THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.42539 OF 2015

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

Heard Sri A.V.A.Siva Kartikeya, learned counsel for the petitioner and Sri M.Govind Reddy, 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 Joint Commissioner (CT-II) dated 04.12.2015 rejecting the petitioner's application seeking stay of collection of the disputed tax pending disposal of their appeal before the Telangana VAT Appellate Tribunal.

The petitioner was assessed to tax, and the sale of handlooms was exempt from tax under Entry 21 of the First Schedule to the Andhra Pradesh Value Added Tax Act, 2005. The order of the assessing authority was revised by the Deputy Commissioner, Commercial Taxes who, by his order dated 20.05.2015, subjected the handloom cloth, sold by the petitioner to surgical companies, to tax under Entry 88 of the Fourth Schedule to the Act. Aggrieved thereby, the petitioner carried the matter in appeal to the VAT Appellate Tribunal. Pending appeal before the Tribunal, they sought stay of collection of disputed tax by filing an application to the Joint Commissioner and, on the said application being dismissed, they have now invoked the jurisdiction of this Court

The question whether the subject goods fall within the ambit of Entry 21 of the First Schedule or Entry 88 of the Fourth Schedule are matters for examination by the Tribunal. Notwithstanding the submission of Sri A.V.A.Siva Kartikeya, learned counsel for the petitioner relying on the judgment of the Patna High Court in **M/s. Spiritco v. State of Bihar & Ors.**[1], that it falls within the ambit of Entry 21 of the First Schedule, it would be inappropriate for us to make any observation in this regard, as this issue must be decided by the Tribunal in the appeal preferred by the petitioner. Suffice it if, pending disposal of the appeal by the Tribunal, the respondents are directed not to take any coercive steps for recovery of the disputed tax on the condition that the petitioner pays 50% thereof within six (6) weeks from today. The petitioner shall be entitled to be given credit to the amount, if any, paid in this regard.

The Writ Petition is disposed of, accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

4th January 2016
RRB

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[1] **1999 SCC Online Patna 515 : (1999) 3 PLJR 210**