THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE T.RAJANI

WRIT PETITION NO.21218 OF 2017

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

Heard Sri M.Venkatram Reddy, learned counsel for the petitioner and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is disposed at the stage of admission.

The proceedings under challenge in this Writ Petition is the endorsement dated 25.05.2017 rejecting the petitioner's application under Section 22(6) of the Andhra Pradesh Value Added Tax Act, 2005 ("the Act" for brevity) for grant of instalments for payment of penalty, on the ground that action had already been initiated, for recovery of arrears, under the Andhra Pradesh Revenue Recovery Act.

Sri M.Venkatram Reddy, learned counsel for the petitioner, would contend, not without justification, that the mere fact that proceedings have been initiated under the Andhra Pradesh Revenue Recovery Act would not disable the Deputy Commissioner from considering the petitioner's application for grant of instalments in accordance with law. On the other hand Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would submit that the only reason mentioned in the application, seeking permission to make payment in 24 instalments, is shortage of funds; and, if such a contention were to be accepted, then every dealer would be entitled to seek instalments for paying the tax and penalty due.

The fact that the order of penalty, passed on 31.07.2015, has attained finality is not in dispute. Once the order of penalty has attained finality, the petitioner is bound to pay the said amount. It is not even his case before this Court that he is not liable to pay the said amount. His only request is to pay the same in instalments. The total sum due is Rs.63,32,387/- which the petitioner, in his letter dated 21.03.2017, sought 24 instalments to repay. Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would submit that, pursuant to the letter dated 21.03.2017, the petitioner has not paid a single rupee till date.

While the *bonafides* of the petitioner is suspect as he has not adhered to the time schedule indicated in his letter dated 21.03.2017, for payment of the penalty amount due in monthly instalments, we are saved the trouble of examining this issue, as Sri M.Venkataram Reddy, learned counsel for the petitioner, fairly states that the entire amount due for the four month period, April to July, 2017, in terms of the petitioner's letter dated 21.03.2017, will be paid on or before 15.07.2017.

In the light of the undertaking given by the learned counsel, on behalf of the petitioner, we consider it appropriate to set aside the impugned order as mere initiation of recovery proceedings would not disable the competent authority from exercising his statutory power under Section 22(6) of the Act. In case the petitioner pays the amount as aforesaid on or before 15.07.2017, the respondent shall consider his application, for grant of instalments, on its merits afresh uninfluenced either by the order impugned in the Writ Petition or the order now passed by us.

Needless to state that the petitioner shall continue to pay the monthly instalments, in accordance with his letter dated 21.03.2017, during the pendency of proceedings before the second respondent.

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, ACJ)

(T.RAJANI, J)

4th July 2017

NOTE: Issue CC by three days

B/O

RRB