**THE HON'BLE SRI JUSTICE SANJAY KUMAR**
**AND**
**THE HON'BLE SRI JUSTICE M.GANGA RAO**

**WRIT PETITION NO.10135 OF 2018**

**ORDER :** (Per Hon'ble Sri Justice Sanjay Kumar)

The prayer of the petitioner in this case reads as under:

> "For the reasons stated in the accompanying affidavit, it is prayed that the Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ or order or direction declaring the action of the 2nd respondent in rejecting the stay application, without going into the merits of the case, and without granting hearing to the petitioner, as arbitrary, illegal, unsustainable under law and to grant stay of collection balance disputed tax of Rs.1,45,53,260/- for the tax period June, 2014 to March, 2015 under A.P. VAT Act, 2005, pending disposal of the appeal before the Andhra Pradesh Value Added Tax Appellate Tribunal, Visakhapatnam, in the interest of justice and to pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of this case."

It is an admitted fact that the appeal filed by the petitioner Company is pending before the Andhra Pradesh Value Added Tax Appellate Tribunal, Visakhapatnam, in T.A.No.255/2017. In the meanwhile, the prayer of the petitioner Company for grant of stay was considered by the Additional Commissioner (Commercial Taxes), office of the Commissioner of Commercial Taxes, Andhra Pradesh, and the same was rejected vide order dated 23.10.2017, firstly, on the ground that the petitioner Company failed to produce evidence of pendency of the appeal and secondly, as certified copies of the assessment orders of the ADC were not filed. However, when the petitioner Company made good these lapses, the Additional

Commissioner (Commercial Taxes), issued endorsement dated 09.03.2018 stating that no case was made out for rectification of his earlier order dated 23.10.2017 and that he had become *functus officio*.

Sri Shaik Jeelani Basha, learned Special Standing counsel for Commercial Taxes for the State of Andhra Pradesh, does not dispute the fact that the petitioner already deposited 50% of the disputed tax at the time of filing of the appeal.

That being so, we are of the opinion that the Additional Commissioner (Commercial Taxes) ought to have granted interim stay as prayed for without harping on technicalities. In the meanwhile, it appears that the Commercial Tax authorities are attempting to attach the account of the petitioner Company in HDFC Bank.

The Writ Petition is accordingly allowed setting aside the order dated 09.03.2018 of the Additional Commissioner (Commercial Taxes), Andhra Pradesh, rejecting the stay application filed by the petitioner Company. There shall be stay of all further proceedings pending disposal of the appeal in T.A.No.255/2017 by the Appellate Tribunal.

Pending miscellaneous petitions, if any, shall stand closed in the light of the afore-stated order. No order as to costs.

**SANJAY KUMAR, J**

**M. GANGA RAO, J**

**27th March, 2018**

**Note:** Issue C.C. by 29.03.2018
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