THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION NO.43371 OF 2016

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

Heard Sri P.Girish Kumar, 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.

This Writ Petition is filed aggrieved by the order passed by the Additional Commissioner (CT), Vijayawada dated 08.11.2016 rejecting the petitioner's application for grant of stay of collection of the disputed tax pending disposal of the appeal before the Andhra Pradesh Value Added Tax Tribunal ("the Tribunal" for brevity). The petitioner, a proprietary concern, is carrying on business of trading in Microscopes, Stop Clocks, Galvanometer, Lab Equipments, Laboratory Chemicals, Lab Instruments, Incubators, Laboratory Glassware, Charts etc. They claim that the subject goods fall within the ambit of the IV Schedule to the Andhra Pradesh Value Added Tax Act ("the Act" for brevity). The assessing authority, however, subjected them to tax @ 14 ½% treating these goods as unclassified goods as the subject goods were not sold to hospitals.

Aggrieved thereby, the petitioner carried the matter in appeal to the Appellate Deputy Commissioner and, on the appeal being dismissed, they preferred a Second Appeal to the Tribunal by way of T.A.No.95 of 2016 which is said to be still pending before the Tribunal. They filed an application before the Additional Commissioner seeking stay of recovery of the disputed tax pending disposal of the appeal; and, on the application being dismissed, they have filed the present Writ Petition.

Sri P. Girish Kumar, learned counsel for the petitioner, would submit that laboratory equipment fall within the ambit of Entry 102(2) of Schedule IV of the Act; the Entry relates to all forms of laboratory equipment, and is not restricted only to laboratory equipment supplied to hospitals; laboratory equipment is distinct from medical equipment; and, consequently, the authorities had erred in subjecting the goods to tax treating them as unclassified goods under Schedule V of the Act.

While the submission of Sri P.Girish Kumar, learned counsel for the petitioner, cannot be said to be without merit, it would be wholly inappropriate for us to record any finding on the petitioner's claim that the subject goods fall within the ambit of Entry 102(2) of Schedule IV of the Act as a substantive appeal is pending consideration before the Tribunal. Suffice it to note that, since the petitioner has already paid 50% of the disputed tax and as the scope and ambit of Entry 102(2) of Schedule IV of the Act necessitates examination by the Tribunal, we consider it appropriate to direct the respondents not to take any coercive steps for recovery of the balance disputed tax till the disposal of the appeal before the Tribunal.

The Writ Petition is disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

19th December 2016
RRB