HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No. 1591 of 2020

ORDER: (Per Sri Justice M.S.Ramachandra Rao)

This Writ Petition is filed assailing the order dt.23-12-2019 passed by the 1st respondent granting stay of collection of 50% of the disputed tax of Rs.34,41,386/- on condition of the petitioner paying other 50% of the disputed tax within four weeks pending disposal of the appeal filed by petitioner before the Telangana Value Added Tax Appellate Tribunal.

2. It is the contention of the learned counsel for petitioner that petitioner, who is a dealer in photo albums, has been selling the same collecting 5% VAT from 2005-06 onwards; that certain Advance Rulings have been issued by the competent authority under Section 66 of the Telangana Value Added Tax Act, 2005 in the case of petitioner's sister undertakings under Advance Ruling No.143/2005 dt.02-07-2005 and Advance Ruling No.137 dt.25-06-2005 stating that photo albums were taxable only at 5%, but shockingly, a pre-revision show cause notice was issued on 18-09-2018, after repeal of the Telangana VAT Act, proposing to levy tax at 14.5% on photo albums treating them as goods coming under residuary V Schedule.

3. Petitioner contends that objections were filed on 15-11-2018, but the 4th respondent rejected the same and passed the revision order on

09-05-2019 for the years 2013-14 and 2014-15 confirming the levy of additional tax of Rs.34,41,386/-.

4. Petitioner contends that petitioner filed an appeal before the Telangana Value Added Tax Appellate Tribunal under Section 33(1) of the Telangana VAT Act, 2005 and said appeal was numbered as T.A.148/2019 after petitioner deposited 25% of the disputed tax as pre-deposit, but in the said application for stay filed by petitioner with the 1st respondent, he had imposed onerous condition on the petitioner to pay 50% of the disputed tax by the impugned order.

5. According to the petitioner, the said action of the 1st respondent is illegal, arbitrary and violates Article 14 and 300-A of the Constitution of India.

6. Sri J.Anil Kumar, learned Special Counsel for Commercial Taxes appearing for respondents supported the order passed by the 1st respondent.

7. Admittedly, the appeal preferred by the petitioner before the Telangana Value Added Tax Appellate Tribunal challenging the revision order dt.09-05-2019 for the assessment years 2013-14 and 2014-15 is pending consideration before the said Tribunal and the petitioner had already deposited 25% of the disputed tax.

8. Having regard to the Advance Rulings issued by the competent authority under Section 67 of the said Act, and since based on the Advance Rulings of the respondents, petitioner did not to collect tax at

5% on the photo albums being sold by petitioner from 2005-06 onwards, the action of the 1st respondent in compelling the petitioner to pay 50% of the disputed tax and now proposing at 14.5% VAT on the sales appears to be arbitrary and illegal.

9. Accordingly, the Writ Petition is disposed of; the order dt.23-12-2019 in ACO No.523/2019 of the 1st respondent is set aside; and it is directed that pending disposal of the appeal by the Telangana Value Added Tax Appellate Tribunal, there would be stay of collection of disputed tax since petitioner had already deposited 25% of the disputed tax before the said Tribunal by way of pre-deposit. No costs.

10. Pending miscellaneous petitions, if any, shall stand closed. No costs.

M.S.RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

Date: 27-01-2020
Vsv