THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.35704 of 2016

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

This writ petition is preferred against the order passed by the Additional Commissioner dated 18.8.2016 rejecting the petitioner's application for grant of stay of collection of the disputed penalty pending disposal of the appeal before the A.P. VAT Appellate Tribunal, Visakhapatnam.

Aggrieved, both by the assessment and the consequential order of penalty, the petitioner carried the matter in appeal initially to the Appellate Deputy Commissioner and, on its dismissal, to the A.P.VAT Appellate Tribunal, Visakhapatnam before whom both the appeals are, admittedly, pending.

It is represented by Ms. Shravya Desai, learned counsel for the petitioner, that the petitioner has paid the entire disputed tax, and 50% of the disputed penalty, pending disposal of the second appeals before the A.P. VAT Appellate Tribunal. In the order under appeal, the Additional Commissioner came to the prima facie conclusion that the assessing authority was justified in levying penalty under Section 53(3) of the A.P.VAT Act, 2005 (for short 'the Act') on the ground that the assessee had claimed the benefit of input tax credit on the entire value of the executed works. While Ms. Shravya Desai, learned counsel for the petitioner, would contend that the findings recorded by the Additional Commissioner are perverse and necessitate interference in these writ proceedings, it would be wholly inappropriate for us to examine the matter on merits as the substantive appeals are pending adjudication before the A.P. VAT Appellate Tribunal. As the petitioner has already paid 100% of the tax due, and 50% of the penalty imposed on them by the assessing authority, we consider it appropriate to dispose of the writ petition directing the respondents not to take coercive steps for recovery of the disputed penalty till the appeals, pending before the A.P. VAT Appellate Tribunal are disposed of subject to the condition that the petitioner deposits 65% of the disputed penalty, with the 1st respondent, within four weeks from today. The petitioner shall be given credit for any amount already paid by them in this regard.

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)

26th October, 2016

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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.35704 of 2016

Date: 26.10. 2016

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