**THE HON'BLE SRI JUSTICE SANJAY KUMAR**
**and**
**THE HON'BLE SRI JUSTICE T. AMARNATH GOUD**

**WRIT PETITION Nos.2896 and 3816 of 2018**

**COMMON ORDER:** (per SK, J)

The prayers of the petitioner company in these two cases read as under:

**WRIT PETITION No.2896 of 2018**

> "For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a Writ of Mandamus to direct the 2nd respondent to refund the amount of Rs.1,88,50,563/- collected without the authority of law from the bank account of the petitioner held with HDFC Bank, Ramalingapuram Main Road, Nellore bearing account Nos.50200020417865 and 50200020417839 without considering the pendency of appeal and stay application before the Appellate Deputy Commissioner, 4th respondent herein and the Additional Commissioner (CT) Legal, 3rd respondent herein by traveling beyond the scope of Section 29 of the Andhra Pradesh Value Added Tax Act, 2005 or to issue any other appropriate Writ or orders as this Hon'ble High Court may deem fit and proper in the facts and circumstances of the case and thus render justice."

**WRIT PETITION No.3816 of 2018**

> "For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a Writ of Certiorari to quash the proceedings of the proceedings of the 3rd respondent in the impugned CTD Order No.ACO401CCT's Ref. No.LII(1)/156/2017, Dt. 02.02.2018 served on the petitioner on 03.02.2018 (filed as

> Annexure P1) which is passed in violation of the principles of natural justice and without considering the legal position or to issue any other appropriate writ or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice."

By common order dated 24.04.2018 passed in both these Writ Petitions, this Court directed as under:

> "The petitioners have come up with the above writ petitions, seeking a direction in the first writ petition i.e., 2896 of 2018 to refund an amount of nearly Rs.2.00 crores taken away from the Bank account by way of an attachment and challenging in the other writ petition i.e., WP.No.3816 of 2018, the dismissal of a stay petition.
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> Heard Mr. A.K. Jaiswal, learned counsel for the petitioners and Mr. Shaik Jeelani Basha, learned Special Standing Counsel for the respondents in WP.No.2896 of 2018 and Sri S. Suribabu, learned Special Standing Counsel for the respondents in WP.No.3816 of 2018.
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> An order of assessment was passed on 28.03.2017 under the Andhra Pradesh Value Added Tax Act, 2005 in relation to the period from 2015-16. It was followed by an order of penalty.
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> As against the order of assessment as well as the order of penalty, the petitioners filed a first appeal before the Appellate Deputy Commissioner. The Appellate Deputy Commissioner, according to the petitioners, dismissed the stay petition without giving sufficient opportunity and hence, the petitioners filed an appeal before the Additional Commissioner (Legal).
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> But, even during the pendency of the stay petition, the respondents issued an order of attachment and took away a sum of nearly Rs.1,88,00,000/- from the Bank account in utter violation of the law well settled by the judgment of this Court to the effect that during the pendency of the stay petition, coercive steps cannot be taken. Therefore, the

petitioners came up with W.P. No.2896 of 2018 seeking a mandamus directing the respondents to return the amount.

The moment notice was ordered in WP.No.2896 of 2018 on 02.02.2018, the Additional Commissioner dismissed the stay petition without notice to the petitioners. Therefore, challenging the dismissal of the stay petitions by the Additional Commissioner, the petitioners have come up with WP.No.3816 of 2018.

There is no doubt about the fact that during the pendency of the stay petition, an order of assessment cannot be enforced. But at the same time, there are situations which go beyond redemption. If stay petitions are filed and the hearing of the stay petitions get delayed not on account of any fault on the part of the department, but on account of the tactics adopted by the assessees, the above well settled law will not be without exceptions. We are not saying for a moment that the petitioners in this case adopted dilatory tactics. We are just explaining the position of law that it is not without exception.

There are two alternative courses of action open to this Court in the given circumstances. The first is to allow WP.No.2896 of 2018, direct the respondents to return the money and to set aside the order of rejection of the stay petitions in WP. No.3816 of 2018 and remit the matter back to the Additional Commissioner for fresh consideration of the stay petitions. But, the appeal itself is now more than one year old. It was filed on 26.04.2017. Therefore, we must choose the second alternative, where the dispute itself can be resolved in a practical manner.

Therefore, there will be a direction to the Additional Deputy Commissioner to fix a date of hearing for the first appeals arising out of the order of assessment as well as arising out of the penalty. The date of hearing shall be fixed on or before 21.05.2018 and the appeal itself shall be disposed of on or before 01.06.2018.

Post on 05.06.2018 for reporting compliance."

We are now informed that pursuant to the aforestated order, the Appellate Deputy Commissioner (Commercial Taxes) passed final order dated 21.05.2018 in the appeal.

Sri Roopesh Sharma, learned counsel representing Sri A.K. Jaiswal, learned counsel for the petitioner company, would state that the appeal was dismissed, but notwithstanding the dismissal of the appeal, this Court should entertain the prayer of the petitioner for refund of the amount collected. However, the order dated 24.04.2018 clearly records that having set out two options available, this Court did not take recourse to the earlier option of directing the respondents to return the money while setting aside the order of rejection of the stay petition but directed the Appellate Deputy Commissioner to dispose of the main appeal itself. The petitioner company would have a further appellate remedy in relation to the dismissal of its appeal. It would therefore be unnecessary for this Court to venture into the merits of the matter at this stage when the petitioner company has an efficacious alternative remedy not only against the dismissal of its appeal but also with regard to the amount collected by the respondents allegedly without authority of law. It may be noted that the grievance of the petitioner company was with regard to the collection of the amount pending the appeal only and the said appeal now stands dismissed. Giving liberty to the petitioner company to pursue its remedies before the appropriate forum in accordance with law, both the writ petitions are closed.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

**SANJAY KUMAR, J**

11th JUNE, 2018.

**T. AMARNATH GOUD, J**

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