HONOURABLE SRI JUSTICE M. S. RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.24775 OF 2019

ORDER: ***(Per Hon'ble Sri Justice M.S. Ramachandra Rao)***

Heard Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner and Sri M. Govind Reddy, learned Special Government Pleader for Commercial Taxes, appearing for respondents.

2. The petitioner is a private limited company incorporated under the Companies Act, 1956 and is carrying on business in Hotel Industry and is running various restaurants all over the country. It is a registered VAT Dealer under the Telangana Value Added Tax Act, 2005 and is an assessee on the rolls of the 1st respondent.

3. A show cause notice in Form 305A dated 30.03.2017 was issued to the petitioner by the 2nd respondent in regard to the tax period 2014-15, 2015-16 and 2016-17 proposing to levy tax to a tune of Rs.36,07,979/-, to which the petitioner filed objections but they were rejected by the 2nd respondent on 08.05.2017 and the proposed levy was confirmed.

4. Challenging the order dated 08.05.2017 of the 2nd respondent, the petitioner filed an appeal along with a stay application before the 3rd respondent on 12.06.2017 and deposited 12.5% of the disputed tax

as mandated by Section 31 of the TVAT Act. The said appeal was rejected on 19.09.2017 and thereafter the petitioner paid more amount and in all the amount paid is close to 50% of the disputed tax.

5. The petitioner filed WP No.1869 of 2019 seeking grant of stay of recovery of the balance disputed tax pending disposal of the appeal by the 3rd respondent and on 01.02.2019, this Court granted the said relief to the petitioner.

6. Ultimately, the 3rd respondent also on 27.08.2019 dismissed the said appeal filed by the petitioner against which the petitioner has filed a further appeal on 28.10.2019 to the Telangana VAT Appellate Tribunal which is now numbered as TA No.161 of 2019 and is pending adjudication.

7. The petitioner contends that the said Tribunal has no power of stay during pendency of the appeal preferred by the petitioner against the order of the 3rd respondent and normally the petitioner would have approached the Additional Commissioner (CT) Legal for stay. But, the Additional Commissioner is none other than the Officer, who dismissed the appeal of the petitioner for the previous period, which is subject matter of appeal in TA No.106 of 2017 and so no purpose would be served in approaching the 3rd respondent.

8. The petitioner, therefore, prays that the petitioner be granted stay of recovery of the balance disputed tax pending disposal of the appeal in TA No.161 of 2019 before the Telangana VAT Appellate

Tribunal on the ground that the appeal itself would become infructuous if the entire disputed tax is allowed to be collected pending disposal of the appeal.

9. The Special Government Pleader for Commercial Taxes opposed the application and contended that the petitioner is not entitled to the relief prayed for in this writ petition.

10. Admittedly, the appeal TA No.161 of 2019 filed by the petitioner before the Telangana VAT Appellate Tribunal is still pending and the disposal of the said appeal might take further time. Since the petitioner had deposited 50% of the disputed tax till date, if stay of recovery of further amount of disputed tax is not granted, the very appeal TA No.161 of 2019 would become infructuous.

11. Therefore, in these circumstances, the Writ Petition is allowed and the respondents are directed not to recover the balance of the disputed tax pursuant to the order dated 27.08.2019 passed by the 3rd respondent pending disposal of TA No.161 of 2019 by the Telangana VAT Appellate Tribunal.

No order as to costs. The miscellaneous petitions, if any pending, shall stand dismissed.

M.S. RAMACHANDRA RAO, J

K. LAKSHMAN, J

November 12, 2019
KTL