THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.11999 OF 2017

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

The petitioner questions the order passed by the Telangana State Value Added Tax Appellate Tribunal, Hyderabad in T.A.No.76 of 2015 dated 28.12.2016 affirming the order passed by the Appellate Deputy Commissioner dated 16.08.2014 rejecting admission of the appeal for belated payment of balance pre-deposit beyond the period of limitation prescribed for presenting the appeal.

On the ground that the appellant had failed to comply with the statutory requirement, prescribed for an appeal to be entertained by the Appellate Deputy Commissioner under Section 31 of the A.P. VAT Act, the appeals preferred by the appellants were rejected. Aggrieved thereby, the petitioner carried the matter in appeal to the A.P. VAT Tribunal which, by the order impugned in the Writ Petition, affirmed the order passed by the Appellate Deputy Commissioner. In the order, impugned in the Writ Petition, the Telangana Value Added Tax Appellate Tribunal followed the judgment of a Division Bench of this Court in **M/s. Ankamma Trading Company, Takkellapadu and Others v. The Appellate Deputy Commissioner (CT), Guntur**[1] (Judgment in WP.No.13470 of 2009 and batch dated 11.02.2011) that appeals filed before the appellate authority could not be admitted if the assessee failed to produce proof of payment of admitted tax and

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[1] 53 APSTJ 1

12.5% of the disputed tax within the prescribed period of 60 days from the date of receipt of a copy of the assessment order. The Tribunal further held that the appellant had received a copy of the assessment order on 02.01.2014; the pre-deposit of 12.5% of the disputed tax came to Rs.14,77,469/-; the appellant had only paid Rs.10,04,679/-, and there was short payment of pre-deposit of tax for an extent of Rs.4,72,790/-; the appellant had filed a reply on 12.08.2014 enclosing proof of payment of tax of Rs.4,72,790/-; payment of the differential amount on 04.08.2014, more than five months after the stipulated period of sixty days had expired on 05.03.2014, did not amount to compliance with the requirement of Section 31 of the A.P. VAT Act; and, in the light of the law declared by the Division Bench in **M/s. Ankamma Trading Company**[1], the Appellate Deputy Commissioner lacked power to entertain the appeal without payment of 12.5% of the disputed tax before the prescribed date. Aggrieved thereby, the present Writ Petition is filed.

Reliance is placed by the petitioner on the interim order passed by the Supreme Court in **M/s. Ideal Industrial Explosives Ltd. v. The Government of Andhra Pradesh**[2] to submit that, since the Supreme Court had granted stay of the order passed by the Division Bench in **M/s. Ankamma Trading Company**[1], this Court should also grant a similar interim order.

A similar contention, as is urged in the present case, was also urged before a Division Bench of this Court in **M/s. Ideal Detonators (P) Ltd. v. Commercial Tax Officer**[3]. The Division Bench held that the order rejecting admission of the appeal, on the

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[2] (Order in S.L.P.No.4675/2015 dated 16.02.2015)
[3] (Order in W.P.No.23071 of 2014 dated 05.09.2014)

ground of belated payment of 12.5% of the disputed tax, was in accordance with the law declared by this Court in **M/s. Ankamma Trading Company**[1]; and, as the said Division Bench judgment is binding on a co-ordinate Bench, no interference is called for in proceedings under Article 226 of the Constitution of India. On its attention being drawn to the interim order passed by the Supreme Court, in **M/s. Ideal Industrial Explosives Ltd.**[3], the Division Bench observed as under:-

> "………………**The ratio of a judgment are the reasons assigned in its support. When a Court of appeal grants stay of the operation of the judgment, it stays the further implementation, as between the parties, of the operative portion thereof. Thereby, the ratio of the decision cannot be said to have been wiped out. (N.Rami Reddy**[2]**). Even when the judgment of a Division Bench of the High Court, which is the subject-matter of an appeal before the Supreme Court, is suspended, the only effect of such suspension is that the judgment cannot be executed or implemented. But so long as the judgment stands, the dicta laid down therein is binding on Single Judges and Division Benches of the High Court. The dicta laid down therein cannot be ignored.** (**Indira Nehru Gandhi v. Raj Narain**[4]; **N.Rami Reddy**[2]; **K.Venkata Reddy v. LAO**[5]). While considering the effect of an interim order, staying the operating of the order under challenge, a distinction has to be made between quashing of the order and stay of operation of the order. Quashing of an order results in restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order, which has been stayed, would not be operative from the date of the passing of the stay order, and does not mean that the said order has been wiped out from existence. (**M/s. Sree Chamundi Mopeds Ltd. v. Church of SIT Association**[6]; **N.Rami Reddy**[2]). Notwithstanding Leave having been granted in **S.E. Graphites (P) Ltd.** (Order in W.P.No.15384 of 2013 dated 17.09.2013), and an interim order being passed that there should be no coercive recovery of the amount in question, the judgment of the Division Bench of this Court, in **M/s. Ankamma Trading Company**[1], is still binding on a co-ordinate Bench…………" (emphasis supplied)

It is not in dispute that the pre-deposit of 12.5% of the disputed tax was not made within sixty days from the date of

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[4] AIR 1975 SC 1590
[5] **1994(1) ALT 227**
[6] AIR 1992 SC 1439

receipt of a copy of the assessment order. Both the Appellate authority and the Tribunal were therefore justified in following the judgment of the Division bench of this Court, in **Ankamma Trading Co.,**[1] and in dismissing the appeals on this ground. As held by the Division bench of this Court in **M/s. Ideal Detonators (P) Ltd**[3], the interim order of stay granted by the Supreme Court does not obliterate the ratio of the judgment of the Division bench of this Court in **Ankamma Trading Company**[1], and the said judgment is binding on a co-ordinate bench. Following the Division bench judgment of this Court in **M/s. Ideal Detonators (P) Ltd.**[3], this Writ Petition is also dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

3rd October 2018
RRB