THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE K.LAKSHMAN

WP.No.134 of 2020

O R D E R: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

1. Heard counsel for the petitioner and the Government Pleader for Commercial Taxes for respondents.

2. This Writ Petition is filed by the petitioner challenging the order dt.14.09.2019 passed by the 3rd respondent directing the petitioner to pay 60% of the disputed tax of Rs.48,39,553/- within four weeks while granting stay of collection of the remaining 40% of the disputed tax pending disposal of the appeal by the Telangana Value Added Tax Appellate Tribunal.

3. It is the contention of the petitioner that the said condition is onerous since the petitioner is not in a position to pay the said amount and that the petitioner has already paid Rs.39,73,360/-, which is 49.20% of the disputed tax of Rs.80,65,921/-.

4. Counsel for the petitioner also relied on the Division Bench judgment of this Court rendered in **Dedee Priya Paints *v.* DCTO-1, State of AP**[1] wherein this Court directed, in the facts of that case, that if 12.5% of the disputed tax is paid pending disposal of the appeal before the Appellate Deputy Commissioner, there should be stay of recovery of the rest of the disputed tax.

5. The Government Pleader for Commercial Taxes supported the order passed by the 3rd respondent and contended that the

[1] on 22.06.2018 in WP.No.20922 of 2018

petitioner has already been given benefit of stay of collection of the 40% of the disputed tax and therefore there is no cause made out for modification of the order passed by the 3rd respondent.

6. We have noted the contentions of both sides.

7. There is no dispute that the appeal filed by the petitioner before the Telangana State Value Added Tax Appellate Tribunal is pending consideration and the amount of disputed tax, which is subject matter of the appeal is Rs.80,65,921/-. As per the order passed by the 3rd respondent there is a stay of 40% of the disputed tax, but the petitioner has to pay 60% of the same. Admittedly, petitioner has paid Rs.39,73,360/- representing 49.26% of the disputed tax.

8. We are of the opinion that the learned Division Bench, which rendered judgment in **Dedee Priya Paintsi**'s case(1 supra), did not laid down any principle of law that in all cases, where appeals are pending, payment of 12.5% of the disputed tax would be sufficient to secure stay of balance tax payable.

9. This Court was exercising its discretionary jurisdiction on the facts of the said case and no principle of law can be deduced from the said order.

10. However, in the facts and circumstances of the present case, since the petitioner has already paid 49.26% of the disputed tax, we modify the order dt.14.09.2019 passed by the 3rd respondent and grant stay of collection of the balance tax payable by the petitioner pending disposal of the appeal by the Telangana State Value Added Tax Appellate Tribunal.

11. Accordingly, the Writ Petition is allowed to the above extent. No order as to costs.

12. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

07th January, 2020.

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