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

WRIT PETITION No.3705 of 2016

ORDER: (per 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 being disposed of at the stage of admission.

The order under challenge in this Writ Petition is the order passed by the Joint Commissioner dated 23.12.2015 rejecting the petitioner's stay application pending disposal of the appeal before the Telangana VAT Appellate Tribunal. By the assessment order dated 18.12.2014, passed by the Commercial Tax Officer (Intelligence), Secunderabad, the turnover of the petitioner for Rs.2,32,51,628/- was subjected to tax at 14.5% on the ground that the HSN code No.7306.90.11 was rescinded by G.O.Ms.No.140 dated 19.03.2013, and subsequent thereto the goods would fall only under the residuary Entry in Schedule-V of the Andhra Pradesh Value Added Tax Act, 2005.

Sri A.V.A.Siva Kartikeya, learned counsel for the petitioner, would submit that, despite noticing the petitioner's contention that the subject goods fall within the ambit of Entry 70 (10) of the IV Schedule,, the revisional authority was swayed by irrelevant considerations of the HSN codes being rescinded vide G.O.Ms.No.140 dated 19.03.2013; and, merely because prescription of HSN codes was subsequently rescinded, did not enable the revisional authority to avoid considering the petitioner's contention that the goods manufactured by them fall within the ambit of Entry 70 (10) of Schedule-IV of the Act. It does appear, from a cursory reading of the order passed by the revisional authority, that this contention of the petitioner has not even been considered. It would, however, be wholly inappropriate for us to delve on this aspect any further as the substantive appeal, against the order passed by the revisional authority, is pending before the Telangana VAT Appellate Tribunal. The order, under challenge before us, is only the order passed by the Joint Commissioner rejecting the petitioner's application for stay of collection of the disputed tax pending disposal of the appeal by the Tribunal.

Ends of justice would be met if the respondents are directed not to take any coercive steps to recover the disputed tax, pending disposal of the appeal before the appellate Tribunal, on condition that the petitioner deposits 50% of the disputed tax within eight weeks from today. The petitioner shall be given credit for the amounts, if any, already paid in this regard.

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

M.SATYANARAYANA MURTHY, J

11th February, 2016.
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