THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

THE HONOURABLE SRI JUSTICE T. AMARNATH GOUD

Writ Petition No.11804 of 2020

ORDER :

In this Writ Petition the petitioner has challenged the stay rejection order passed by the 3rd respondent on 30.05.2020 in Appeal No.A/36/19-20 – Entertainment Tax vide A.D.C. Order No.1002 for the Assessment period 2010-11 to 2013-14, pending disposal of the Appeal before the 3rd respondent.

2. The petitioner is a Public Limited Company registered under the Indian Companies Act, 1956 and has its corporate office in Mumbai and Branch Office at Hyderabad.

3. The petitioner claims to be one of the largest Master System Cable Operator (M.S.O.) and it provides Digital Cable Services comprising of Digital Channels, Movies, etc., with the State-of-Art distribution set-ups. It provides very cost-effective technologically advanced set-top boxes which enable the subscribers to have access to other Value Added Services provided by it which include Video-on-Demand, Gaming, E-Commerce, etc., and the entire system is routed through local cable operators who reach the end-consumers.

4. The State of Telangana had adopted the Andhra Pradesh Entertainment Tax Act, 1939 and cable service was brought under the purview of the State Act by insertion of Section 15-A in the said statute.

5. The petitioner got itself registered under the said Act on the rolls of the 1st respondent w.e.f. 01.08.2008.

6. According to the petitioner, in terms of the said Act, it is paying tax at the rate of 5% per connection under the said Act.

7. The 1st respondent issued a show-cause notice dt.05.01.2015 proposing to levy entertainment tax on the petitioner for the tax period 2011-12, 2012-13 and 2013-14 amount to Rs.3,24,51,090/- on three entities, viz., (i) Digi Cable Network (I) Pvt. Ltd, Hyderabad; (ii) Digi Route Network Ltd., Hyderabad; and (iii) Lifestyle Networks Pvt. Ltd., Hyderabad.

8. The petitioner filed detailed reply on 16.01.2015 to the said show-cause notice.

9. Thereafter, the 1st respondent passed an Assessment Order in A.A.O.No.2465 dt.30.01.2015 imposing a tax liability of Rs.5,57,790/- which was paid by the petitioner.

10. Thereafter, the 2nd respondent, who is the Commercial Tax Officer under the Telangana VAT Act, 2005, and who was redesignated as Assistant Commissioner (State Tax) consequent on the introduction of the Telangana GST Act, 2017, issued a Revision Show-cause notice dt.28.06.2017 to the petitioner in exercise of powers vested in him under Section 9-A of the Act proposing to revise the assessment order passed by the 1st respondent on the ground that the order passed by the 1st respondent was prejudicial to the State Revenue as per the Vigilance and Enforcement report, and the material evidence available on record showed that a number of connections given by M/s. Sun 18 Distribution Services Pvt. Ltd. to the assessees which was admitted by the said party.

11. But, by mid-2017 the petitioner contend that it had closed its business in the State of Telangana and had vacated its business premises, though this was not intimated to the 1st respondent. It claims that it had sent all the records and books of accounts to its corporate office at Mumbai and that the corporate office could not immediately respond to the Revision Show-cause notice issued by the 2nd respondent and it sought time to file objections.

12. The 2nd respondent granted such time, but since the revision assessment would get time-barred by 30.01.2019 the 2nd respondent passed Revision Order dt.21.01.2019 in A.O.No.15264 confirming the proposals contained in the show-cause notice and levying a demand of Rs.3,24,51,090/- for the tax period 2011-12, 2012-13 and 2013-14 as petitioner did not file objections to the Revision show-cause notice.

13. The petitioner questioned the same in Writ Petition No.10891 of 2019.

14. On 28.06.2019, the said Writ Petition was allowed setting aside the Revision assessment order dt.21.01.2019 and the matter was remitted to the revisional authority to consider afresh after giving opportunity to the petitioner through its authorized representative.

15. After the said order, the petitioner filed detailed objections on 13.06.2019 to the Revision show-cause notice.

16. The 2nd respondent passed a fresh Revision Order in A.O.No.45858 dt.18.11.2019 for the tax period 2010-11 to 2013-14.

17. This was questioned by the petitioner in Writ Petition No.1039 of 2020. But, this Court dismissed the Writ Petition on 18.01.2020 directing the petitioner to avail remedy of appeal available under the statute.

18. The petitioner then filed before the 3rd respondent on 08.02.2020, and also filed along with the appeal, an application seeking stay of collection of disputed tax of Rs.3,24,51,090/-, pending disposal of the appeal.

19. Several contentions were raised in the Stay application and in the Grounds of Appeal before the 3rd respondent by the petitioner.

20. On 29.05.2020, the Stay application was heard by the 3rd respondent, and it was dismissed by it on 30.05.2020 through the impugned order passed in Appeal No.A/36/19-20-Entertainment Tax vide A.D.C. Order No.1002.

21. The petitioner contended that none of the contentions raised by the petitioner in the said stay application were considered by the 3rd respondent, and the 3rd respondent merely stated that he perused the impugned orders, went through the Grounds of the Stay petition, and also heard arguments of authorized representative who reiterated the Grounds of Appeal; that the authorized representative did not produce related material evidence in support of his contention; and so, he rejected the Stay application.

22. The counsel for petitioner relied on an order dt.27.02.2020 passed by this Court in **Euphoric Imports and Exports, Hyderabad *vs*. Commercial Tax Officer, N.S. Road Circle and others** wherein this Court had deprecated the practice of the authorities considering the Stay applications, pending Appeal, who did not assign any reasons while rejecting the Stay applications.

23. Sri J. Anil Kumar, Special Counsel for Commercial Taxes appearing for respondents, is unable to explain why in spite of the order dt.27.02.2020 in Writ Petition No.4258 of 2020 passed by this Court in **Euphoric Imports and Exports, Hyderabad (1 supra),** the 3rd respondent has again, without considering the contentions raised in the Stay application and the Grounds of Appeal, through a cryptic Stay rejection order, rejected the Stay application.

24. Consequent to the rejection of the Stay application through the impugned order dt.30.05.2020 passed by the 3rd respondent which was served on the petitioner on 22.06.2020, an arrears' notice dt.09.06.2020 was also served on the petitioner by the 1st respondent asking the petitioner to pay the disputed tax of Rs.3,24,51,090/- within three (03) days.

25. Having regard to the order passed by this Court in **Euphoric Imports and Exports, Hyderabd (1 supra)**, we are of the opinion that the impugned Stay rejection order dt.30.05.2020 passed by the 3rd respondent deserves to be set aside on the ground of non-consideration of contentions of petitioner by the 3rd respondent, and that the matter ought to be remitted to 3rd respondent for fresh consideration.

26. Accordingly, the Writ Petition is allowed. The impugned A.D.C. Order No.1002 dt.30.05.2020 passed by the 3rd respondent in Appeal No.A/36/19-20 – Entertainment Tax for the Assessment period 2010-11 to 2013-14 is set aside; the Stay application filed by the petitioner in the Appeal filed by it before the 3rd respondent is restored to the file of the 3rd respondent; and the 3rd respondent shall pass a reasoned order after considering the contentions raised by the petitioner in the Stay application / Grounds of Appeal in accordance with law, and communicate it to the petitioner. No order as to costs.

27. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T. AMARNATH GOUD

Date: 17.08.2020
Ndr