THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.19616 OF 2016

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

This Writ Petition is filed questioning the order passed by the Additional Commissioner of Commercial Taxes (CT) Legal, Hyderabad in proceedings dated 08.06.2016 rejecting the petitioner's application for grant of stay pending disposal of the appeal by the Sales Tax Appellate Tribunal (Tribunal).

Facts, to the extent necessary, are that the petitioner was assessed to tax under the Andhra Pradesh Value Added Tax Act, 2005 ("the Act" for brevity). The second respondent sought to revise the assessment order and issued show cause notice dated 31.10.2014 and, thereafter, passed a revisional order confirming the tax liability of Rs.23,80,120/- and rejecting the exemption claimed by the petitioner for Rs.1,90,40,962/-. Aggrieved thereby, the petitioner carried the matter in appeal in T.A.No.126 of 2015, and the said appeal is said to be still pending on the file of the Tribunal. The petitioner, thereafter, filed an application before the fifth respondent, under Section 33(6) of the Act read with Rule 39 of the Andhra Pradesh Value Added Tax Rules, 2005 ("the Rules" for brevity), for stay of collection of the disputed tax. The fifth respondent, by the impugned order dated 08.06.2016, rejected the petitioner's application for grant of stay. Aggrieved thereby, the present Writ Petition.

Sri Damodar Mundra, learned counsel for the petitioner, would submit that, as the petitioner is a retail dealer, Rule 26(1) of the Rules which requires the particulars to be mentioned in each invoice is not applicable; the fifth respondent erred in examining the matter on its merits; by passing an elaborate order, the fifth respondent had rendered the appeal pending before the Tribunal infructuous; and, as the substantive appeal is still pending on the file of the Tribunal, the revisional authority ought not to have considered the matter on its merits.

While Rule 26(1) of the Rules applies to a dealer, other than a retail dealer, the Additional Commissioner has taken a *prima facie* view that this did not mean that retail dealers need not specify the date and the description of the goods in the sales bills issued by them, as these are vital information which form the basic requirement of any sale bill. As the substantive appeal is still pending before the Tribunal, it would not be appropriate for us to examine the scope of Rule 26(1) of the Rules or to record any finding on whether Rule 26(1) of the Rules exempts retail dealers from even mentioning the date and description of the goods in the sale bills issued by them. Suffice it to observe that the *prima facie* conclusion of the Additional Commissioner in this regard cannot be said to suffer from perversity necessitating exercise interference in proceedings under Article 226 of the Constitution of India. Needless to state that the Tribunal shall examine the petitioner's claim, on the inapplicability of Rule 26(1) of the Rules, on its own merits uninfluenced by the observations made either by the Additional Commissioner in the impugned order or by this Court in the present Writ Petition.

With regard the contention that the Additional Commissioner ought not to have examine the matter on merits, it is evident that the impugned order merely records the *prima facie* view of the Additional Commissioner. As the petitioner had filed an elaborate and detailed petition under Section 33(6)(a) of the Act seeking stay of the disputed tax, the Additional Commissioner was bound to deal with all the contentions raised by the petitioner in their stay application, and record his *prima facie* conclusion. His failure to do so may have resulted in the petitioner complaining that the objections raised by them, in their stay petition was not even examined.

Reliance placed, on behalf of the petitioner, on Section 33(6) of the Act to contend that the Additional Commissioner is bound to pass a conditional order of stay pending disposal of the appeal by the Tribunal does not also merit acceptance. Section 33(6)(a) of the Act merely stipulates that, when an appeal is preferred before the Tribunal, the Additional Commissioner may, on an application being filed by the dealer and subject to such terms and conditions as he may think fit, order grant of stay pending disposal of the appeal by the appellate Tribunal. Section 33(6)(a) is an enabling provision, and confers power on the Additional Commissioner to grant stay pending disposal of the appeal before the Tribunal either unconditionally or on such terms and conditions as he may think fit to impose. The power to grant stay would include the power to refuse to grant stay, and Section 33(6)(a) of the Act cannot be so understood as to mean that the Additional Commissioner is bound to grant stay, in each and every application filed before him, either conditionally or unconditionally. In the present case, the Additional Commissioner has specifically held that the petitioner's application, for grant of stay pending disposal of the appeal before the Tribunal, did not merit acceptance. This contention urged by Sri Damodar Mundra also necessitates rejection.

Sri Damodar Mundra, learned counsel for the petitioner, would submit that the petitioner has, in addition to the amount already deposited before the Tribunal, also paid Rs.9,70,000/- towards the disputed tax. The second proviso to Section 33(2) of the Act requires 25% of the differential tax, as ordered by the revisional authority under Section 32(2) of the Act, to be paid for an appeal, under Section 33(1) of the Act, to be entertained by the appellate Tribunal. The mere fact that the petitioner paid 25% of the disputed tax would not by itself justify grant of stay. While the petitioner's request, that the impugned order passed by the Additional Commissioner must be set aside, necessitates rejection, it is made clear that, while paying the balance tax due in terms of the order passed by the revisional authority, the petitioner shall be given credit for the amount paid by them towards the tax due.

Sri Damodar Mundra, learned counsel for the petitioner, requests eight weeks' time to make payment of the balance tax due. We, however, consider it appropriate to direct the respondents not to take any coercive steps, for recovery of the balance tax due pending disposal of the appeal before the Tribunal, in case the petitioner pays the balance tax due within a period of four (4) weeks from today. Needless to state that failure on the part of the petitioner to pay the balance tax due within the aforesaid period would enable the respondents to proceed and recover the balance tax due in accordance with law. It is also made clear that the balance tax paid by the petitioner shall be subject to the result of the appeal pending before the Tribunal.

Subject to the above observations, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

21st June 2016
RRB