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

Writ Petition No.10677 of 2017

Order: (per V.Ramasubramanian, J.)

Aggrieved by the inaction on the part of the respondents on the request made by the petitioner for adjustment of the penalty from out of the refund claim, the dealer under the Andhra Pradesh Value Added Tax Act, 2005, has come up with the above writ petition.

2. Heard Mr. S.Dwarakanath, learned counsel for the petitioner and Mr. Shaik Jeelani Basha, learned Special Standing Counsel for the respondents.

3. As against the demand for tax made by the respondents without adjusting the same from out of the refund claim, the petitioner earlier came up with a writ petition in W.P.No.46905 of 2016. The said writ petition was disposed of by an order dated 05-01-2017, the operative portion of which reads as follows:

> "The Writ Petition is, accordingly, disposed of directing respondents 1 and 2 to examine the petitioner's claim for adjustment of input tax credit against the assessed tax, and give them the benefit of such adjustment at the earliest, and in any event on or before 12.01.2017; and to intimate the order, so passed by them, to the petitioner forthwith. The petitioner's claim for refund of the balance input tax credit is left open to be contested in independent legal proceedings. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs."

4. Now the respondents have passed an order of penalty. All that the petitioner wants is that the entire amount of penalty may be adjusted from out of the refund claim so that the petitioner can file an appeal without just making a pre-deposit of 12.5%.

5. There cannot be any objection to the above course of action. Today, the petitioner is lawfully entitled to pay 12.5% of the penalty amount to file an appeal and seek refund of the amount that is due to them. But since there is a prohibition from the payment of any refund claim when there are arrears of tax or penalty, the petitioner does not want a larger amount due to him, to be kept by the respondents on this plea. Once the petitioner is agreeable to the adjustment of the entire amount of penalty and of course without prejudice, from out of the refund claim, the department is actually getting more than 12.5%, which alone is liable to be paid as pre-deposit.

6. Therefore, the writ petition is disposed of directing the respondents to adjust the entire penalty as demanded by the order of penalty, from out of the refund claim, to enable the petitioner to file a statutory appeal as against the order of penalty. However, it will be without prejudice to the contentions in the appeal. The petitioner shall file an appeal within the period of limitation and the same shall be entertained by the Appellate Authority without insisting on the pre-deposit condition, as a consequence of this order.

The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

12th April, 2017.
Ak

Note:-
Issue C.C. by 17-4-2017.
(B/o)
Ak

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

Writ Petition No.10677 of 2017
(per VRS, J.)

12th April, 2017.
(Ak)