HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION Nos.5164, 5189, 5190 and 5205 of 2019

COMMON ORDER: *(per V. Ramasubramanian, J)*

The Andhra Pradesh Tourism Development Corporation Limited has come up with these Writ Petitions, challenging an order passed by the Additional Commissioner (State Tax) rejecting the application for stay of collection of the disputed tax under the Entertainment Tax Act, 1939.

2. Heard Mr.Bhaskar Reddy Vemireddy, learned Counsel for the petitioner. Mr.J.Anil Kumar and Mr.M.Govind Reddy, learned Special Standing Counsel takes notice for respondents.

3. As against four (4) Assessment Orders under the Entertainment Tax Act, 1939, relating to the period from 2010-2011 to 2013-2014, the petitioner/Corporation has filed separate statutory appeals. Pending disposal of the appeals, the petitioner sought stay of collection of the disputed tax. The petitions for stay were rejected by the Additional Commissioner by the Orders impugned in these Writ Petitions forcing the petitioner to come up with the above Writ Petitions.

4. It is seen from the orders impugned in these Writ Petitions that the Additional Commissioner has considered elaborately, the issue of *prima facie* case. But the question of *prima facie* case alone is not the sole criteria for determining the eligibility of an assessee to stay pending disposal of the appeal.

5. In this case, the petitioner is the Tourism Development Corporation wholly owned by the State of Andhra Pradesh. The period in respect of which tax has been levied, was a period when the State was a combined State. Even if the statutory appeals filed by the petitioner get rejected ultimately, the entire liability may have to be apportioned between the petitioner/Corporation and their counterpart in the State of Telangana. These issues have not been taken into account by the Additional Commissioner before rejecting the prayer for stay.

6. Mr.Bhaskar Reddy, learned Counsel for the petitioner, submitted that the petitioner/Corporation is running into huge losses. He has produced the Income Tax Returns for the financial years 2016-2017 and 2017-2018. They disclose that the petitioner/Corporation has been consistently incurring huge losses running into several crores of rupees. Therefore, undue hardship may be caused to the petitioner/Corporation, if the collection of the disputed tax is not stayed.

7. As we have pointed out above, even if the statutory appeals are ultimately dismissed and the Assessment Order confirmed, the liability of the petitioner/Corporation may have to be shared by the Telangana Tourism Development Corporation. Therefore, considering the dire financial straits into which the petitioner is placed, we are of the view that some leniency should be shown to the petitioner.

8. Hence, the Writ Petitions are allowed, setting aside the impugned Orders and granting stay of recovery of the disputed tax, subject to the condition that the petitioner deposits a sum of

Rs.10,00,000/- (Rupees ten lakhs only) within a period of eight weeks from the date of receipt of a copy of this Order.

Consequently, miscellaneous petitions if ay pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

March 13, 2019
smr