THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. JUSTICE M. GANGA RAO

Writ Petition No.1368 of 2018

Order: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

Heard Sri V. Bhaskar Reddy, learned counsel for the petitioner, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, and with their consent, the Writ Petition is disposed of at the stage of admission.

The challenge in this Writ Petition is to the garnishee notice issued by the Assistant Commissioner (CT) LTU, Ananthapur to the Branch Manager, State Bank of India, Tadipatri vide letter dated 11.1.2018 requesting the latter to implement the statutory provisions of Section 29 of the Andhra Pradesh Value Added Tax Act, 2005 (for short 'the Act') and remit the outstanding amount available in the account of the petitioner. In terms of the garnishee notice, a sum of Rs.42,20,01,075/- was sought to be recovered from the petitioner's bank account. This garnishee notice was issued on the ground that the petitioner had failed to pay the amount due in terms of the revisional order passed by the revisional authority dated 16.11.2017 rejecting the petitioner's claim that they had transferred the stock of goods to their branches and it was not an inter-state sale of goods. Aggrieved by the order passed by the revisional authority, the petitioner preferred an appeal to the A.P. VAT Tribunal, Visakhapatnam along with an application seeking stay.

Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, on instructions, would fairly state that the appeal and the application for stay are pending consideration before the Tribunal, but that they have not yet been numbered.

Section 18-A of the Central Sales Tax Act, 1956 (hereinafter referred to as “the CST Act”) provides for appeals to the highest appellate authority of the State and under Sub-section (1) thereof, notwithstanding anything contained in the State Act (A.P. VAT Act), any person aggrieved by an order made by the assessing authority under Section 6-A (2) of the CST Act or an order made under the provisions of Section 6-A(3), may, notwithstanding anything contained in the General Sales Tax Law of the State (the A.P. VAT Act), prefer an appeal to the highest appellate authority of the State against such an order. The highest appellate authority in the State is the A.P. VAT Tribunal at Visakhapatnam.

Sub-section (5) of Section 18-A stipulates that, notwithstanding anything contained in a State Act, the highest appellate authority of the State may, on the application of the appellant and after considering the relevant facts including the deposit of any amount towards local or Central Sales Tax in other States on the same goods, pass an order of stay subject to such terms and conditions as it thinks fit; and such an order may, inter alia, indicate the portion of tax, as assessed, to be deposited prior to admission of the appeal.

Section 18-A of the CST Act, *per se*, does not stipulate any amount as pre-deposit for an appeal to be entertained and discretion is conferred on the Tribunal, among others, to also determine the amount which the appellant should deposit for an appeal to be entertained by the Tribunal or, for that matter, the amount to be deposited for stay of the revisional order to be granted. Since the appeal is yet to be numbered, we consider it appropriate to direct the A.P. VAT Tribunal to examine and ascertain whether the appeal is in order, and to number it if it is so, or to return the appeal if it is not in order. If the appeal is found to be in order, the same shall be placed before the Bench of the

Tribunal, which shall then decide either on the amount to be deposited as a pre-condition for an appeal to be entertained or on the amount to be paid as a condition for grant of stay of the order of the revisional authority.

The entire exercise, culminating in an order being passed by the Tribunal, shall be completed within one month from today. For a period of six weeks from today, the respondent-authorities shall not give effect to the garnishee notice issued by them to the concerned banks. Needless to state that, in case the appeal were to be returned by the Tribunal, the respondent-authorities shall be intimated thereof, and it would be then be open to them to take action in accordance with law against the petitioner. If on the other hand, the appeal is entertained, and an order of pre-deposit or a conditional order of stay is passed by the Tribunal, the petitioner shall comply with such orders.

It is open to Sri Shaik Jeelani Basha, learned Special Standing Commercial Taxes to communicate a copy of this order to the A.P.VAT Appellate Tribunal at Visakhapatnam.

The Writ Petition is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M. GANGA RAO, J)

22nd January, 2018

Note:
Furnish c.c. by 25.1.2018.
b/o
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Date: 22.1.2018

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