IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

AND

***HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

+<u>Writ Petition No.9695 of 2018</u>

% 20-03-2018

M/s. Exel Rubber Limited, represented by its Accounts Officer, Mr. K. Jwala Prasad, Survey Nos.315 & 316, Ameenpur Road, Bachupally Village, Quthbullapur Mandal, Medchal, District

… Petitioner

Vs.

$ Assistant Commissioner (ST), Sanathnagar Circle, Hyderabad and 3 others

… Respondents

! Counsel for the Petitioners : Mr. S. Dwarakanath

Counsel for Respondents : Mr. J. Anil Kumar, special standing counsel

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

Writ Petition No.9695 of 2018

ORDER: *(V. Ramasubramanian, J)*

The petitioner has come up with the above writ petition challenging the garnishee notice issued by the 1st respondent to the 2nd respondent.

2. Heard Mr. S. Dwarakanath, learned counsel for the petitioner. Mr. J. Anil Kumar, learned special standing counsel takes notice for the respondents.

3. As against the Original Order of Assessment, passed on 21-10-2017, the petitioner has already filed a statutory appeal. Along with the appeal he has paid 12.5% of the disputed tax, as a precondition.

4. Unfortunately, the petitioner did not file an application for stay along with the regular appeal. But after the first garnishee notice was issued, the petitioner woke up and moved an application for stay. But finding that the first garnishee notice contained a mistake as to the amount due, a second garnishee notice was issued with correction.

5. Immediately, the petitioner has come to this Court contending that when an application for stay is pending, there cannot be coercive action. There is no doubt that the law is well settled that coercive action cannot be taken when stay application is

still pending consideration. But the law cannot be applied *de hors* the facts. In cases where applications for stay are filed along with the appeals and the authorities keep the applications for stay in cold storage, the Recovery Officers cannot swing into action to recover the money. But in cases where the stay applications themselves are filed as a consequence of the coercive actions taken, the Court should be loathe to follow the said general principle.

6. In any case, by suspension of the garnishee notice and directing the respondents to dispose of the stay applications, we normally multiply the litigation. After the disposal of the stay applications one way or the other, the petitioner is entitled to a revision and thereafter to come to the writ court if any amount is directed to be deposited. Instead of multiplying this litigation, it will be in the interest of both parties, if a conditional order is passed by this Court itself so that two future rounds of litigation could be avoided.

7. Therefore, the writ petition is disposed of putting the garnishee notice on hold, subject to the condition that the petitioner deposits with the 1st respondent, 20% of the disputed tax, in addition to the 12.5% of the disputed tax already deposited, within a period of three (3) weeks from the date of receipt of a copy of this order. Upon such deposit being made, the petitioner will have the benefit of stay pending disposal of the appeal.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

Date: 23-03-2018

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