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

WRIT PETITION No.28073 of 2018

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

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

> "For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 3rd respondent in rejecting the stay application filed by the petitioner through the impugned order dated 15-6-2018 vide CCT's Ref.No.LII(1)/70/2018 for the months of June 2014 to July 2016 under APVAT Act 2005 as illegal, arbitrary, high handed and in violation of principles of natural justice and set aside the same and consequently restrain the 1st respondent from initiating any coercive action for recovery of the balance disputed penalty pending disposal of the appeal filed before the Hon'ble VAT Appellate Tribunal and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case as otherwise the petitioner will be put to irreparable loss and hardship."

It is an admitted fact that to maintain the appeal before the Appellate Tribunal, the petitioner company deposited 50% of the disputed penalty. That being so, rejection of the stay application by the Additional Commissioner (CT) Legal, Vijayawada, the third respondent herein, pending disposal of the said appeal, is not proper. Further, the third respondent seems to have entered into the merits of the matters for the purpose of ascertaining whether there was a *prima facie* case and whether there was any question of irreparable injury. Such an approach on the part of the third respondent was not called for when the substantive appeal filed by the petitioner company was pending consideration before the Appellate Tribunal. At best, the third respondent could have examined as to whether the interest of the Revenue would suffer by grant of a stay order. We find no consideration on this aspect as it is not reflected in the order under challenge that the petitioner company would be unable to pay the disputed penalty in the event it lost the appeal.

On the above analysis, we are of the opinion that refusal of a stay order by the third respondent pending disposal of the appeal was not justified.

The writ petition is accordingly allowed. There shall be a direction to the respondent authorities not to take coercive measures for collection of the balance disputed penalty pending disposal of the petitioner company's appeal by the Appellate Tribunal.

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

SANJAY KUMAR, J

T.AMARNATH GOUD, J

Dt: 09.08.2018.
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