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

WRIT PETITION NO.22470 of 2018

ORDER: (per SK,J)

The grievance of the petitioner-Proprietary concern is with regard to the order dated 29.05.2018 passed by the Additional Commissioner (CT), Legal, office of the Commissioner of Commercial Taxes, Edupugallu, Vijayawada, Andhra Pradesh, refusing to grant stay of collection of the disputed tax amount notwithstanding the pendency of the appeal filed by the petitioner concern before the Appellate Deputy Commissioner (CT), Vijayawada. The disputed tax amount relates to the period April 2012 to June, 2016 and arises under the provisions of the Andhra Pradesh Value Added Tax Act, 2005 (for short, 'the Act of 2005'). A consequential direction was sought by the petitioner concern to the Commercial Tax authorities not to take any coercive steps for recovery of the disputed tax amount of Rs.5,61,948/- pending disposal of its appeal.

The petitioner concern is a registered TOT dealer under the provisions of the Act of 2005 and is engaged in the business of trading in paints since April, 2007. It was assessed to tax for the period in question by the Deputy Commercial Tax Officer-II, Nuziveedu Circle, Vijayawada, Andhra Pradesh, under order dated 29.06.2017. Aggrieved thereby, the petitioner concern preferred an appeal before the Appellate Deputy Commissioner (CT), Vijayawada Division, Vijayawada, by paying 12.5% of the disputed tax. As regards the balance disputed tax amount, the petitioner concern filed a stay application before the Appellate Deputy Commissioner (CT), Vijayawada Division, Vijayawada, who denied the said relief *vide* order dated 12.04.2018. Aggrieved thereby, the petitioner concern filed a revision before the Additional Commissioner (CT), Legal, Andhra Pradesh. Thereupon, the revisionary authority passed the impugned order dated 29.05.2018 refusing to grant stay. Perusal of the said order reflects that the revisionary authority relied upon the judgment of the Supreme Court in Assistant Collector of Central Excise Chandan Nagar, West Bengal v. Dunlop India Limited[1].

The observations made in the aforestated judgment could not have been relied upon by the revisionary authority when a distinguishing factor on facts was pleaded by the petitioner concern. It is also relevant to note that it was not for the revisionary authority to express such an opinion when the appeal filed by the petitioner concern was pending consideration before the Appellate Deputy Commissioner concerned. The revisionary authority, at best, could have only considered the *prima facie* case made out by the assessee for seeking stay of payment of the disputed tax and could not have made observations on the merits of the matter. Such observations would invariably have a prejudicial effect upon the appellate authority who is subordinate in rank to the revisionary authority.

We are therefore of the opinion that the impugned order suffers on counts more than one. When the petitioner concern already paid 12.5% of the disputed tax amount for the purpose of maintaining an appeal as required by law, it would be wholly unjust for the tax authorities to demand the balance of the disputed tax amount notwithstanding the pendency of the appeal.

The writ petition is accordingly allowed setting aside the impugned order dated 29.05.2018 passed by the Additional Commissioner (CT), Legal, office of the Commissioner of Commercial Taxes, Edupugallu,

[1] 1985 AIR 330

Vijayawada, Andhra Pradesh. The Commercial Tax authorities shall desist from taking coercive measures for collection of the balance disputed tax amount payable by the petitioner in terms of the assessment order dated 29.06.2017 till disposal of its appeal by the Appellate Deputy Commissioner.

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

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SANJAY KUMAR,J

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T.AMARNATH GOUD,J

Date: 03.07.2018
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