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

WRIT PETITION No.22500 of 2016

ORDER: (Per the Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri K.Srinivasa Rao, learned counsel for the petitioner, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes 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 Additional Commissioner (CT), Hyderabad, dated 20.06.2016 rejecting the petitioner's application for grant of stay pending disposal of the appeal in T.A.No.19 of 2016 before the A.P.VAT Appellate Tribunal.

Facts, to the extent necessary, are that the petitioner was originally registered as a dealer in the composite State of Andhra Pradesh on the rolls of the Assistant Commissioner (CT)(LTU), Begumpet Division. After bifurcation of the State, they obtained registration at Vijayawada on the rolls of the 1st respondent. From out of the sales effected by them prior to bifurcation, certain goods were returned (sales returns) after bifurcation of the State. The petitioner claims to have adjusted the sales returns with the sales effected in the corresponding district; and, as these sales returns related to districts which fall within the present State of Andhra Pradesh, they claimed adjustment of the sales returns with the sales effected in the State of Andhra Pradesh.

On the assessing authority rejecting their claim, the petitioner carried the matter in appeal to the Deputy Commissioner; and, on their appeal being dismissed, they carried the matter in further appeal to the A.P.VAT Appellate Tribunal. As the power to grant stay, during the pendency of the appeal, is conferred only on the Commissioner/Additional Commissioner/ Joint commissioner, the petitioner filed an application seeking stay before the Additional

Commissioner who, by his order dated 20.06.2016, rejected their application on the ground that adjustment of the sales returns could be claimed only by a dealer with the very same TIN; and, as the petitioner was granted a distinct TIN number after bifurcation, they could seek adjustment of the sales returns only with the sales effected under the earlier TIN number which is applicable only in the State of Telangana.

Sri K.Srinivasa Rao, learned counsel for the petitioner, would draw attention of this Court to Rules 16(3) and 28(3) of the A.P.Value Added Tax Rules, 2005, which enable a dealer to claim credit for the sales returns within 12 months of the original sale, to submit that, for the sales effected prior to bifurcation, the petitioner is entitled to seek adjustment of the sales returns even after bifurcation of the State, provided the goods were returned within 12 months from the date of the initial sale. Learned counsel would contend that, as the original sales were effected in the districts which now fall within the State of Andhra Pradesh, the sales returns have necessarily to be adjusted in the turnover relating to the State of Andhra Pradesh, and not in any other State.

While the submission of the learned counsel for the petitioner cannot be said without merit, it would not be appropriate for us to examine this question in the present writ proceedings, as the substantive appeal is pending consideration before the A.P.VAT Appellate Tribunal in T.A.No.19 of 2016. As the present writ petition is filed only against the order passed by the Additional Commissioner rejecting stay, pending disposal of the appeal by the Tribunal, we consider it appropriate to direct the respondents, pending disposal of the appeal by the Tribunal in T.A.No.19 of 2016, not to take any coercive steps for recovery of the disputed tax on condition that the petitioner deposits 60% thereof with the 1st respondent within four (4) weeks from today. The petitioner shall be given credit for the amount already paid by them 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)

12th July 2016
JSU

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

WRIT PETITION No.22500 of 2016

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Date: 12.07.2016

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