THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No.2550 of 2016

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The proceedings under challenge in this writ petition is the order passed by the Additional Commissioner (Commercial Taxes) dated 27.10.2015 rejecting the petitioner's application for grant of stay pending disposal of their appeal before the A.P. Value Added Tax Appellate Tribunal, Visakhapatnam.

The petitioner was assessed to tax for the assessment year 2002-03 by proceedings of the Assessing Authority dated 29.01.2004. The Deputy Commissioner, by his proceedings dated 01.02.2008, revised the assessment under Section 20(2) of the A.P. General Sales Tax Act, 1957 (for short "the Act"). Aggrieved thereby, the petitioner carried the matter in appeal to the Tribunal, and the appeal is said to be pending. The petitioner sought stay pending appeal, and the impugned order dated 27.10.2015 was passed by the 3rd respondent.

In the impugned order, the Additional Commissioner observed that the petitioner had contended that the Deputy Commissioner had withdrawn exemption to the extent of Rs.81,72,598/- which was the expenditure incurred; this expenditure was in the nature of cost of establishment; and they had relied on the judgment of the High Court in ***VEEAAR Constructions, Hyderabad vs. State of A.P.***[1]. The Additional Commissioner held that the cost of the establishment, and other similar expenses, were analogous to the expenditure considered in ***VEEAAR Constructions, Hyderabad***[1]; no details thereof were filed either before the Deputy Commissioner or before him; he could not, therefore, examine even *prima facie* whether the deductions involved in the disputed turnover were analogous to the deductions specified in Rule 6(2) of the A.P. General Sales Tax Rules, 1957; while it was contended that the value of the work in progress was also taken as a total turn over erroneously by the Deputy Commissioner, no evidence was placed to show that the sum of Rs.8,41,473/- actually related to work in progress as on 31.03.2003; the dealer had failed to file any objections before the Deputy Commissioner in the revision proceedings; no details were also filed before him; and the amount received by the contractor alone was taken as the measure of the turnover by the Deputy Commissioner. The Additional Commissioner found no ground to interfere with the collection process of the disputed tax.

Sri S.Krishna Murthy, learned counsel for the petitioner, would submit that, as the petitioner has already made a pre-deposit of 25% of the disputed tax, pending disposal of the appeal before the Tribunal, this Court should grant stay. The scope of judicial review of an interlocutory order, in proceedings under Article 226 of the Constitution of India, is extremely limited. It is only when a clear case of an error apparent on the face of record is made out would this Court be justified in interfering with the matter. The order of the Additional Commissioner is a reasoned order. It cannot be said that it suffers from any perversity necessitating interference. Needless to state that the Tribunal shall decide the appeal on its own merits uninfluenced either by any observations made in the impugned order or in the order now passed by us. We see no reason, however, to interfere with the order passed by the Additional Commissioner refusing to grant stay pending disposal of the appeal by the Tribunal

Sri S.Krishna Murthy, learned counsel for the petitioner, requests six weeks time to pay the balance tax. We consider it appropriate, however, to permit the petitioner to pay the balance tax within four weeks from today failing which it is open to the respondents to initiate proceedings for recovery of the said amount in accordance with law.

The writ petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date:22.02.2016

JSU

<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>

AND

<u>THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY</u>

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