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

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

W.P.No.40881 of 2017

Date: 11.12.2017

Between:

M/s.Kei-Rsos Maritime Limited,
Door No.70-17A-2/9B, Sasikanth Nagar,
Near RTO Office Road, Kakinada,
East Godavari district, Andhra Pradesh-533 003,
Rep. by its Chief Executive Officer,
Mr.Ashok Mudgil, S/o.Pushkar Datt … Petitioner

And

The Commercial Tax Officer (Int.).,
Kakinada, East Godavari district
and eight others … Respondents

Counsel for the Petitioner : Mr.Akkapeddi Srinivas

Counsel for the Respondents : Mr. Shaik Jeelani Basha
Special Standing Counsel
for Commercial Taxes(AP)
for respondents No.1 to 6

Mr. B.Narasimha Sarma,
Senior Standing Counsel for
Customs, Central Excise and
Service Tax
for respondents No.8 and 9

The Court made the following:

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

This writ petition is filed for a mandamus to set aside order dated 24.10.2017 of respondent No.4, whereby he has confirmed the assessment order dated 20.08.2015 of respondent No.1, imposing value added tax for the period from March, 2013 to March, 2014.

2. At the hearing, the learned counsel for the petitioner has not disputed the fact that against the impugned order, his client has the remedy of filing appeal before the A.P. Value Added Tax Appellate Tribunal (for short 'the Tribunal'). He has however, submitted that the issue raised in this writ petition pertains to levy of Value Added Tax on tug-boats and marine crafts operated during the period of contract, for providing services at Gangavaram port, which is a pure question of law and that the stand of the petitioner that it is not liable to pay tax, is supported by a Division Bench judgment of this Court in W.P.No.44908 of 2016.

3. Mr.Shaik Jaleel Basha, learned Special Standing Counsel for Commercial Taxes (AP), submitted that the facts in this case are not identical to the facts in W.P.No.44908 of 2016 and that the issue raised by the petitioner, needs to be adjudicated by the Tribunal.

4. Inasmuch as, an effective alternative remedy is available to the petitioner for questioning the order of the 1st appellate authority, we are not inclined to entertain this writ petition, for adjudication on

merits. Having regard to the fact that the petitioner is seriously disputing its liability to pay VAT, as it has already paid the service tax for the same service, we are of the opinion that interest of justice would be served, if the petitioner is permitted to file the appeal before the Tribunal and pending the appeal, the respondent concerned is restrained from recovering the disputed tax, subject to the petitioner paying 25% of the disputed tax, within eight weeks from today. On such payment, the Tribunal shall dispose of the appeal on merits.

5. Subject to the above directions, the writ petition is disposed of.

6. As a sequel to the disposal of the writ petition, W.P.M.P.No.50757 of 2017, filed by the petitioner for interim relief, is dismissed as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 11th December, 2017

msb