THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.5475 OF 2016

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

Heard Sri N.Venkataiah, learned counsel for the petitioner and Sri J.Anil Kumar, 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 assessment order passed by the third respondent on 27.11.2015 for a consecutive period of ten years for 2005-06 to 2015-16. It is not in dispute that, against the said assessment order, the petitioner has preferred an appeal to the Appellate Deputy Commissioner. Sri N.Venkataiah, learned counsel for the petitioner, would submit that, while the assessment order has been subject to challenge in this Writ Petition, the only relief which he seeks is for grant of stay of collection of the disputed tax and penalty pending disposal of the appeal before the Appellate Deputy Commissioner.

Section 8(2) of the Andhra Pradesh Tax on Professions, Trades, Callings and Employments Act, 1987 ("the Act" for brevity) prescribes a limitation of four years, from the expiry of the year to which the assessment relates, to make assessment. *Prima facie*, the professional tax levied for the first six, of the aforesaid ten years period, appears to be barred by limitation. The power to impose penalty, under Section 12 of the Act, is only after the assessing authority gives the dealer a reasonable opportunity of making his representation. It is not in dispute that no such opportunity has been afforded to the petitioner and, by way of the present order, both professional tax and penalty thereon has been levied.

Schedule I of the Act, as amended by G.O.Ms.No.82 dated 04.02.2013, requires a dealer, registered under the A.P. VAT Act, to pay professional tax of Rs.2,500/- per annum. *Prima facie*, the professional tax which the respondent could have collected from the petitioner, for the four-year period within limitation, is only Rs.10,000/-. Rule 24 of the Andhra Pradesh Tax on Professions, Trades, Callings and Employments Rules, 1987 confers power to levy interest @ 2% for each month from the date specified for its payment. The interest component, even if the petitioner is held liable to tax for the preceding four-year period, would be approximately Rs.5,000/-.

We consider it appropriate, in such circumstances, to dispose of the Writ Petition directing stay of collection of the disputed tax by the third respondent on condition that the petitioner deposits Rs.15,000/- with him within four (4) weeks from today. The petitioner shall be given credit for any amount paid by them in this regard. The Appellate Deputy Commissioner shall, without being influenced by the observations made in this order, examine the petitioner's appeal on its own merits and in accordance with law.

The Writ Petition stands 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)

2nd March 2016
RRB