THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.27487 OF 2016

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

Heard Sri Karan Talwar, learned counsel for 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. Aggrieved by the order passed by the Additional Commissioner dated 28.07.2016, rejecting the revision preferred by the petitioner against the order passed by the Appellate Deputy Commissioner rejecting stay, the present Writ Petition is filed.

By the order under challenge in this Writ Petition, the petitioner's request for grant of stay, pending disposal of the appeal by the Appellate Deputy Commissioner, was rejected. While several issues arise for consideration in the appeal, a substantial part thereof i.e., for nearly Rs.1.79 crores relates to the belated claim of input tax credit.

The submission of Sri Karan Talwar, learned counsel for the petitioner, is that Section 13(1) of the Andhra Pradesh Value Added Tax Act, 2005 ("the Act" for brevity), by using the words "made by the dealer during the tax period", makes it clear that it relates only to the purchase of taxable goods during that period, and does not disentitle the dealer from claiming input tax credit as long as the selling VAT dealer has paid tax thereon. Learned counsel would refer to Section 13(3)(a) of the Act and clause (a)(a) of Section 13(3), as inserted by Act No.4 of 2016 dated 12.01.2016, to submit that the said provision does not provide for any penal consequence; and failure of the dealer to claim input tax credit within a particular period is immaterial as no particular period, for claiming input-tax credit, is stipulated under the Act.

On the other hand Sri S.Suri Babu, learned Special Standing

Counsel for Commercial Taxes, would contend that, while the dealer is required to file the monthly return, disclosing their monthly turnover, by the 20th of the succeeding month, the very fact that they are entitled to file a revised return thereto, within a period of six months, can only mean that the dealer is not entitled to claim input tax credit beyond a period of six months after the month in which they ought to have filed their return disclosing their monthly turnover.

As the scope and ambit of Sections 13(1) and 13(3) of the Act arise for consideration, and as the substantive appeal is still pending adjudication before the Appellate Deputy Commissioner, it would be wholly inappropriate for us to express any opinion on the rival submissions. Suffice it to note that it is not even the case of the revenue that the selling VAT dealer had not issued a tax invoice to the petitioner or even that tax had not been paid by them on the goods sold to the petitioner herein.

We consider it appropriate, in such circumstances, to direct the respondents not to take any coercive steps for recovery of the disputed tax, pending disposal of the appeal by the Appellate Deputy Commissioner, on condition that the petitioner deposits 40% of the tax due within two months from today i.e., 50% thereof within one month from today, and the balance 50% within one month thereafter. The petitioner shall be given credit for the amount already paid by them in this regard.

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, ACJ)

(M.SATYANARAYANA MURTHY, J)

24th August 2016

RRB