THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.28783 OF 2016

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

This writ petition is preferred against the order of the Additional Commissioner (CT) & Joint Commissioner (CT)-1, Hyderabad (the 1st respondent), dated 19.8.2016, rejecting the petitioner's application for grant of stay pending disposal of the appeal before the Sales Tax Appellate Tribunal.

For the goods supplied to the Government of India prior to April 2007, the petitioner received a part of the consideration, and claimed concessional rate of tax at 4% by furnishing Form-D. The consideration required to be paid to the petitioner, a public sector undertaking, was not determined by the Government of India. It was only later, during the assessment year 2010-11, was the price finally determined towards the additional consideration, for the transactions of sale prior to April, 2007. The additional consideration was received by the petitioner during the year 2010-11.

The petitioner contended that they had received the additional consideration in 2010-11, for the sale transactions which related to the period prior to April, 2007 when they were entitled to concessional rate of tax @ 4% on furnishing Form-D; they should be extended a similar concession for the consideration received during the period 2010-11 also, and their liability to pay tax was only @ 4% and not @ 14.5%. The contention of the revenue, on the other hand, was that, since the facility of concessional rate of tax, on furnishing Form-D, was withdrawn from 1.4.2007 onwards, the petitioner was not entitled for concessional rate of tax @ 4% for the consideration received during the year 2010-11, and their liability was to pay tax at the local tax rate applicable to these goods i.e., @ 14.5%.

The Additional Commissioner rejected the petitioner's application for grant of stay holding that, during the year 2010-11, the benefit of concessional rate of tax at 4%, on furnishing Form-D, was not available to the dealer.

While Sri S. Dwarakanath, learned counsel for the petitioner, would contend that the petitioner is entitled to the concessional rate of tax at 4%

even for the additional consideration received in the year 2010-11, Sri M. Govind Reddy, learned Special Standing Counsel for Commercial Taxes, would contend that the petitioner is not so entitled, as the facility of Form-D was not available to them during the year 2010-11.

Inasmuch as the substantive appeal is pending adjudication before the Tribunal, it would be wholly inappropriate for us to express any opinion on this question. As the petitioner is a public sector undertaking, and the consideration on which the respondents seek to levy tax is the additional consideration received by them from the Government of India, we consider it appropriate to direct the respondents, pending disposal of the appeal before the Sales Tax Appellate Tribunal, not to take any coercive steps for recovery of the disputed tax, as the petitioner has already paid 50% thereof.

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

(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

30th August 2016

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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

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Date:30.08.2016

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