THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.35992 of 2016

Order: (**Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

The petitioner has invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, against the order passed by the Appellate Deputy Commissioner on 1.7.2016 rejecting the petitioner's appeal, against the order of penalty passed by the assessing authority, on the ground of non-payment of 12.5% of the disputed penalty.

Facts, to the extent necessary, are that an order of penalty was passed by the assessing authority on 4.5.2015, copy of which was served on the petitioner on 6.5.2015. The petitioner preferred an appeal on 4.7.2015 disputing the penalty of Rs.27,70,514/- imposed on them. The appellate authority is precluded from admitting an appeal under Section 31(1) of the A.P. VAT Act, unless proof of payment of 12.5% of the disputed penalty/tax is produced. A Division Bench of this Court, in **Ankamma Trading Company vs. The Appellate Deputy Commissioner**[1], held that the time limit, for depositing 12.5% of the disputed tax/penalty, is the same time limit of sixty days prescribed for preferring an appeal under Section 31(1) of the A.P. VAT Act and its proviso.

Against the order of the Division Bench, in **Ankamma Trading Company**[1], the matter has been carried in appeal to the Supreme Court, and the appeal is pending. Another Division Bench of this Court, in **Ms/. New Tech Infrastructure**

[1] 2011 (53) APSTJ page 1

vs. Appellate Deputy Commissioner[2], held that, if payment of the disputed tax/penalty is made by way of a cheque within sixty days and such a cheque is dishonoured, payment of 12.5% of the disputed tax by way of a demand draft, upon notice being issued by the authorities informing the petitioner of the cheque having been dishonoured, would be in continuation of the cheque which was issued by him within sixty days; it must be held to be a payment made prior to consideration of the appeal for admission; and the ratio laid down in **Ankamma Trading Company**[1] cannot be applied to such cases. In the present case the cheque dated 4.7.2015 for Rs.3,46,314/-, deposited as proof of payment of 12.5% of the disputed penalty, was dishonoured by the bank for insufficient funds in the petitioner's account. It is not as if the petitioner has paid 12.5% of the disputed penalty even within sixty days from the date of dishonour of the cheque. Dr. S.R.R. Viswanath, learned counsel for the petitioner, would fairly state that payment of 12.5% of the disputed penalty was made on 25.10.2016, a day after the writ petition was filed before this Court on 24.10.2016.

The submission of Sri Dr. S.R.R. Viswanath, learned counsel for the petitioner, that the judgment of the Division Bench of this Court in **Ankamma Trading Company**[1] has been stayed by the Supreme Court and, therefore, the law declared therein has no application does not merit acceptance. It is settled law that stay of operation of an order of the High Court, by the Supreme Court, only means that the said order would not be operative from the date on which the order of stay is passed, and does not mean that the order, which has been stayed, has been obliterated.

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[2] (Judgment in Writ Petition No. 12517 of 2015 dated 27.04.2015)

When a Court of appeal stays the operation of the judgment, it stays the further implementation, as between the parties, of the operative portion thereof, and thereby the ratio of the decision cannot be said to be wiped out. (**K. Venkata Reddy v. LAO**[3]; **M/s.Sree Chamundi Mopeds Ltd. v. Church of SIT Association**[4]; and **Govt. of A.P. v. N.Rami Reddy**[5]).

Reliance placed on the Division Bench judgment, in **New Tech Infrastructure**[2], is misplaced as, in the said case, the requirement of the second proviso to Section 31(1) was complied within 87 days from the date of the assessment order, evidently within sixty days from the date on which it was dishonoured. In the present case, while the cheque was presented on 4.7.2015 payment was made, consequent on said cheque being dishonoured, only after one year and three months on 25.10.2016, that too after the present writ petition was filed on 24.10.2016. Accepting the submission of Dr. S.R.R. Viswanath, that dishonour of a cheque deposited within time before the appellate authority, would enable the appellant to deposit 12.5% of the disputed tax/penalty at any time thereafter, would mean that an appellant, who prefers an appeal against the assessment order, can make payment of 12.5% of the disputed tax/penalty by way of a cheque without having sufficient balance in his bank account and, on such a cheque being dishonoured, to make payment of 12.5% of the disputed tax/penalty at his convenience, and thereby overcome the period of limitation of sixty days prescribed under the second proviso to Section 31(1) of the A.P. VAT Act. Such a contention is only to be noted to be rejected. It is only if payment is made

[3] 1994 (1) ALT 227
[4] AIR 1992 SC 1439
[5] 2001 (1) ALD 443 (DB)

at least within a period of sixty days from the date of dishonour of the cheque can an assesee claim, in the light of the law declared by the Division Bench in **New Tech Infrastructure**[2], that their appeal should be entertained. The said judgment has no application to the facts of the present case.

Viewed from any angle, we see no reason to interfere with the discretion exercised by the appellate authority to reject the appeal. The writ petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A. SHANKAR NARAYANA, J)

26th October, 2016
Note:
Furnish c.c. in one week.
b/o
pnb

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Date: 26.10. 2016

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