* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE T.RAJANI

+ Writ Petition No.23713 of 2017

% Date: 10-8-2017

# M/s. Dalmia Laminators Ltd., Plot Nos.13 and 14,
Industrial Development Area, AP-IIC,
Ramanayyapeta, Kakinada-533 005,
Rep. by its Commercial Manager,
Pawan Kumar Sharma

... Petitioner

Vs.

$ 1. The State of A.P., Rep. by its Prl. Secretary,
Dept. of Revenue-Finance, Guntur, A.P.

2. Addl. Commissioner (CT) Legal,
O/o. Commissioner of Commercial Taxes,
A.P. Edupugallu, Near Vijayawada

3. The Deputy Commissioner (CT), Kakinada,
East Godavari District, Andhra Pradesh

4. The Commercial Tax Officer (CTO), Kakinada,
East Godavari District, Andhra Pradesh

... Respondents

! Counsel for Petitioner : Smt. Radhika Chandra Sekhar,
representing Mr. A.K. Jaiswal

Counsel for Respondents : Mr. Sheik Jeelani Basha,
Spl. Standing Counsel for CT (AP)

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> Head Note:

? Cases referred:
Nil.

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Order: (per V.Ramasubramanian, J.)

The petitioner has come up with the above writ petition challenging the refusal of the Additional Commissioner of Commercial Taxes to grant interim stay of collection of the balance of disputed tax, pending disposal of an appeal before the Andhra Pradesh Value Added Tax Tribunal.

2. Heard Smt. Radhika Chandra Sekhar, representing Mr. A.K. Jaiswal, learned counsel for the petitioner and Mr. Sheik Jeelani Basha, learned Special Standing Counsel for the respondents.

3. By an order dated 17-11-2016, passed by way of revised assessment, the Deputy Commissioner determined the output tax liability on the sales that escaped assessment to the tune of Rs.1,15,03,067/-. The petitioner filed a statutory appeal before the VAT Tribunal along with an application for condonation of delay. Simultaneously, the petitioner filed a stay petition before the Additional Commissioner.

4. Along with the appeal filed before VAT Tribunal, the petitioner has already deposited 25% of the disputed tax. Therefore, the Tribunal condoned the delay and has taken up the appeal on file.

5. However, the Additional Commissioner rejected the stay petition on the ground that the original order of the Deputy

Commissioner contains a detailed analysis and that no evidentiary documents were produced by the assessee for making out a *prima facie* case.

6. Out of the total demand of Rs.1,15,03,067/-, the petitioner has already paid 25%. The balance remaining is Rs.86,27,267/-.

7. As a matter of fact, the appeal filed by the petitioner is actually a first appeal before the Tribunal, since it arises out of revised order of assessment passed under Section 32(2) of the A.P. VAT Act, 2005. If it had been a regular assessment as against which a first appeal is filed to the Deputy Commissioner, the petitioner would have been asked to pay only 12.5% of the disputed tax. But since what the petitioner has filed is an appeal against the revised assessment, they have been made to pay 25%.

8. Moreover, the exercise of power for the grant of stay by the Appellate Authority normally stands on a different footing from the exercise of power for grant of stay before an authority other than the Appellate Authority. The Appellate Authority happens to be a quasi-judicial authority, while persons other than the Appellate Authority but who considers the stay petition, generally do not act as quasi-judicial authorities. Therefore, the appreciation of the existence of the *prima facie* case, hardship etc., are not normally at the same level as the Appellate Authority would do.

9. In the light of the above, we are of the considered view that the grievance of the petitioner could be redressed partially, by putting them on certain terms so that the balance is restored between the assessee and the Department. The balance of liability, after adjusting 25% of the tax is about Rs.86,27,267/-. By directing the petitioner to pay another 10% of the total demand of Rs.1,15,03,067/-, total payment made would come to about 35% of the disputed tax.

10. Therefore, the writ petition is allowed, setting aside the impugned order and granting stay in favour of the petitioner during the pendency of the appeal before the VAT Tribunal, subject to the condition that the petitioner deposits with the respondents, a sum of Rs.11,50,300/- (Rupees eleven lakhs, fifty thousand and three hundred only) within a period of 4 (four) weeks from the date of receipt of a copy of this order. If the petitioner fails to make payment, the stay will stand automatically vacated. It is open to the Tribunal to proceed with the appeal on merits. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

T.RAJANI, J.

10th August, 2017.
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AND
HON'BLE SMT. JUSTICE T.RAJANI

<u>Writ Petition No.23713 of 2017</u>
(per VRS, J.)



$10^{th}$ August, 2017.
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