

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No. 10291 of 2017

ORDER: (*Per VRS,J*)

Challenging the conditional order, by which the petitioner was directed to pay 35% of the penalty, for the grant of stay of the order of penalty, the dealer under the Andhra Pradesh Value Added Tax Act, 2005 has come up with the present writ petition.

2. Heard Mr. S. Dwarakanath, learned counsel for the petitioner. Mr. Shaik Jeelani Basha, learned special standing counsel for Commercial Taxes (AP), takes notice for the respondents.

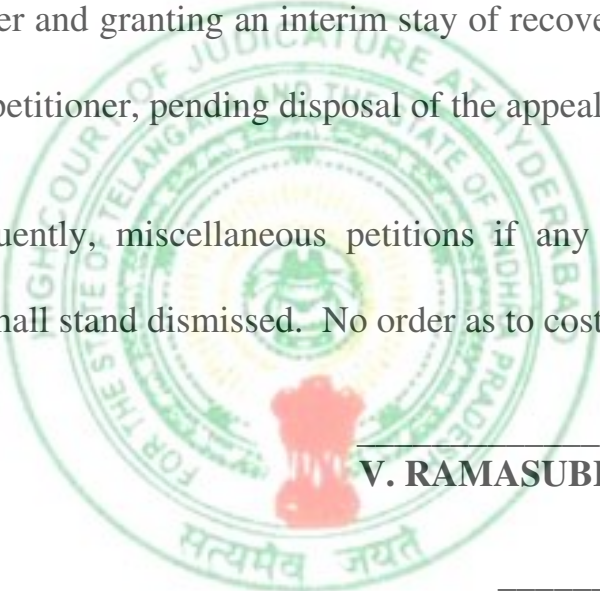
3. Both against the order of assessment and against the order of penalty, the petitioner has filed a statutory appeal. As a pre-condition for the entertainment of the appeal, the petitioner has already paid 12.5% of the tax. But, the appellate authority refused to grant stay, forcing the petitioner to come up with a writ petition. The writ petition was disposed of, granting stay in favour of the petitioner, subject to the payment of 25% of the tax. The petitioner has now paid the same.

4. Insofar as the penalty is concerned, the 3rd respondent imposed a condition for payment of 35% of the penalty. Therefore, the petitioner is before us.

5. When the collection of tax itself is stayed on condition that the petitioner deposits 25% of the tax, the conditional order of stay in respect of penalty, directing the petitioner to pay 35%, may not be proportionate. The petitioner has now paid 25% of the total tax demanded and also 12.5% of the penalty. In such circumstances, we are of the considered view that the petitioner is entitled to stay of penalty without any condition.

6. Therefore, the Writ Petition is allowed, setting aside the impugned order and granting an interim stay of recovery of penalty in favour of the petitioner, pending disposal of the appeal.

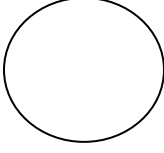
Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.



V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

23rd March, 2017
cbs



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Writ Petition No. 10291 of 2017
(allowed)

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