HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
AND
HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO

WRIT PETITION No.10 of 2023

ORDER: ***(per UDPR, J)***

The petitioner seeks writ of mandamus setting aside the revisional order dated 09.05.2022 passed by the 3rd respondent for the tax period April, 2016 to June, 2017 as being illegal, arbitrary, without jurisdiction and contrary to Rule 17(1)(e) of Andhra Pradesh VAT Rules, 2005 and also to set aside the garnishee notice dated 23.12.2022 issued by the 1st respondent to the 5th respondent for recovery of the disputed tax of ₹1,33,74,783/-, pursuant to the impugned order of the 3rd respondent dated 09.05.2022 and pass such other order.

2. Heard Sri S.Dwarakanath, learned Senior Counsel, representing on behalf of Sri Karthik Ramana Puttamreddy, learned counsel for petitioner on record and learned Government Pleader for Commercial Taxes – I for the respondents and with their consent, this writ petition is disposed of at the admission stage.

3. Learned counsel for petitioner would submit that as against the impugned order dated 09.05.2022, the petitioner has filed an appeal T.A. No.____of 2022 before A.P. VAT Appellate Tribunal, Visakhapatnam (in short, 'the Tribunal') with a delay of 128 days, which is beyond the condonable power of the Tribunal, the order to be passed by the appellate tribunal is obvious that the delay cannot be condoned by the appellate tribunal. So submitting, learned counsel for petitioner requests this Court to condone the delay of 128 days with a direction to the Tribunal to admit the appeal.

4. Regarding the reasons for delay, learned counsel would submit that the revision order was passed on 09.05.2022 by the 3rd respondent and the said order was received by the petitioner on 17.05.2022. However, since the staff of the petitioner who received the order was looking after the tax work for some time and later on, went on leave for two months on account of his personal works and the said staff member has not informed to the petitioner about the receipt of the revision order and therefore, the delay was inevitable but it was neither wanton nor due to the negligence of the petitioner. Learned counsel would submit that

the petitioner is ready to comply with the terms if any imposed by this Court for condoning the delay. It is also submitted that the petitioner has valid grounds in the appeal and hence, an opportunity may be accorded to the petitioner by condoning the delay.

5. Learned Government Pleader opposed the writ petition on the ground that instead of inviting the order of the Tribunal, the petitioner rushed and filed the petition, which is a premature one.

6. As can be seen, under section 33 of the VAT Act, an appeal to the Appellate Tribunal can be filed within 60 days from the date of service of the order or proceedings on the assessee. The Appellate Tribunal, under Section 33(2) of the Act, has power to condone the delay for a further period of 60 days and admit the appeal. In the instant case, the impugned order was passed on 09.05.2022 and the same was furnished to the petitioner on 17.05.2022 and the appeal was filed on 21.11.2022, meaning thereby the delay is beyond the condonable power of the Tribunal in terms of Section 33 of the Act. Therefore, the order on the delay condoning petition is an anticipated one. In that view, in the

interest of justice, this writ petition can be entertained by this Court in our view. So far as the reason for delay is concerned, according to the petitioner, the staff member who received the order copy went on leave for two months and before that he was engaged in tax work and he did not inform the said fact to the petitioner.

7. Having found the reasons submitted by the petitioner as reasonable, this writ petition is allowed and the delay of 128 days in preferring the appeal by the petitioner is condoned with a direction to the A.P. VAT Appellate Tribunal, Visakhapatnam, to admit the appeal and after affording an opportunity of hearing to both parties, pass an appropriate order on merits in the appeal, on the condition of petitioner depositing 50% of the demanded tax within two weeks from the date of receipt of a copy of this order, either by himself or through the 5th respondent/bank, since the Garnishee notice was already said to be issued to the 5th respondent. Since it is the submission of the petitioner that he already filed stay application before the Deputy Commissioner, Vijayawada, till the disposal of said stay application, the 1st

respondent shall not take any coercive steps against the petitioner for recovery of the remaining 50% of the demanded tax. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

T.MALLIKARJUNA RAO, J

04.01.2023
SS