THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No. 38428 of 2016

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

The order under challenge in this writ petition is the proceeding of the Additional Commissioner (CT), Vijayawada, dated 8.9.2016, dismissing the petitioner's application for grant of stay pending disposal of the appeal filed before the A.P. VAT Tribunal, Visakhapatnam in T.A. No. 40 of 2016.

The petitioner, a sub-contractor to M/s. Parthi Sai Contractors, filed an application in Form VAT 250 seeking composition of tax under Section 4 (7) (c) of the A.P. VAT Act. The said form is required to be submitted in advance indicating the estimated turnover of the works to be executed in the ensuing year. The petitioner's case, in short, is that they did not execute any work in terms of Form VAT 250 and, consequently, they are not liable to pay tax.

Sri D. Srinivas, learned counsel for the petitioner, submits that, while the assessing authority had held that they were not liable to tax, the revisional authority had, without application of mind, levied tax on the turnover disclosed in the Form VAT 250 without even ascertaining whether the petitioner had received consideration or had executed the works for the amount reflected therein. It is their grievance that the petitioner's application for stay, pending disposal of the appeal before the A.P.VAT Tribunal, was mechanically dismissed by the Additional Commissioner without application of mind.

Sri S. Suri Babu, learned Special Standing Counsel for Commercial Taxes, would fairly state that the contentions raised by the petitioner were not examined by the Additional Commissioner; and, instead of keeping the writ petition pending on the file of this Court, it would suffice if the Additional Commissioner is permitted to re-examine the matter, and to pass an order afresh in accordance with law.

In the light of the submissions made by Sri S. Suri Babu, learned Special Standing Counsel for Commercial Taxes, the order impugned in this writ petition is set aside. The Additional Commissioner shall, after affording the petitioner an opportunity of being heard, pass an order afresh, and in accordance with law. Till the Additional Commissioner passes an order afresh, the respondents shall not take any coercive steps to recover the disputed tax.

The writ petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A. SHANKAR NARAYANA, J)

9th November, 2016

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Date: 9.11.2016

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