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

Writ Petition No.7262 of 2018

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

In this Writ Petition, the proceedings under challenge is the order dated 28.02.2018 of the Additional Commissioner (ST), in the office of the Commissioner of State Tax, Telangana State, Hyderabad, rejecting the petitioner's application for grant of stay pending disposal of the appeal before the Telangana VAT Appellate Tribunal.

Facts, to the limited extent necessary, are that the petitioner is engaged in the trade and service of two wheelers, and in the sale of pre-owned vehicles. On completion of an audit of the petitioner's accounts, a pre-assessment notice dated 31.08.2015 was issued proposing to assess the under-declared output tax of Rs.9,78,11,669/- to tax besides denying notional input tax of Rs.18,85,76,528/-. Thereafter, an assessment order was passed on 31.05.2016. Aggrieved thereby the petitioner preferred an appeal to the Appellate Deputy Commissioner, along with an application seeking stay of collection of the disputed tax. The stay application was dismissed by order dated 28.02.2018. The main appeal was, subsequently, dismissed by the Appellate Deputy Commissioner by his order dated 07.04.2017. Against the appellate order, the petitioner preferred an appeal to the Telangana VAT Appellate Tribunal in T.A.No.215 of 2017. The petitioner filed a petition, before the Additional Commissioner, seeking stay of collection of the disputed tax pending disposal of the appeal by the Telangana

VAT Appellate Tribunal. This application was dismissed by the Additional Commissioner (ST) by his order dated 28.02.2018. Thereafter, a recovery notice was issued on 02.03.2018, and the petitioner's bank account is said to have been frozen.

In his order dated 28.02.2018, the Additional Commissioner observed that this Court, in its order in W.P.No.20186 of 2016 dated 19.07.2016, had granted certain reliefs on the original demand raised on under-declared input and output; accordingly, the under-declared input and output taxes were restricted to Rs.9,27,35,825/- by the assessing authority; the appeal preferred thereagainst had been dismissed; and the various objections raised by the petitioner are yet to be decided by the Telangana VAT Appellate Tribunal in the appeal preferred by them in T.A.No.215 of 29017. On the ground that he saw no valid reason, in the arguments of the appellant, the Additional Commissioner (ST) dismissed the stay application.

While Smt.Niyatha, Learned Counsel for the petitioner, would challenge the validity of the order passed by the Additional Commissioner (ST) on various grounds, including on merits, it would be wholly inappropriate for us to express any opinion on merits since the substantive appeal is pending adjudication before the Telangana VAT Appellate Tribunal. The Additional Commissioner has merely rejected the application filed by the petitioner seeking stay of recovery of the balance disputed tax pending disposal of the appeal by the VAT Appellate Tribunal.

As the petitioner is required to deposit 50% of the disputed tax, as a pre-condition for the appeal to be entertained by the Telangana VAT Appellate Tribunal, and Smt.Niyatha, Learned

Counsel for the petitioner, submits that the petitioner has deposited the said amount, ends of justice would be met if the petitioner is directed to deposit 2/3rd of the disputed tax within 8 (eight) weeks from today. The petitioner shall be given credit for the amounts already paid in this regard.

The Writ Petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

Date:07th March, 2018.

Note:
Issue C.C. by tomorrow.
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