THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION NO.12743 OF 2016

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

Heard Sri S.Dwarakanath, learned counsel for the petitioner and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes and, at their request, the Writ Petition is disposed of at the stage of admission. The proceedings under challenge in this Writ Petition is the sale notice in Form No.7 dated 25.02.2016 issued under Section 36 of the Andhra Pradesh Revenue Recovery Act ("the Act" for brevity), and the endorsement dated 03.03.2016 issued by the first respondent herein.

The petitioner herein, a registered VAT dealer at Rajam, Srikakulam District, was extended the benefit of sales tax deferment, and pursuant thereto an agreement was entered into between the petitioner and the Deputy Commissioner (CT). Consequently, the sales tax collected by the petitioner for a particular year was treated as a loan, extended to them by the Government, to be repaid fourteen years thereafter without interest.

On the ground that the sales tax deferment of Rs.2,23,08,799/-, for the year 2001-02 repayable in the year 2015-16 was not paid, the subject properties were sought to be put to sale; and proceedings under the Act were initiated. The petitioner claimed adjustment of the sales tax deferment loan to the extent of Rs.1,15,79,942/- with the input tax credit available to them for the month of May, 2014. By the impugned endorsement, the first respondent informed the petitioner that the input tax credit of Rs.1,15,79,942/- would be adjusted against the final instalment of Rs.2,23,08,799/-; and they should pay the deferment demand of Rs.2,23,08,799/- immediately.

Sri S.Dwarakanath, learned counsel for the petitioner, would submit that the petitioner is entitled to seek adjustment of the input tax credit available to them, with the output tax which is the annual instalment of the sales tax deferment facility extended to them, and the respondents were not justified in refusing to adjust Rs.1,15,79,942/-, which represents the input tax credit available to them, with repayment of the annual instalment of the sales tax deferment facility. Sri S.Suri Babu, learned Special Standing Counsel for Commercial taxes, would, however, contend that the sale tax deferment facility extended to the petitioner is, pursuant to the agreement entered into between them and the Deputy Commissioner, Commercial Taxes, in the nature of a loan; while input tax credit can be adjusted against the output tax payable by the petitioner, it cannot be adjusted against the sales tax deferment loan; and the respondents were, therefore, justified in refusing to permit the petitioner to adjust the credit carried forward with the sales tax deferment instalment, payable for the year 2015-16, of Rs.2,23,08,799/-.

If, as is now contended before us by Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, the sales tax deferment facility extended to the petitioner is a loan which is incapable of being adjusted against the input tax credit carried forward, it does not stand to reason that the respondents should permit the petitioner to seek adjustment of this amount with the final instalment payable by them in the year 2027-28. It is unnecessary for us to dwell on this issue any further as Sri S.Suri Babu, learned Special Standing Counsel, would fairly state that this part of the order, passed by the Commercial Tax Officer, may necessitate reconsideration.

The fact, however, remains that the balance due of Rs.1,07,28,857/- represents the amount payable, in the month of September 2015, by the petitioner to the State Government towards sales tax deferment availed in 2000-01. While Sri S.Dwarakanath, learned counsel for the petitioner, would contend that the petitioner is entitled to request the Deputy Commissioner (CT) to grant permission to repay the said amount in instalments, it is not in dispute that no such application has even been made by the petitioner to the Deputy Commissioner till date.

While we see no reason to interdict the auction scheduled to be held on 25.04.2016, it would suffice if the respondents are directed to confine the auction, and sell the land, to the extent necessary to recover Rs.1,07,28,857/- with interest. While the remaining property shall continue to remain under attachment, they shall not be put to sale till the respondents passes an order afresh on the petitioner's claim of the credit carried forward of Rs.1,15,79,942/- being adjusted against the sales tax deferment of the year 2001-02. The impugned endorsement dated 03.03.2016 is set aside and the auction, scheduled to be held on 25.04.2016, shall be conducted in accordance with the observations made hereinabove.

It is made clear that this order shall neither preclude the petitioner from making an application to the Deputy Commissioner (CT) under Section 22(6) of the Andhra Pradesh Value Added Tax Act, 2005 nor shall it disable the Deputy Commissioner from considering the said application in accordance with law.

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, J)

(SURESH KUMAR KAIT, J)

22nd April 2016

Note: Issue CC today
B/O
RRB