

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND NINE

PRESENT
THE HON'BLE MR JUSTICE GHULAM MOHAMMED
and
THE HON'BLE MR JUSTICE G. BHAVANI PRASAD

WRIT PETITION NO : 21125 of 2009

Between:

M/s. Sri Sanjevaraya Industries, Gandhi Chowk, Tadipatri,
Anantapur District, rep. by its Proprietor, Sri K.M.Chiranjeevulu.

..... PETITIONER

AND

Commercial Tax Officer, Tadipatri and others.

.....RESPONDENTS

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ORDER: (Per Sri Justice Ghulam Mohammed)

This writ petition is filed seeking a writ of mandamus questioning the order, dated 19.06.2009, passed by the third respondent in rejecting stay of collection of penalty of Rs.2,55,480/- for the assessment year 2000-01 under the APGST Act, pending disposal of the appeal before the Sales Tax Appellate Tribunal.

2. The petitioner is a Proprietary concern engaged in the business of manufacturing and marketing of edible oils and an assessee on the rolls of the first respondent. The Commercial Tax Officer, Dharmavaram, assessed and determined the gross and net turnovers at Rs.77,73,538/- and Rs.73,32,526/- respectively, for the year 2000-01 vide proceedings dated 16.08.2002. The petitioner states that while assessing the same, the said authority disallowed exemption on the turnover of Rs.21,29,000/-, which represented second purchase of sunflower seeds, even though there is evidence that the said seeds suffered tax at the earlier stage, and not issued any show cause notice before its completion. Aggrieved thereby, the petitioner preferred an appeal before the second respondent and the same was confirmed. Against the said order, the petitioner preferred T.A.No.882 of 2004 and the same is pending. Subsequently, the first respondent levied

the penalty of Rs.2,55,480/- which is equivalent to three times the tax due on the turnovers on which exemption was rejected, vide proceedings dated 24.11.2005. Aggrieved thereby, the petitioner preferred an appeal before the Appellate Deputy Commissioner, Kurnool and the same was dismissed on 24.03.2009, against which, the petitioner preferred an appeal along with a petition seeking stay of collection of the disputed penalty. The stay petition was rejected by the Additional Commissioner (Commercial Taxes) (Legal), Office of the Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad, vide order, dated 19.06.2009. Hence, this writ petition.

3. Heard the learned counsel for the petitioner and the learned Government Pleader for Commercial Taxes.

4. The controversy is that pending an appeal, application for stay was dismissed by the competent authority on the ground that both the assessing and the appellate authorities have concurrently found that that affidavits filed in support of the claim seeking exemption are fictitious and bogus. We feel that interests of justice would be met if stay is granted pending appeal, subject to deposit of 50% of the disputed penalty. Therefore, we set aside the order impugned granting stay of collection of disputed penalty subject to the condition that the petitioner deposits 50% of the disputed penalty, within a period of six weeks from today, pending the appeal. If any amount has already been paid by the petitioner, the same shall be given credit. The stay shall remain in force till disposal of the appeal.

The Writ Petition is accordingly disposed of. No costs.

GHULAM MOHAMMED, J

G. BHAVANI PRASAD, J

Date:30.09.2009

SJ

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