HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WP.No.37990 of 2017

Date:13.11.2017

Between:

M/s Murugan Cold Storage Private Limited, Punganur, reptd by its Managing Director-K.Reddy Vara Prasad

..... **Petitioner**

And:

Commercial Tax Officer, Madanapalli and three others.

....**Respondents**

Counsel for the appellant: Mr. K.Aroah
for Mr. S.Krishna Murthy

Counsel for the respondents: Mr. Shaik Jilani Basha
Special Standing Counsel for CT (AP)

The Court made the following:

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

The assessment order pertaining to Assessment Year 2003-04 was the subject matter of appeal in the earlier round of litigation. After remand, the Assessing Officer (AO) has reiterated the earlier assessment order, assailing which an appeal was filed before the first appellate authority, *i.e.*, respondent No.2. Having been unsuccessful in the said appeal, the petitioner filed a further appeal before the Andhra Pradesh Value Added Tax and Appellate Tribunal, Visakhapatnam (for short 'the Tribunal'). Pending the appeal, the petitioner filed an application before respondent No.3 for stay of payment of balance amount under the impugned assessment order. The said application was rejected. Feeling aggrieved thereby, the petitioner filed this Writ Petition.

At the hearing, Mr. Shaik Jilani Basha, learned Special Standing Counsel for Commercial Taxes (Andhra Pradesh), has not disputed that the petitioner has already paid 50% of the disputed tax as a pre-condition for maintaining the appeal before the Tribunal.

Considering the fact that the appeal is pending before the Tribunal and the validity or otherwise of the assessment order needs to be adjudicated in the pending appeal, we find the elements of *prima facie* case, balance of convenience and irreparable injury in favour of the petitioner for staying the balance tax liability.

Accordingly, the order of respondent No.3 is set aside. Respondent No.1 is restrained from recovering the balance tax due for the assessment year 2003-04 from the petitioner pending the appeal before the Tribunal.

Subject to the above direction, the Writ Petition is allowed.

As a sequel to disposal of the Writ Petition, WPMP.No.47186 of 2017 is disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE CHALLA KODANDA RAM

13th November 2017
DR