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

WRIT PETITION NO.5241 of 2018

ORDER: (per SK,J)

The petitioner company seeks to assail the action of the Additional Commissioner (Sales Tax), office of the Commissioner of State Tax, Telangana State, Hyderabad, the third respondent, in rejecting its stay application pending appeal, under his order dated 31.10.2017.

The matter relates to the tax period 2009-10 under the Central Sales Tax Act, 1956 (for short 'the Act of 1956'). The petitioner company is engaged in the manufacture and sale of biscuits and is a registered dealer on the rolls of the Commercial Tax Officer, Rajendranagar Circle, Hyderabad (CTO), the first respondent, under the Telangana Value Added Tax Act, 2005 (for short, 'the Act of 2005'), and the Act of 1956. The CTO completed the petitioner company's assessment for the tax period 2009-10 *vide* order dated 23.03.2013. After the assessment, the petitioner company filed certain 'F' forms received from the consignment agents and in relation to stock transfers outside the State of Telangana. It also filed 'C' declaration forms against the interstate sales of biscuits and 'H' forms against the deemed export sales. Upon due verification, the CTO revised the earlier assessment by order dated 15.07.2013.

However, the Deputy Commissioner (Commercial Taxes), Saroornagar Division, Hyderabad, the second respondent, exercised *suo moto* revisional power under Section 32 of the Act of 2005, read with Section 9(2) of the Act of 1956, and proposed to withdraw the exemption extended to the petitioner company in the re-assessment. The petitioner company submitted its reply dated 22.07.2014. Ultimately, the Deputy

Commissioner (Commercial Taxes), confirmed the proposed revision of the re-assessment *vide* order dated 12.11.2016. Aggrieved thereby, the petitioner company filed an appeal before the Telangana Value Added Tax Tribunal on 10.01.2017. Simultaneously, it moved an application before the third respondent seeking stay of collection of the disputed tax amount of 9,54,296/- pending disposal of the appeal by the Tribunal. It is this application which was rejected by the impugned order dated 31.10.2017. Aggrieved by such rejection, the petitioner company is before this Court apprehending that coercive measures would be taken for recovery of the balance disputed tax amount.

Perusal of the order dated 31.10.2017, which is under challenge, reflects that the third respondent disallowed the plea of the petitioner company for stay of collection of the disputed tax amount by going into the merits of the matter. As the substantial appeal filed by the petitioner company is still pending consideration before the jurisdictional Tribunal, we are of the opinion that the third respondent ought not to have gone into the merits of the matter for the purpose of dismissing the stay application. The interest of the revenue would have been sufficiently protected by directing deposit of a further amount apart from the pre-deposit which would have been made by the petitioner company at the time of institution of the appeal.

The writ petition is accordingly allowed setting aside the order dated 31.10.2017 passed by the Additional Commissioner (Sales Tax), office of the Commissioner of State Tax, Telangana State, Hyderabad. There shall be stay of collection of the disputed tax amount pending disposal of the appeal by the jurisdictional Tribunal subject to deposit of 50% of the total disputed tax amount by the petitioner company with the tax authorities. Due credit shall be given to the amounts already deposited by the petitioner company out of the said amount. Subject to this deposit being made within four weeks from the date of a receipt of a copy of this order, the stay shall remain operative pending disposal of the appeal by the jurisdictional Tribunal.

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

____
SANJAY KUMAR,J

____
T.AMARNATH GOUD,J

Date:04.06.2018

GJ