THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.5011 OF 2018

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

The proceedings, under challenge in this Writ Petition, is the order passed by the Additional Commissioner (CT) dated 05.01.2018 dismissing the petitioner's application for grant of stay of recovery of the balance disputed tax, pending disposal of the appeal by the Andhra Pradesh VAT Tribunal.

The petitioner was assessed to tax for the period 2007-08. The Deputy Commissioner (CT), Kakinada revised the assessment order, and disallowed the exemption sought by the petitioner for a turnover of Rs.8,66,87,963/-. Aggrieved thereby, the petitioner carried the matter in appeal to the Andhra Pradesh VAT Tribunal before which the substantive appeal is said to be still pending. As required under the Act, they paid 25% of the disputed tax as a pre-condition for the appeal to be entertained by the Tribunal. They filed an application, to the Additional Commissioner, seeking stay of collection of the disputed tax pending disposal of the appeal. On their application, for grant of stay, being rejected the petitioners have invoked the jurisdiction of this Court.

In the impugned order, the Additional Commissioner has taken note of the submission urged on behalf of the petitioner, and has observed that, most of the turnover of the petitioner was not covered by the purchase orders issued by exporters in order to establish that these sales were made by them to exporters and after receipt of the purchase orders; this contention had weighed with the Deputy Commissioner to disbelieve that rice was exported to other countries during the period when ban was imposed, on export of rice, by the Government of India; and even before him, the purchase orders of the exporters were not filed. The revisional authority noted that the tax sought to be stayed was less than Rs.3 lakhs i.e. Rs.2,98,516/-, and declined to grant stay of collection of the disputed tax.

As a substantive appeal is pending consideration before the Tribunal, it would be wholly inappropriate for us to express any opinion on the merits of the case. We are satisfied, however, that the *prima facie* view expressed by the Additional Commissioner, rejecting grant of stay pending disposal of the appeal by the Tribunal, does not suffer from an error apparent on the face of the record justifying exercise of jurisdiction of this Court under Article 226 of the Constitution of India. Suffice it to make it clear that the tax paid by the petitioner, in terms of the revisional order passed by the Deputy Commissioner, shall be subject to the result of the appeal before the Tribunal, and the Tribunal shall decide the petitioner's appeal uninfluenced by any observations made either by the Deputy Commissioner or by the order now passed by us.

Subject to the aforesaid observations, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

28th February 2018
RRB