**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

**THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

**And**

**THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**Writ Petition Nos.35408 and 35409 of 2017**

**W.P.No.35408 of 2017**

Between:

M/s. MW High Tech Projects India Private Ltd.,
Having its registered office at Level 10, Kapil Towers,
Survey #115/1, IT Park, Financial District,
Nanakramguda, Hyderabad

… Petitioner

Vs.

The Additional Commissioner (CT), Legal,
Office of the Commissioner of Commercial Taxes,
Epudugallu near Vijayawada, Andhra Pradesh and
5 others

.. Respondents

**W.P.No.35409 of 2017**

Between:

M/s. MW High Tech Projects India Private Ltd.,
Having its registered office at Level 10, Kapil Towers,
Survey #115/1, IT Park, Financial District,
Nanakramguda, Hyderabad

… Petitioner

Vs.

The Additional Commissioner (CT), Legal,
Office of the Commissioner of Commercial Taxes,
Epudugallu near Vijayawada, Andhra Pradesh and
5 others

.. Respondents

For Petitioner : Mr. Karan Talwar

For Respondents : Mr. Sk. Jeelani Basha, Spl. Standing Counsel

**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**

**AND**

**HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**Writ Petition Nos.35408 and 35409 of 2017**

**ORDER:** ***(V. Ramasubramanian, J)***

The petitioner has come up with the above writ petitions challenging the onerous conditions imposed for the grant of stay pending disposal of the regular appeals against the order of assessment and the order of penalty.

2. Heard Mr. Karan Talwar, learned counsel for the petitioner in both the writ petitions. Mr. Shaik Jeelani Basha, learned special standing counsel takes notice for the department.

3. There is no dispute about the fact that as against the orders of assessment and penalty, the petitioner has filed regular first appeals before the 2nd respondent. Pending the appeals, the petitioner sought interim stay by moving necessary applications before the 1st respondent. By the orders impugned in these writ petitions, the 1st respondent has granted stay on condition that the petitioner deposits 75% of the tax and 60% of the penalty. Contending that these conditions are onerous, the petitioner has come up with the above writ petitions.

4. It is seen from the order of assessment dated 26-08-2016 as corrected by a subsequent order dated 13-10-2016 that the total amount of tax demanded after adjusting the TDS certificates is Rs.1,27,95,694/-. But the penalty levied is to the tune of

Rs.3,73,87,971/-. The penalty levied is more than three times the tax demanded, on the logic that the adjustment of TDS certificates will not have a bearing upon the original tax liability. Therefore, *prima facie*, there is perversion in the approach with regard to the penalty. Therefore, we are of the considered view that the condition that the petitioner should deposit 60% of the penalty, is certainly onerous.

5. In so far as taxes are concerned, the petitioner is actually obliged to pay 12.5% of the tax demanded as a pre-deposit condition for the 2nd respondent to entertain the appeal. But the petitioner has actually paid 14.5% on a miscalculation. Therefore, we are of the considered view that by directing the petitioner to deposit 50% of the tax demanded, in addition to the amount of 14.5% already paid and by granting a blanket stay in so far as the penalty is concerned, equities between the parties will be worked out.

6. Therefore, both the writ petitions are disposed of to the following effect:

1) in addition to the pre-deposit condition that the petitioner has already complied with, the petitioner shall pay 50% of the tax demanded, within a period of six (6) weeks from the date of receipt of a copy of this order;
2) in so far as the penalty is concerned, the petitioner will have the benefit of an interim stay without any further condition; and
3) the petitioner will be entitled to stay of recovery of the balance amount of tax and the entire amount of penalty, upon complying with the above conditions till disposal of the first appeals.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

**V. RAMASUBRAMANIAN, J**

**ABHINAND KUMAR SHAVILI, J**

Date: 25-10-2017

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