THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition No.27212 of 2016

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

Heard Sri S. Dwarakanath, learned counsel for petitioner and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes (Andhra Pradesh) and, with their consent, the Writ Petition is disposed of at the admission stage.

Aggrieved by the assessment order passed for the tax period March, 2013 to March, 2014, levying tax under Sec.4(8) of the Andhra Pradesh Value Added Tax Act, 2005 (for short "the Act") on the transfer of the right to use tugboats, the petitioner preferred an appeal to the Appellate Deputy Commissioner (CT), Visakhapatnam. They also filed an application seeking stay of all further proceedings pending disposal of the appeal. On the stay application being rejected, the petitioner preferred a revision to the Additional Commissioner (CT), who, by the impugned order dated 14.07.2016, rejected the application for stay.

Sri S. Dwarakanath, learned counsel for petitioner, would draw our attention to the interlocutory order passed in the Assessee's own case for the earlier tax period in terms of the very same agreement, to submit that, since interim stay was granted therein, this Court should consider granting stay pending disposal of the appeal by the Appellate Deputy Commissioner (CT); and the petitioner has already paid service tax @ 12.36% on the very same transaction. Learned counsel would fairly state that the petitioner is ready and willing to pay 25% of the disputed tax, provided they are given credit to the tax already paid, in this regard earlier.

Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes (A.P), would submit that there is a clear transfer of the right to use the goods, in the subject case, attracting Section 4 (8) of the Act. These are all questions which are required to be considered by the Appellate Authority in the appeal preferred by the petitioner against the assessment order, and cannot be examined in the present writ proceedings wherein the challenge is to the interlocutory order passed in revision refusing to grant stay pending disposal of the appeal.

We consider it appropriate, in the circumstances, to direct the respondents not to take coercive steps for recovery of the disputed tax on condition that the petitioner deposits 25% of the disputed tax, as agreed before us by Sri S.Dwarakanath, learned counsel for petitioner, with the 4^{th} respondent within four (4) weeks from today. The petitioner shall be given credit to the tax already paid in this regard.

The Writ Petition is accordingly disposed of. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

RAMESH RANGANATHAN, ACJ

U.DURGA PRASAD RAO, J

Dt: 22.08.2016
Scs/Murthy