THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No. 38991 OF 2017

DATED 20TH NOVEMBER, 2017

Between:
I.T.C. Limited,
Indian Tobacco Division,
Thomson Road, Visakhapatnam,
Rep. by its Power of Attorney
Sanjay Singh,
S/o S.K.Singh, 61 years … Petitioner
AND
The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Revenue Department (CT-II),
Velagapudi, Amaravathi, Guntur District,
Andhra Pradesh, and others … Respondents

Counsel for the petitioner : Sri M.V.J.K.Kumar

Counsel for the respondents : Sri S.Suri Babu

THE COURT MADE THE FOLLOWING

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This Writ Petition is filed for issue of *certiorari* to quash order dated 04-02-2017 in Appeal No. VSP/12/2017-18.

2. For disposal of this case, the facts in detail need not be recorded. It will suffice to note that while entertaining W.P.No. 7155 of 2017 filed questioning the assessment order dated 04-02-2017 levying luxury tax of Rs.62,80,29,344/-, a Division Bench of this Court in W.P.M.P.No. 8784 of 2017 by its order dated 18-04-2017 permitted the petitioner to file an appeal before respondent No. 2 against the said assessment order without prejudice to its contentions in the Writ Petition. This Court, while granting stay of enforcement of the assessment order for a period of two weeks, permitted the petitioner to file stay application in the appeal. Accordingly, the petitioner filed an appeal on 28-04-2017. The petitioner also filed a stay application in the said appeal. By order dated 25-10-2017, respondent No. 2 stayed the collection of disputed tax on condition of the petitioner paying 60% of the same within 30 days while staying the balance 40% of the disputed tax pending appeal. While doing so, respondent No. 2 observed that as the disputed amount is huge, it requires exhaustive study and inquiry and that without expressing any

opinion on the merits of the issue for passing a conditional stay order.

3. Sri M.V.K.Moorthy, learned counsel appearing for the petitioner, has invited our attention to notice dated 29-05-2017 issued by respondent No. 2, wherein the petitioner is directed to appear before the said respondent on 12-07-2017 "for hearing on Appeal Petition". Learned counsel submitted that having issued the notice on appeal, respondent No. 2, instead of completing the hearing on appeal, passed the order on stay application taking the petitioner's representative off gaurd. He has further submitted that had a prior notice been issued for hearing of stay application, the petitioner would have been prepared for advancing all such submissions which are necessary for convincing respondent No. 2 to grant an unconditional order of stay and that absence of such notice has denied such an opportunity to the petitioner.

4. Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes (A.P.), submitted on the basis of instructions received by him that on 12-07-2017, the authorized representative of the petitioner advanced submissions on stay petition also. He

however did not state whether a separate notice for hearing the stay petition was issued or not.

5. In our opinion, unless a party is informed of the specific purpose for which the hearing is proposed to be held, it is not expected of such party to go with preparedness to project his case properly. Indubitably, the scope of appeal and that of stay application vastly varies. Ordinarily, for considering an application for *interim* order, the elements of *prima facie* case, balance of convenience, irreparable injury and public interest are considered. As rightly submitted by the learned counsel for the petitioner, had a notice for hearing of stay petition been issued, that would have given an opportunity to the petitioner's representative to make his submissions on the aforementioned parameters. As this procedure is evidently not followed by respondent No. 2, the impugned order is set aside without expressing any opinion on its sustainability or otherwise on merits. Respondent No. 2 shall issue a notice for hearing the stay application giving at least two weeks' time to the petitioner. On the date so fixed for hearing of the stay application, respondent No. 2 shall hear the authorized representative of the

petitioner and pass a fresh order based on all the submissions of the representative and also the available record.

6. The Writ Petition is accordingly allowed.

7. As a sequel to disposal of the Writ Petition, W.P.M.P.No. 48368 of 2017 shall stand closed as infructuous.

C.V.NAGARJUNA REDDY, J.

T.AMARNATH GOUD, J.

Date: 20-11-2017.
JSK