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

The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Ms. Justice J.UMA DEVI

Writ Petition No.15971 of 2018

Between:

M/s. United Power Services, D.No.5-620,
M.G. Road, Ashok Nagar, Vijayawada,
Krishna District, Andhra Pradesh,
Represented by its Managing Partner,
Sri K.V. Purnachandra Rao

… Petitioner

Vs.

1. The State of Andhra Pradesh,
   Rep. by the Principal Secretary,
   Revenue (CT) Department, Secretariat
   Buildings, Amaravathi, Guntur District,
   Andhra Pradesh and 2 others

… Respondents

For Petitioner : Mr. P. Girish Kumar,

For Respondent No.1 : Special G.P. for Commercial Tax

For Respondents 2&3 : Mr. Shaik Jeelani Basha

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.15971 of 2018

Order:

Aggrieved by the rejection of a stay petition pending disposal of an appeal before the Andhra Pradesh Value Added Tax Appellate Tribunal, the dealer under the Andhra Pradesh Value Added Tax Act, 2005, has come up with the above writ petition.

2. Heard Mr. P.Girish Kumar, learned counsel for the petitioner. Mr. Shaik Jeelani Basha, learned Special Standing Counsel, takes notice for the respondents.

3. By an order dated 15-5-2014, the Deputy Commissioner (CT) passed an order of revision of assessment. As against the said order, the petitioner filed a statutory appeal before the A.P. VAT Appellate Tribunal, on 15-10-2014. The appeal is now pending on the file of the Appellate Tribunal for the past nearly four years.

5. After filing the appeal, the petitioner moved an application for stay before the Additional Commissioner. The Additional Commissioner dismissed the stay petition by an order dated 09-02-2015. After keeping quiet for more than three years, the petitioner has come up with the above writ petition challenging the stay rejection order.

6. The reason as to why the petitioner took it easy was that the Recovery Officer himself had taken it easy and issued

Form VAT 206 Notice only on 07-3-2018 under Section 29 of the A.P. VAT Act. Therefore, after enjoying a divine protection for three years, the petitioner has come up seeking the judicial protection.

7. Strictly speaking, the writ petition is liable to be thrown out on the ground of delay and laches. The only explanation offered by the petitioner for coming up after three years of the impugned order is that no coercive steps were taken so far. But the petitioner cannot wait till coercive steps are taken, if they were aggrieved by the order rejecting the stay petition.

8. But the fact remains that a regular first appeal is pending. In cases where the dealers come up with a challenge to the rejection of the stay petitions without any delay, this Court grants some protection. This is especially in cases where the first appeal is pending.

9. But the petitioner cannot have the benefit of a blanket stay since they are guilty of delay and laches. If the petitioner had suffered an order at the hands of the Assessing Officer and gone up before the Second Appellate Authority after exhausting the remedy of first appeal, the petitioner would have paid 50% of the disputed tax as a pre-deposit condition. We think the petitioner can be put to the same test with a little more due to the delay.

10. Therefore, the writ petition is disposed of, granting stay of collection of the disputed tax pending disposal of the

appeal before the A.P. VAT Appellate Tribunal, Visakhapatnam, subject to the condition that in addition to the deposit of 25% already made, the petitioner shall also make an additional payment of 35% of the disputed tax. The amount shall be paid within a period of 4 (four) weeks from the date of receipt of a copy of this order. Till then, the order of attachment shall stand suspended except the extent of this 35% of the disputed tax. The interlocutory applications, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J

J.UMA DEVI, J

01st May, 2018.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.15971 of 2018

01st May, 2018.
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