THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION NO.32637 OF 2016

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

This Writ Petition is filed against the order passed by the Additional Commissioner (CT) ((Legal), Vijayawada, dated 24.08.2016 rejecting the petitioner's application for grant of stay pending disposal of the appeal before the Appellate Deputy Commissioner (CT), Vijayawada.

The petitioner, a Government of India Public Sector Undertaking, questioned the assessment order, passed for the tax period April 2008 to May 2012, before the Appellate Deputy Commissioner along with an application for grant of stay. As their application for stay, pending disposal of the appeal, was rejected, they invoked the jurisdiction of the Additional Commissioner who, by the impugned order, substantially rejected their request for stay, and granted stay of collection of tax of Rs.20,00,000/- leaving the balance tax of Rs.1.28 crores to be paid by the petitioner.

In the order under challenge in this Writ Petition, the Additional Commissioner has noted that tax invoices were not filed; only photocopies of the purchase invoices were filed; not even the list of such invoices were filed; more than 100 such photocopies were filed; the total number of invoices filed were not known; and, on the basis of the photocopies it could not be ascertained whether the petitioner is eligible for input tax credit.

Sri P.Karthik Ramana, learned counsel for the petitioner, would submit that the impugned order was passed even without notice to the petitioner; the original tax invoices are available with the petitioner; if only the petitioner had been given an opportunity of hearing, the original tax invoices could have been produced; and, though photostat copies of the tax invoices were filed, it is evident from the impugned order that they were not even considered by the Additional Commissioner.

The fact that photostat copies of the tax invoices were filed is noted by the Additional Commissioner in the impugned order. If he had any difficulty in ascertaining the total input tax credit claimed, on the basis of these tax invoices, or if he desires to peruse the original tax invoices, he could have called upon the petitioner to produce the same. While the order impugned in this Writ Petition is undoubtedly an interlocutory order, it is an order bereft of reasons, and has deprived the assessee of his right to have his application, filed seeking stay of collection of the disputed tax, considered by the Additional Commissioner in accordance with law.

While we were initially inclined to set aside the impugned order and remand the matter to the Additional Commissioner for his consideration afresh, bearing in mind that the appeal was filed before the Appellate Deputy Commissioner on 08.01.2016, we consider it appropriate to direct the second respondent to dispose of the appeal itself at the earliest, and in any event within two (2) months from the date of receipt of a copy of this order. Ends of justice would be met if the respondents are directed, pending disposal of the appeal by the Appellate Deputy Commissioner, not to take coercive steps for recovery of the disputed tax on condition that the petitioner deposits one-third ($1/3^{rd}$) of the disputed tax with the assessing authority within four (4) weeks from today. The petitioner shall be entitled to be given credit for the amounts already paid 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)

(A.SHANKAR NARAYANA, J)

19th October 2016
RRB