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

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 37373 OF 2017

DATED 10TH NOVEMBER, 2017

Between:

M/s. DRA Industries Limited,
Rep. by its Deputy General Manager (Commercial),
Mr. M.Manga Raju,
Attivaram Village, Ozil Mandal,
SPSR Nellore District … Petitioner

AND

Assistant Commissioner (Sales Tax),
Gudur, Nellore District, and another … Respondents

Counsel for the petitioner : Sri P.Karthik Ramana

Counsel for the respondents : Sri Sk. Jeelani Basha

THE COURT MADE THE FOLLOWING

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

This Writ Petition is filed for a *mandamus* to set aside endorsement dated 06-10-2017 of respondent No. 1.

2. The petitioner filed W.P.M.P.No. 47130 of 2017 with a prayer to permit it to file the correct endorsement of respondent No. 1 sought to be impugned in the Writ Petition. At the hearing, learned counsel for the petitioner submitted that this Court may consider the true endorsement dated 06-10-2017 filed along with W.P.M.P.No. 47130 of 2017 as the order impugned in this Writ Petition which reads as under:

> *"With reference to the letter filed by the dealers on 03-10-2017, it is informed that the excess tax payment under CST Act cannot be adjusted to the APVAT Act as the two ACTs are different. If the assessment is made and any excess tax paid is found the same can be claimed as refund by the dealers. Hence they are requested to remit the tax dues under the VAT as per the notice dated 23-09-2017."*

Learned counsel for the petitioner has not disputed the fact that the VAT liability of the petitioner was Rs.15,77,766/- and that it remitted only a sum of Rs.8,98,013/- towards the said liability. Learned counsel however submitted that initially, the petitioner sought transfer of excess payment of VAT to the extent of Rs.3,65,604/-

towards CST liability, but the same was later remitted through Form VAT 200. Independent of the said adjustment, the petitioner claimed to have paid CST liability separately of a sum of Rs.3,65,604/-. The petitioner requested respondent No. 1 to adjust the said sum of Rs.3,65,604/- towards the total VAT liability of Rs.15,77,766/-. The said request was rejected by the aforementioned order dated 06-10-2017, filed along with W.P.M.P.No. 47130 of 2017, of respondent No. 1 on the reasoning that the excess tax payment under CST cannot be adjusted to the APVAT as the two Acts are different and that if the assessment is made and any excess tax paid is found, the same can be claimed as refund by the dealers.

3. Learned counsel for the petitioner has not brought to our notice any provision under the Andhra Pradesh Value Added Tax Act, 2005, or Rules made thereunder which provides for adjustment of excess paid CST towards VAT. In the absence of such provision, the submission of learned counsel for the petitioner that in the absence of prohibition against such adjustment, the petitioner is entitled to seek adjustment has no merit because in the absence of enabling provision for such adjustment, neither the tax authorities nor the Courts have power to direct such adjustment. Therefore, we

do not find any error in the impugned order of respondent No. 1. If the petitioner has paid excess CST, it is entitled to claim refund of the same from the competent authority as per the procedure prescribed under the extant statutory provisions. The learned counsel for the petitioner requested for permission for grant of reasonable time for payment of the shortfall in demand towards VAT. Accordingly, the petitioner is permitted four weeks' time from the date of receipt of a copy of this order, for making the payment.

4. Subject to the above, the Writ Petition is dismissed.

5. As a sequel to dismissal of the Writ Petition, W.P.M.P.No. 46420 of 2017 shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J.

CHALLA KODANDA RAM, J.

Date: 10-11-2017.
JSK