THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.23903 of 2016

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

Heard Sri S.Niranjan Reddy, learned counsel appearing on behalf of the petitioner, and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes and, with their consent, the writ petition is disposed of at the stage of admission. The order passed by the 2nd respondent dated 08.07.2016, and the consequential notice issued by the 3rd respondent dated 18.07.2016 demanding payment of the outstanding disputed tax of Rs.32,53,10,577/-, are questioned in this writ petition as being illegal and arbitrary.

Against the assessment order passed in Form VAT 305 dated 27.02.2016, the petitioner carried the matter in appeal before the 2nd respondent. They also filed an application, for grant of stay pending disposal of the appeal, on 22.03.2016. The stay application was rejected by the 2nd respondent by his order dated 12.05.2016. Aggrieved thereby, the petitioner preferred a revision application before the Additional Commissioner for grant of stay pending disposal of the appeal by the Appellate Deputy Commissioner. The said stay application is said to have been posted for hearing on 19.07.2016 and to be still pending on the file of the Additional Commissioner. Though the appeal preferred by the petitioner was dismissed by the Appellate Deputy Commissioner only on 08.07.2016, and the petitioner has a statutory remedy of a further appeal to the A.P.VAT Appellate Tribunal, Visakhapatnam under Section 33(1) of the A.P.Value Added Tax Act, 2005 (for short "the Act') within 60 days from the date of receipt of a copy of the order passed by the Appellate Deputy Commissioner, the 3rd respondent initiated coercive steps for recovery, of the amount due in terms of the assessment order, by his notice dated 18.07.2016.

Sri S.Niranjan Reddy, learned counsel appearing on behalf of the petitioner, on instructions, undertakes that the petitioner would prefer an appeal to the A.P.VAT Appellate Tribunal, Visakhapatnam within four weeks from today and, immediately after the appeal is preferred, an application would also be filed before the Additional Commissioner under Section 33(6)(a) of the Act seeking stay of collection of the disputed tax pending disposal of the appeal by the Tribunal.

Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would submit that the revision application filed by the petitioner is now slated for hearing before the Additional Commissioner on 22.07.2016; though the assessment order was passed as early as on 27.02.2016, the petitioner has not paid any amount, apart from 12.5% which they had deposited as a pre-condition for preferring an appeal before the 2nd respondent; and even if the petitioner's request were to be acceded to, this Court may direct them to pay atleast a part of the substantial demand, before they avail the remedy of an appeal before the A.P.VAT Appellate Tribunal.

The pre-condition for an appeal being filed before the A.P.VAT Appellate Tribunal, as stipulated under the third proviso to Section 33(2) of the Act, is deposit of 50% of the differential tax. As the petitioner undertakes to prefer an appeal within four weeks from today, the interests of the Revenue is adequately safeguarded as the petitioner is required to deposit 50% of the differential tax within the aforesaid period of four weeks. As to whether petitioner should be granted stay for the balance amount is again a matter which the Additional Commissioner would consider on his jurisdiction being invoked by the petitioner under Section 33(6) of the Act. The respondents cannot therefore be heard to contend that, pending disposal of the appeal by the Tribunal, they should be permitted to enforce the garnishee, and recover the entire tax due, as that would render the appellate remedy, prescribed under Section 33(1) of the Act, illusory.

Recording the undertaking of the petitioner that an appeal would be preferred to the A.P.VAT Appellate Tribunal, against the appellate order passed by the Appellate Deputy Commissioner, within four weeks from today, and an application for grant of stay would be filed before the Additional Commissioner within two weeks of preferring the appeal to the Tribunal, we direct the respondents herein not to take any coercive steps for recovery of the disputed tax till the application filed by the petitioner before the Additional Commissioner, for grant of stay pending disposal of the appeal by the Tribunal, is disposed of, and the order of the Additional Commissioner is communicated to the petitioner herein.

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

(RAMESH RANGANATHAN, J)

(U.DURGA PRASAD RAO, J)

20th July 2016
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

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Date: 20.07.2016

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