HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J.UMA DEVI

WRIT PETITION No.4122 of 2017

ORDER: (per Hon'ble Sri Justice V.Ramasubramanian)

Challenging the order of the Joint Commissioner (CT)-II, dated 27.12.2016, refusing to grant stay pending disposal of a regular appeal before the Telangana Value Added Tax Appellate Tribunal, Hyderbad, the dealer has come up with the present writ petition.

2. Heard Mr. M.Sudheer Kumar, learned Counsel for the petitioner and Mr. T.Vinod Kumar, learned Special Standing Counsel for Commercial Tax, appearing for the respondents.

3. The tax liability determined under the original order of assessment is to the tune of Rs.25,92,054/-. The petitioner has filed a statutory appeal by depositing 25% of the said amount. The prayer for stay of recovery of the balance 75% was rejected by the Joint Commissioner, on the ground that there was a discrepancy in relation to the sales turnover of stone ballast.

4. The very issue, whether there was discrepancy in the sales turnover of stone ballast or not, is pending consideration in appeal. The positive case of the petitioner is that the material has already suffered tax once and therefore there cannot be a double taxation.

5. When such a plea is raised, it is not fair for the Joint Commissioner to reject the request for stay. Since the petitioner has already paid 25% of the tax demanded, the Joint Commissioner could have granted stay on condition that the petitioner pays

another 25% of the demanded tax. Therefore, we are of the considered view that the impugned order is to be set aside and a stay granted on condition.

6. 25% of the demanded tax would come to Rs.6,33,965/-. The petitioner has produced a copy of Form-C/refund order to the tune of Rs.9,00,961/-. In other words, the department was due to pay this money to the petitioner. Therefore, in the interest of justice, stay can be granted subject to condition that the petitioner makes a deposit of 25% of the demanded tax, which can be adjusted from out of the refund due to the petitioner.

7. Therefore, the Writ Petition is allowed and the impugned order is set aside. There will be an interim stay of collection of 75% of the balance demanded tax subject to the condition that it is open to the respondents to allocate a sum of Rs.6,33,965/- from out of the refund money due to the petitioner, as 25% of the demanded tax as deposit now made by the petitioner. It is open to the respondents to issue a revised Form-C/refund order. However, this deposit of 25% of the demanded tax will be subject to outcome 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

09.02.2017
Gsn.