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

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

W.P.No.40850 of 2017

Date: 11.12.2017

Between:

M/s. Bisleri International Private Limited,
rep. by its Assistant General Manager,
Mr.B.Krishna Kumar,
Door No.5/52, Marikavalasa village,
Visakhapatnam-531 163. … Petitioner

And

Additional Commissioner (CT) Legal,
Edupugallu, Near Vijayawada
and three others. … Respondents

Counsel for the Petitioner : Mr. S.Dwarakanath

Counsel for the Respondents : Mr.Shaik Jeelani Basha,
Special Standing Counsel for
Commercial Tax (AP)

The Court made the following:

Order : (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Feeling aggrieved by the rejection of stay of recovery of disputed tax by respondent No.1, pending appeal before the respondent No.2, the assessee filed this writ petition.

2. A perusal of the record shows that the dispute is with regard to the classification of water manufactured and sold by the petitioner. The learned counsel for the petitioner Mr.S.Dwarakanath, relied upon, CTD Order No.DC 670 RR No.40/2016-2017 dated 28.12.2016 of the Deputy Commissioner (CT), Punjagutta Division of the Telangana State, accepting the stand of the petitioner that the water manufactured by it falls under Entry 126 of the IV schedule and does not fall under residuary Entry in Schedule V and dropping the revision proceedings.

3. Mr.Shaik Jaleel Basha, learned Special Standing Counsel for Commercial Taxes (AP), submitted that as the very issue raised by the petitioner regarding classification, is pending before respondent No.2, and based on the prima facie facts of the case, the respondent No.1 has taken a decision, the impugned order is not liable to be interfered with.

4. The fact that the State of Telangana has accepted the plea of the petitioner regarding the classification, is not in dispute. However, its opinion may not ipso facto bind the State of Andhra Pradesh. As there is a *bona fide* dispute on the classification, we are of the opinion

that blanket denial of stay may cause serious prejudice to the interests of the petitioner. Instead, we are of the opinion that interests of justice would be served if stay of recovery of the disputed tax is granted, by placing the petitioner on reasonable terms.

5. Accordingly, without expressing any opinion on the merits of the case, the impugned order of the respondent No.1 is set aside, subject to the petitioner depositing to the credit of the respondent No.3, 1/3rd of the outstanding disputed tax, within two weeks from the date of receipt of this order. On such deposit, the respondents shall not recover the balance tax due, pending the appeal before respondent No.2.

6. With the above observations, the writ petition is allowed.

7. As a sequel, W.P.M.P.No.50721 of 2017 filed by the petitioner for interim relief, is disposed of.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 11th December, 2017

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