HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.5041 of 2018

ORDER: *(per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)*

Heard Sri G. Narender Chetty, learned counsel appearing on behalf of the petitioner and Sri J. Anil Kumar, learned Special Standing Counsel for Commercial Tax (Telangana). With their consent, the Writ Petition is disposed of at the stage of admission.

The proceedings under challenge in this Writ Petition is the order passed by the Additional Commissioner (ST) dated 06.02.2018, rejecting the petitioner's application for grant of stay of collection of the disputed tax, pending disposal of the appeal before the Appellate Deputy Commissioner. The appeal was preferred against the assessment order dated 31.01.2017 for the tax periods 2011-12 to 2013-14. The petitioner preferred an appeal to the Appellate Deputy Commissioner, along with an application seeking stay of collection of the disputed tax pending disposal of the appeal. The stay petition was rejected by the Appellate Deputy Commissioner by his order dated 16.11.2017. Aggrieved thereby, the petitioner preferred a revision to the Additional Commissioner who, by the order impugned in the Writ Petition, rejected the application for stay.

The dispute in the appeal related to handling charges and warranty claims, which the petitioner had contended were post sale consideration received for services rendered, and not on the sale of automobiles. The Assessing Authority held that they were pre-sale receipts and formed part of the sale consideration.

Sri G. Narender Chetty, learned counsel for the petitioner, would rely on the decisions in '*Commissioner of Sales Tax Vs. Premnath Motors (Pvt) Limited*[1] and *Commercial Tax Officer (Anti-Evasion), Jodhpur vs. Madhura Motors*[2]'. On the other hand Sri J. Anil Kumar, Special standing counsel for Commercial Tax would place reliance on the decision in '*Mohd. Ekram Khan & Sons vs. Commissioner of Trade Tax*[3], which was relied upon by the Revisional Authority.

As the substantive appeal is still pending consideration before the Appellate Deputy Commissioner, and as the Judgment of the Supreme Court in *Mohd. Ekaram Khan & sons* relates to warranty charges which forms a substantial part of the turnover subjected to tax, we consider it appropriate to direct the respondents not to take coercive steps to recover the balance tax due, pending disposal of the appeal before the Appellate Deputy Commissioner, on condition that the petitioner deposits 2/3rds of the disputed tax with the Assessing Authority within four weeks from today. The petitioner shall be given credit for any amount already paid in this regard.

The Writ Petition stands disposed of accordingly. No order as to costs. Pending miscellaneous petitions, if any, in this writ petition shall stand closed.

RAMESH RANGANATHAN, ACJ

KONGARA VIJAYA LAKSHMI, J

Date: 28.02.2018
BSS

[1] 43 STC 52 (Del.)
[2] 2010(29) VST 114 (Raj.)
[3] (2004) 6 SCC 183

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(per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Date: 28.02.2018

BSS