THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.19945 of 2016

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri V.Bhaskar Reddy, learned counsel for the petitioner, and Sri T.Vinod Kumar, learned Special Standing Counsel for Commercial Taxes (TG) and, with their consent, the writ petition is disposed of at the stage of admission.

The proceedings under challenge in this writ petition is the order passed by the Joint Commissioner (CT)-III (the 2nd respondent herein) dated 11.05.2016, rejecting the petitioner's application for grant of stay of collection of the disputed penalty pending disposal of the appeal by the Appellate Deputy Commissioner (3rd respondent).

On the ground of belated payment of tax of 34 days, penalty proceedings were initiated against the petitioner and an order of penalty was passed on 01.10.2015. Aggrieved thereby, the petitioner preferred an appeal to the Appellate Deputy Commissioner and sought stay of collection of the disputed penalty pending disposal of the appeal. The 3rd respondent rejected the petitioner's stay application by order dated 05.03.2016. Aggrieved thereby, the petitioner invoked the jurisdiction of the Joint Commissioner who, by order dated 11.05.2015, rejected the petitioner's application for grant of stay. The Joint Commissioner relied on the order of the Sales Tax Appellate Tribunal, Hyderabad, in **M/s. Hyquip Projects (P) Limited vs. State of Andhra Pradesh**[1], to hold that non-payment of tax on the ground that it was beyond the control of the dealer, or that the petitioner had no mens rea not to pay tax, were factors extraneous and irrelevant for levy of penalty under Section 51 (1) of the AP VAT Act, 2005 (for short, 'the Act'). Aggrieved thereby, the present writ petition.

Sri V. Bhaskar Reddy, learned counsel for the petitioner, would submit that Section 51 (1) of the Act cannot be understood in the manner interpreted by the Tribunal in the aforesaid judgment; the Supreme Court, in **M/s. Shree Bhagwati Steel Rolling Mills vs. Commissioner of Central Excise**[2]**,** has held that a provision which makes no distinction between one day's delay and a year's delay is violative of Article 14 of the Constitution of India; and for a delay of merely 37 days in paying the tax due, the respondents were not justified in imposing penalty of 10% on the tax paid belatedly.

On the other hand Sri T.Vinod Kumar, learned Special Standing Counsel for Commercial Taxes (TG), would submit that the penalty, which was imposed in **M/s. Shree Bhagwati Steel Rolling Mills**[2], was equivalent to the amount of tax due; Section 51 (1) of the Act prescribes penalty of merely 10% of the tax paid belatedly; the petitioner has, admittedly, not paid tax within time; and for his failure to pay tax within time, the respondents were justified in imposing penalty, of 10% on him, under Section 51 (1) of the Act.

It would be wholly inappropriate for us to examine the rival contentions on merits as the substantive appeal, against the order of penalty, is still pending adjudication before the 3rd respondent. What is under challenge is merely an order refusing to grant stay. As the submission of Sri V.Bhaskar Reddy, learned counsel for the petitioner, cannot be said to be without merit, we consider it appropriate to direct the respondents not to initiate coercive steps to recover the balance penalty due on condition that the petitioner pays 1/3rd of the disputed penalty to the 4th respondent within four weeks from today. The petitioner shall be given credit for any amount already paid in this regard.

The writ petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 22.06.2016

v v

[1] 57 APSTJ 255

[2] Civil Appeal No.4280 of 2007 dated 24.11.2015