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Andhra Pradesh High Court

Case No: Writ Petition No. 23071 of 2014

Ideal Detonators Private Limited	APPELLANT
Vs	
The Government of Telangana	RESPONDENT

Date of Decision: Sept. 5, 2014

Acts Referred:

- Andhra Pradesh Value Added Tax Act, 2005 - Section 19(1), 21(5), 31, 31(1)
- Central Sales Tax Act, 1956 - Section 9(2)
- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 89, Order 21 Rule 92
- Constitution of India, 1950 - Article 136, 142, 142(1), 226

Hon'ble Judges: Ramesh Ranganathan, J; M. Satyanarayana Murthy, J

Bench: Division Bench

Advocate: M.V.J.K. Kumar, Advocate for the Appellant; J. Anil Kumar, Spl. Standing Counsel, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Ramesh Ranganathan, J.
The relief sought for in this Writ Petition is to declare the assessment order dated 28.02.2009 passed by the 3rd respondent, without considering the statutory declaration C Forms, as contrary to Section 9(2) of the Central Sales Tax Act (CST Act for short) read with Rule 2(c)(i) of the CST (A.P). Rules and Section 21(5) and Rule 59 of the A.P. VAT Act and Rules, 2005 respectively as arbitrary and illegal. The proceedings of the 2nd respondent dated 19.06.2014 rejecting the petitioners appeal, on the ground of belated payment of 12.5% of the disputed tax beyond the prescribed period for filing the appeal u/s 31 of the A.P. VAT Act, is also questioned as illegal and without authority of law.

2. The petitioner, a limited company, is an assessee on the rolls of the 4th respondent and is a registered dealer both under the A.P. VAT Act and the CST Act. Pursuant to an audit of the petitioner undertaking on 18.02.2008, the 3rd

respondent issued show cause notice dated 30.12.2008 proposing to levy a higher rate of tax on a turnover of Rs.10.78 crores on the ground that concessional rate of tax could not be allowed as the petitioner had not filed the C declaration forms. An assessment order came to be passed on 28.02.2009. Aggrieved thereby, the petitioner preferred an appeal on 03.04.2009 which was rejected by the 2nd respondent, by his order dated 19.06.2014, on the ground that he, as the first appellate authority, could not consider admission of an appeal if the appellant failed to produce proof of payment of the admitted tax, and 12.5% of the disputed tax, within sixty days from the date of receipt of the assessment order including the condonable delay period of thirty days; as the petitioner had paid the amount, 478 days after receipt of the order of assessment, the delay could not be condoned and the appeal could not be admitted; as held in M/s. Zuari Cements Limited v. State of A.P., a statutory authority could not deviate from the prescribed statutory requirement; a Division Bench of the High Court, in Ankamma Trading Company v. The Appellate Deputy Commissioner, had held that admission of an appeal, filed before the Appellate Deputy Commissioner, was liable for rejection if payment of the admitted tax/12.5% of the disputed tax was made beyond the period of sixty days from the date of receipt of a copy of the assessment order; and as the petitioner had failed to comply with the prescribed statutory requirement, while filing a statutory appeal u/s 31 of the A.P. VAT Act, the appeal preferred by them could not be admitted. Accordingly, admission of the appeal was rejected.

3. Oral submissions were made, and written arguments filed, by Sri M.V.J.K. Kumar, Learned Counsel for the petitioner. Learned counsel would submit that the petitioner was being extended the benefit of tax deferment, vide G.O. Ms. No. 108 dated 20.05.1996, for a period of fourteen years from 30.03.2002 to 29.03.2016; they were permitted to collect tax, for the development of their industry, and remit the amount after completion of fourteen years; they had requested the 4th respondent to adjust the pre-deposit, of 12.5% of the disputed tax which worked out to Rs.24,29,036/-, from their deferment amount balance of Rs.30,98,688/-; thereafter, on legal advice, they had belatedly made payment of the pre-deposit of Rs.24,29,036/- on 29.06.2010; the appellate authority ought to have condoned the delay, admitted the appeal and passed orders on merits, instead of rejecting the appeal on the ground that the amount was not paid within the prescribed time; and the order of the 2nd respondent, refusing to entertain their appeal, is illegal. Learned Counsel would submit that the petitioner herein was also one of the petitioners in Ankamma Trading Company2 (i.e., the petitioner in W.P. No. 27885/2010); questioning the judgment, in Ankamma Trading Company2, the petitioner had carried the matter in appeal to the Supreme Court by way of SLP No. 32221/2011; after hearing both the parties, the SLP was disposed of on 17.09.2012 with a direction to the Appellate Deputy Commissioner (CT) to take the appeals on file, and dispose them of on merits after due notice, though the pre-deposit had not been made within time; in S. Pitchi Reddy v. Appellate Deputy Commissioner (CT),

Guntur, this Court had, on request, granted the petitioners therein two weeks time, from the date of receipt of the order, to pay the pre-deposit amount, as they were disputing their liability to make payment of such pre-deposit; M/s. S.E. Graphites Pvt. Ltd., filed W.P. No. 15384 of 2013 challenging the order of the appellate authority rejecting the appeal for non payment of 12.5% of the disputed tax within the prescribed time; in its order, in W.P. No.15384 of 2013 dated 17.09.2013, this Court held that the judgment in S. Pitchi Reddy3 was distinguishable; the order of the Supreme Court, in SLP No. 32221 of 2011, could not be treated as a precedent; and, following the judgment in Ankamma Trading Company2, had dismissed the Writ Petition; against the judgment of this Court in M/s. S.E. Graphites Pvt. Ltd. v. State of Andhra Pradesh, SLP No. 3217 of 2014 was filed; upon hearing both the parties on 19.02.2014, the Supreme Court had ordered notice and directed that there should be no coercive recovery of the amount in question; and when the matter was listed on 30.07.2014, and upon hearing both the sides and considering it necessary to hear the issues involved at length, the Supreme Court had granted leave (meaning thereby that the appeal was admitted), and had ordered continuation of the interim relief granted on 19.02.2014; in State of A.P. v. M/s. Pearl City Containers this Court, following the judgment in M/s. Swastik Oleachems Ltd. Hyderabad v. State of Andhra Pradesh and Ankamma Trading Company2, held that the assessee was liable to pay the condition precedent amount in order to entertain the appeal, and had granted four weeks time to make payment thereof; in similar circumstances, the petitioners sister concern M/s. Ideal Industrial Explosives Ltd. filed W.P. No. 13617/2014 wherein the interim order passed by the Supreme Court, in SLP No. 3217/2014 dated 19.02.2014, was brought to the notice of this Court; and taking note of the submission, that the judgment in Ankamma Trading Company2 was subjudice before the Supreme Court, this Court had, by order in W.P.M.P. No. 17000 of 2014 in W.P. No. 13617 of 2014 dated 28.04.2014, granted stay.

4. According to the Learned Counsel the judgments of this Court, in Ankamma Trading Company2, and M/s. S.E. Graphites Pvt. Ltd.,4 are now subjudice before the Supreme Court; when an SLP is filed, challenging the orders passed by any Court or Tribunal, the said judgment of the Court/Tribunal ceases to operate, whether or not leave is granted, and whether or not operation of the judgment of the Court/Tribunal is stayed; as the Supreme Court has granted leave, admitted the appeal and stayed recovery in M/s. S.E. Graphite Pvt. Ltd4, the correctness or otherwise of both the aforesaid judgments of this Court is wide open; the Supreme Court is entitled to examine both questions of fact and law; in such circumstances, the correctness of the judgment, in Ankamma Trading Company2, is also in jeopardy; and as the judgments in Ankamma Trading Company2 followed in M/s. S.E. Graphites Pvt. Ltd.,4 are both subjudice before the Supreme Court, and interim relief has been granted therein directing the respondent officials not to take coercive action for recovery of the amounts, this writ petition should also be admitted, and collection of the disputed tax stayed, pending disposal of the Civil

Appeal filed by M/s. S.E. Graphites Pvt. Ltd. Learned Counsel would rely on Union of India v. West Coast Paper Mills Ltd.; and Ranjith Impex v. Appellate Deputy Commissioner (CT).

5. In Swastic Oleachems Ltd. Hyderabad6, it was contended that the petitioner therein could not be said to have committed default in making payment of the admitted tax and 12.5% of the disputed tax, for preferring an appeal u/s 19(1) of the A.P.G.S.T. Act, as they were sanctioned sales-tax deferment by the Commissionerate of Industries; and such incentive must be deemed as payment of the entire tax. Following the earlier judgment in Ankamma Trading Company2, a Division Bench of this Court held that Clause 11(ii) of the final eligibility certificate issued by the Commissionerate of Industries made the incentive subject to the condition that the sales-tax incentive should be utilized for the development of the industry only, and should not be utilized for any other purpose; and the petitioners plea that, by reason of the incentives sanctioned to them, the disputed tax must be deemed to have been paid and, therefore, the condition prescribed in the proviso to Section 19(1) of the A.P.G.S.T. Act should be waived, was misconceived.

6. In S. Pitchi Reddy3 it was contended, on behalf of the petitioner, that, since the very liability to tax in the transactions covered between APSRTC and the petitioner regarding lease of vehicles, was under challenge, there was neither an admitted liability nor did there exist any difference between the admitted and non-admitted liability; and, as such, the second proviso to Section 31 of the AP VAT Act was not attracted. A Division Bench of this Court held that the true intention of the second proviso of Section 31 was that, since the petitioner was disputing his liability to pay tax, the consequent penalty and the interest on the tax liability so assessed in its entirety, he was required to deposit 12.5% of the assessed liability, and the contention to the contrary was misconceived.

7. Sri M.V.J.K. Kumar, Learned Counsel for the petitioner, would fairly state that, in view of the law declared by this Court in M/s. Swastik Oleachems Ltd. Hyderabad6, the benefit availed by the petitioner, under the tax deferment scheme, cannot be adjusted against the requirement of pre-deposit of 12.5% of the disputed tax. Learned Counsel would, however, contend that, as the petitioner had deposited the disputed 12.5% tax, albeit belatedly on 29.06.2010, the 2nd respondent ought to have entertained the appeal.

I. JUDGMENT RENDERED BY A DIVISION BENCH OF THE HIGH COURT IS BINDING ON A CO-ORDINATE BENCH:

8. Sri M.V.J.K. Kumar, Learned Counsel for the petitioner, would submit that as the Supreme Court has granted leave to M/s. S.E. Graphites (P) Ltd. (order in SLP No. 3217 of 2014 dated 30.07.2014), to prefer an appeal against the order of this Court in M/s. S.E. Graphites (P) Ltd.4 (order in WP No. 15384 of 2013 dated 17.09.2013) wherein this Court had followed the ratio laid down in Ankamma Trading

Company2, both the judgments of the Division Bench of this Court are in jeopardy; and, therefore, no reliance can be placed on the judgment of this Court, in Ankamma Trading Company2, till the Civil Appeal is heard and decided by the Supreme Court.

9. On the other hand Sri P. Balaji Varma, Learned Special Standing Counsel for Commercial Taxes, would submit that, as Section 31(1) of the AP VAT Act and the second proviso thereto prescribe sixty days as the period within which an appeal should be preferred, and in the absence of any separate period being prescribed for making the deposit, the time to make the deposit and for filing the appeal would be the same; and, consequently, payment of deposit under the second proviso to Section 31(1) of the AP VAT Act can only be made within sixty days from the date of receipt of the order of assessment, and not thereafter. Learned Special Standing Counsel would rely on Annapurna v. Mallikarjun in this regard.

10. A Division Bench of this Court, in Ankamma Trading Company2, held that payment of the admitted tax, and 12.5% of the disputed tax, beyond the period of sixty days, from the date of receipt of a copy of the order of the assessing authority, would disable the appellate authority from admitting the appeal. The judgment of the Division Bench of this Court in Ankamma Trading Company2 is binding on a co-ordinate Bench of this Court.

11. In Annapurna9 the Supreme Court held that, on a careful perusal of the provisions of Rules 89 to 92 of Order 21 CPC and Article 127 of the Limitation Act, it was clear that, although Order 21 Rule 89 CPC did not prescribe any period either for making the application or the required deposit, Article 127 of the Limitation Act prescribes sixty days as the period within which such application should be made; and, in the absence of any separate period for making the deposit and in view of the judgment of the Constitution Bench of the Supreme Court in Dadi Jagannadham v. Jammulu Ramulu, the time to make the deposit and for making the application would be the same. While the submission of the Learned Special Standing Counsel for Commercial Taxes, that as the time limit to prefer an appeal is sixty days the time limit for making the pre-deposit would also be sixty days, has considerable force, it is unnecessary for us to again examine the scope of the second proviso to Section 31(1) of the AP VAT Act in view of the law declared by the Division Bench of this Court in Ankamma Trading Company2 which is binding on us.

12. The doctrine of stare decisis, a part of our judicial system, means "to abide by former precedents". Blackstone elucidated the doctrine thus:

"for it is an established rule to abide by former precedents, where the same points come again in litigation : as well as to keep the scale of justice even and steady and not liable to waver with every new judge''s opinion, as also because the law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, is now become a permanent rule, which it is not in the breast of

any subsequent judge to alter or vary from, according to his private sentiment. "

13. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. (Chandra Prakash v. State of U.P.). If one thing is more necessary in law than any other, it is the quality of certainty. (Mahadeolal Kanodia v. Administrator General of W.B.; Shridhar v. Nagar Palika, Jaunpur). In a country governed by the rule of law, law has to be certain and uniform. (State of U.P. v. Synthetics and Chemicals; Commissioner of Income Tax v. M/s. B.R. Constructions). Certainty of the law and consistency of rulings are fundamental to the rule of law and form the core of judicial discipline. (State of Punjab v. Devans Modern Breweries Ltd.; Chandra Prakash11). Certainty of the law, consistency of rulings and comity of courts all flowering from the same principle converge to the conclusion that a decision once rendered must later bind like cases. (Mamleshwar Prasad v. Kanhaiya Lal).

14. The decision rendered by a Division Bench of the High Court is binding upon another Division Bench. (Govt. of A.P. v. N. Rami Reddy). An order passed by the Court, not consistent with its own earlier decisions on law, is bound to send out confusing signals and usher in judicial chaos. (Secretary, State of Karnataka v. Umadevi). In order to guard against the possibility of inconsistent decisions on points of law by different Division Benches, and in order to promote consistency and certainty in the development of the law and its contemporary status, a rule has been evolved that the pronouncement of law by a Division Bench is binding on another Division Bench. (Union of India v. Raghubir Singh). The doctrine of binding precedent has the merit of promoting certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. (Raghubir Singh20).

15. Benches of High Courts should not, normally, differ from earlier judgments rendered by benches of co-ordinate jurisdiction merely because they hold a different view on a question of law for the reason that certainty and uniformity in the administration of justice is of paramount importance. (Synthetics and Chemicals Ltd14; M. Subbarayudu v. State and M/s. B.R. Constructions15). Every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent. Other submissions sparkling with creative ingenuity and presented with high pressure advocacy, cannot persuade the Court to reopen what was laid down. Fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned. (Ambika Prasad Mishra v. State of U.P.,). It would be wholly inappropriate for us, therefore, to differ from the judgment of the Division Bench of this Court in Ankamma Trading Company2.

II. THE POWER CONFERRED ON THE SUPREME COURT UNDER ARTICLE 142 OF THE CONSTITUTION OF INDIA IS NOT AVAILABLE TO A HIGH COURT UNDER ARTICLE

226:

16. It is no doubt true that aggrieved by the judgment of the Division Bench of this Court, in Ankamma Trading Company2, the petitioner had carried the matter in the appeal to the Supreme Court by way of SLP (Civil) No. 32221 of 2011 which was disposed of by order dated 17.09.2012. The Supreme Court, while making it clear that they had not evaluated the merits of the grounds urged in the Special Leave Petition, held that although, admittedly, 12.5% of the disputed tax had not been deposited within the time granted, yet, in the interest of justice, they deemed it proper and expedient to direct the Appellate Deputy Commissioner to revive the same and dispose them of on merits, after due notice to the parties.

17. M/s. S.E. Graphites Private Limited, whose appeal was also rejected by the Appellate Deputy Commissioner on the ground that they had failed to pay the admitted tax within the stipulated maximum period of sixty days, filed W.P. No. 15384 of 2013 relying on the judgment of this Court in S. Pitchi Reddy3 and the order of the Supreme Court in SLP (Civil) No. 32221 of 2011 dated 17.09.2012. A Division Bench of this Court, by order dated 17.09.2013, dismissed W.P. No. 15384 of 2013 following the law laid down in Ankamma Trading Company2. The Division Bench held that the order of the Supreme Court, in SLP (Civil) No. 32221 of 2011 dated 17.09.2012, was an order passed in the exercise of its powers under Article 142 of the Constitution of India.

18. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary for doing complete justice in any case or matter pending before it, which authority the High Court does not enjoy. The jurisdiction of the High Court, in writ proceedings, is circumscribed by limitations which cannot transgressed on the whim or subjective sense of justice varying from Judge to Judge. (State of Punjab v. Surinder Kumar). The power which is available to the Supreme Court under Article 142 is not available to the High Courts. (Chairman, Grid Corpn. Of Orissa Ltd. (Gridco) v. Sukamani Das). The power conferred on the High Court, under Article 226 of the Constitution of India, is not on par with the constitutional jurisdiction conferred upon the Supreme Court under Article 142 of the Constitution of India. (State of U.P. v. Johri Mal; State of H.P. v. A parent of a Student of Medical College and Asif Hameed v. State of J&K). Although the High Court may pass an order for doing complete justice to the parties, they do not have the power akin to Article 142 of the Constitution of India. (Johri Mal25; Guruvayoor Devaswom Managing Committee v. C.K. Rajan; B.C. Chaturvedi v. Union of India). Exercise of the extraordinary jurisdiction, constitutionally conferred on the Supreme Court under Article 142(1) of the Constitution, can be of no guidance on the scope of Article 226. (State of Haryana v. Naresh Kumar Bali; State of H.P. v. Mahendra Pal).

19. As the Supreme Court, in M/s. Ideal Detonators (P) Ltd. v. Commercial Tax Officer, made it clear that they had not evaluated the merits of the grounds urged in the SLP, it is evident that the law declared in Ankamma Trading Company continues

to hold the field. The direction to the Appellate Deputy Commissioner, to revive the appeals and dispose them of on merits, was issued by the Supreme Court in the exercise of its powers under Article 142 of the Constitution of India. As no such power is available to this Court, while exercising jurisdiction under Article 226 of the Constitution of India, it would not be open to us, in the light of the judgment in Ankamma Trading Company2, to pass any order or issue any direction contrary thereto.

III. PENDENCY OF AN APPEAL BEFORE THE SUPREME COURT WILL NOT JUSTIFY A CO-ORDINATE BENCH IGNORING THE JUDGMENT IN ANKAMMA TRADING COMPANY AS THE LAW DECLARED THEREIN CONTINUES TO REMAIN IN FORCE:

20. In S.E. Graphites Private Limited4 a Division Bench of this Court referred with approval to its earlier order in M/s. Tanvi Foods Pvt. Ltd. v. The Appellate Deputy Commissioner (CT), Punjagutta Division, Hyderabad, wherein it was held that the discretion exercised by this Court in S. Pitchi Reddy3, permitting the petitioner therein to deposit the amount within two weeks, could not be treated as a precedent. Aggrieved thereby M/s. S.E. Graphites Private Limited filed SLP No. 3217 of 2014 and the Supreme Court, while issuing notice, had, by order dated 19.02.2014, directed that there shall be no coercive recovery of the amount. Thereafter, by order dated 30.07.2014, the Supreme Court granted leave, and extended the interim order passed earlier on 19.02.2014. As leave has been granted by the Supreme Court, SLP No. 3217 of 2014 is now a Civil Appeal; and, on the Civil Appeal being finally disposed of, the order of the Division Bench, in Ankamma Trading Company2, would merge therewith.

21. In West Coast Paper Mills Ltd.7 a Division Bench of the Supreme Court doubted the correctness of another two-Judge Bench decision of the Supreme Court in P.K. Kutty Anuja Raja v. State of Kerala, and referred the matter to a three-Judge Bench. The respondent before the Supreme Court had filed a petition before the Railway Rates Tribunal, aggrieved by the revision in the rate of freight. The Tribunal declared the said levy as unreasonable. Aggrieved thereby the appellant filed an application for grant of special leave before the Supreme Court. While granting special leave, the Supreme Court passed a limited interim order permitting the appellant to charge the usual rates without inflation of the distance, and for the respondent to give a bank guarantee. The SLP was later dismissed. The respondent then filed a Writ Petition before the High Court which was dismissed leaving it open to them to file a Suit. The respondent, thereafter, filed two Suits claiming refund. The said Suits were decreed and, in appeal, the High Court confirmed the order of the Trial Court. Before the Supreme Court, the appellant contended that the said Suits were barred by limitation as the cause of action, for filing the Suits, arose immediately after the judgment of the Tribunal; in terms of Article 58 of the Limitation Act, they were required to be filed within a period of three years from the said date; while a SLP had been preferred against the order of the Tribunal, the Supreme Court had not

granted stay; the period, during which the matter was pending before the Supreme Court, could not be excluded in computing the period of limitation; in the absence of an order, staying the operation of the judgment of the Tribunal, it became enforceable; and the respondent ought to have filed a Suit within the period of limitation specified therein i.e., three years from the date of the order of the Tribunal. Placing reliance on the judgment of the Supreme Court, in Kunhayammed v. State of Kerala, it was contended, on behalf of the respondent, that, as the Supreme Court had granted special leave to appeal and had passed a limited interim order, the judgment of the Tribunal was in jeopardy; and, as the doctrine of merger applied, the period of limitation would begin to run from the date of passing of the appellate decree, and not from the date of passing of the original decree. It is in this context that the Supreme Court observed:

Article 136 of the Constitution of India confers a special power upon this Court in terms whereof an appeal shall lie against any order passed by a Court or Tribunal. Once a Special Leave is granted and the appeal is admitted the correctness or otherwise of the judgment of the Tribunal becomes wide open. In such an appeal, the court is entitled to go into both questions of fact as well as law. In such an event the correctness of the judgment is in jeopardy.

22. Even in relation to a civil dispute, an appeal is considered to be a continuation of the suit and a decree becomes executable only when the same is finally disposed of by the Court of Appeal.

23. The starting point of limitation for filing a suit for the purpose of recovery of the excess amount of freight illegally realised would, thus, begin from the date of the order passed by this Court. It is also not in dispute that the respondent herein filed a writ petition which was not entertained on the ground stated hereinbefore. The respondents were, thus, also entitled to get the period during which the writ petition pending, excluded for computing the period of limitation. In that view of the matter, the civil suit was filed within the prescribed period of limitation.

24. In Kunhayammed ((2000) 119 STC 505 : (2000) 6 SCC 359), this Court held:

"12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject- matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of

jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."

25. It was further observed (page 383 of 6 SCC and page 381 of 245 ITR):

"41. Once a SLP has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.

42."To merge" means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality.(See Corpus Juris Secundum, Vol. LVII, pp. 1067- 68)" (See also Raja Mechanical Company Pvt. Ltd. Vs. Commissioner of Central Excise,) It is beyond any cavil that in the event, the respondent was held to have been prosecuting its remedy bona fide before an appropriate forum, it would be entitled to get the period in question excluded from computation of the period of limitation. Unfortunately in P.K. Kutty (supra) and Mohinder Singh Jagdev (supra) no argument was advanced as regard applicability of doctrine of merger. The ratio laid down by the Constitution Benches of this Court had also not been brought to the court''s notice. In the aforementioned cases, this Court failed to take into consideration that once an appeal is filed before this Court and the same is entertained, the judgment of the High Court or the Tribunal is in jeopardy. The subject matter of the lis unless determined by the last Court, cannot be said to have attained finality. Grant of stay of operation of the judgment may not be of much relevance once this Court grants special leave and decides to hear the matter on merit. It has not been and could not be contended that even under the ordinary civil law the judgment of the appellate court alone can be put to execution. Having regard to the doctrine of merger as also the principle that an appeal is in continuation of suit, we are of the opinion that the decision of the Constitution Bench in S.S. Rathore (supra) was to be followed in the instant case.

(emphasis supplied).

26. The law laid down by the Supreme Court, in West Coast Paper Mills Ltd7, is that the logic, underlying the doctrine of merger, is that there should not be more than one decree or operative order, on the same subject matter, at a given point of time; once Leave has been granted, the doors for the exercise of the appellate jurisdiction of the Supreme Court are open; the order impugned becomes an order appealed against; and any order, that would be passed thereafter, would be an appellate order and would attract the doctrine of merger. The Supreme Court followed its earlier decision in Kunhayammed35 wherein it was held that when the order passed by the inferior court is subjected to a remedy available under law before a Superior forum, though the order under challenge is effective and binding, nevertheless its finality is put in jeopardy. While the law declared in Ankamma Trading Company2. may be in jeopardy, it is still effective and binding till the said decision is overruled by the Supreme Court.

27. The ratio of a judgment are the reasons assigned in its support. When a Court of appeal grants stay of the operation of the judgment, it stays the further implementation, as between the parties, of the operative portion thereof. Thereby the ratio of the decision cannot be said to have been wiped off. (N. Rami Reddy18). Even when the judgment of a Division Bench of the High Court, which is the subject-matter of an appeal before the Supreme Court, is suspended, the only effect of such suspension is that the judgment cannot be executed or implemented. But so long as the judgment stands, the dicta laid down therein is binding on Single Judges and Division Benches of the High Court. The dicta laid down therein cannot be ignored. (Indira Nehru Gandhi v. Raj Narain; N.Rami Reddy18; K. Venkata Reddy v. LAO). While considering the effect of an interim order, staying the operation of the order under challenge, a distinction has to be made between quashing of the order and stay of operation of the order. Quashing of an order results in restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order, which has been stayed, would not be operative from the date of the passing of the stay order, and does not mean that the said order has been wiped out from existence. (M/s. Sree Chamundi Mopeds Ltd. v. Church of SIT Association; N.Rami Reddy18). Notwithstanding Leave having been granted in S.E. Graphites (P) Ltd.4, and an interim order being passed that there should be no coercive recovery of the amount in question, the judgment of the Division Bench of this Court, in Ankamma Trading Company2, is still binding on a co- ordinate Bench.

IV. AN ORDER, WHICH CONTAINS DIRECTIONS WITHOUT ASSIGNING REASONS, DOES NOT CONSTITUTE A BINDING PRECEDENT:

28. In S. Pitchi Reddy3, a Division Bench of this Court considered it appropriate to grant each of the petitioners therein two weeks time, from the date of receipt of a copy of the order, to deposit the amount liable to be deposited under the second

proviso to Section 31 of the AP VAT Act. The earlier judgment of the Division Bench in Ankamma Trading Company2 was not referred to therein. The said order does not also contain reasons for issuing such directions. In M/s. Tanvi Foods Pvt. Ltd.33, a Division Bench of this Court held that the discretion exercised by the Court in S. Pitchi Reddy3, permitting the petitioner therein to deposit the amount within two weeks, could not be treated as a precedent. Another Division Bench of this Court, in M/s. Pearl City Containers5 after referring to the earlier judgments in M/s. Swastik Oleachems Ltd., Hyderabad6, Ankamma Trading Company2 and S. Pitchi Reddy3, and, following the judgment of the Supreme Court in Ranjit Impex8, held that, in view of the law declared in Swastik Oleachems Ltd6, it was not open to the respondent to claim exemption from deposit of 12.5% only on the ground that the tax has been impounded by the Commissioner of Industries; but it was a fit case to direct the petitioner to comply with the pre-condition of deposit of 12.5% within fifteen days, and to take the appeal on file.

29. In Ranjit Impex8 the order of the Deputy Commissioner (CT), in refusing to entertain the appeal as the amount required to be deposited u/s 51 of the TN VAT Act was not done, was under challenge before the Madras High Court. Section 51 of the TN VAT Act used the term entertain. The Division Bench of the Madras High Court held that proof of deposit of tax had to be produced at the time when the appeal was taken up for consideration, but not at the time of presentation of the appeal. The Supreme Court held that the condition prescribed to entertain an appeal did not mean that the memorandum of appeal should be returned because of such non-compliance pertaining to pre-deposit; the only consequence was that the appeal should not be entertained; and this meant that the appeal should not be considered on merits, and should eventually be dismissed on that ground. It is in this context that the Supreme Court directed the appellant to deposit the amount as required by the Deputy Commissioner, whereafter the appeal was directed to be heard and disposed of on merits.

30. Unlike the words entertain an appeal in Section 51 of the TN VAT Act, the second proviso to Section 31(1) of the AP VAT Act stipulates that no appeal, against the order passed u/s 31 shall be admitted unless it is accompanied by satisfactory proof of payment of tax and 12.5% of the disputed tax or any other amount as ordered by the appellate authority u/s 31. Section 51 of the TN VAT Act, 2006, which uses the words entertain an appeal is not in pari-materia with the second proviso to Section 31 of the AP VAT Act which uses the words no appeal.. shall be admitted unless it is accompanied by satisfactory proof of payment. The words entertain an appeal has been held by the Supreme Court to mean that an appeal shall not be considered on merits. The second proviso to Section 31 of the AP VAT Act, however, prohibits admission of an appeal, and not its being entertained. As the statutory provisions in question are not identical, the judgment of the Supreme Court, in Ranjit Impex8, has no application to the facts of the present case.

31. Both in S. Pitchi Reddy3 and in M/s. Pearl City Containers5, the Division Benches of this Court have not assigned any reasons for the direction that the precondition of deposit of 12.5% be complied within 15 days, and the appeal be taken on file. A decision is available as a precedent only if it decides a question of law. No reliance can be placed on an order of the Court which contains directions without assigning reasons. (Surinder Kumar23). The petitioner is, therefore, not justified in contending that a direction, similar to that issued in S. Pitchi Reddy3 and M/s. Pearl City Containers5, should be issued in this Writ Petition also.

V. INTERIM ORDERS ARE NOT PRECEDENTS WHICH BIND A CO-ORDINATE BENCH:

32. Yet another Division Bench of this Court, while issuing notice before admission to the respondents, had, by order in M/s. Ideal Industrial Explosives Ltd. v. Govt. of A.P., directed that there shall be no coercive recovery of the amount in question. That the Supreme Court, in M/s. S.E. Graphites Pvt. Ltd., v. State of A.P. had directed that there should be no coercive recovery of the amount in question, does not justify a similar order being passed by the High Court as, on the question of the requirement to assign reasons for an order, the distinction between a Court whose judgment is not subject to further appeal and other Courts must be kept in mind. One of the main reasons for disclosing and discussing the grounds in support of a judgment is to enable a higher Court to examine the same in the case of a challenge. This requirement is not imperative in the case of the Supreme Court. It is, therefore, futile to suggest that, if the Supreme Court has issued an order, the High Court can also do. (Surinder Kumar23). If that be the case of a final order, an interim order of the Supreme Court would not enable this Court to pass a similar interim order which would fall foul of the law declared by a co-ordinate Division Bench in Ankamma Trading Company2. As there is no finality to an interlocutory order, and interim orders passed by Courts on certain conditions are not precedents for other cases which may be on similar facts (Empire Industries Limited v. Union of India; M. Vijaya Kumar v. Milk Products Factory), the interim order passed in M/s. Ideal Industrial Explosives Ltd.39 would not require this Court to pass a similar interim order, more so as it is contrary to the law declared in Ankamma Trading Company2.

33. Granting unconditional stay of payment of the disputed tax, and keeping the Writ Petition pending on the file of this Court, would result in a relief being granted to the petitioner beyond what they would be entitled even if the Writ Petition itself had been allowed. The petitioner is not entitled for grant of interim relief beyond the main relief sought for in the Writ Petition. The only relief which the petitioner would be entitled to, even if the present Writ Petition were to be allowed, is for their appeal to be entertained, and their stay application considered on its merits, by the 2nd respondent. There is no justification, therefore, for interim stay to be granted, and for the Writ Petition to be admitted and kept pending on the file of this Court, till disposal of the Civil Appeal preferred by M/s. S.E. Graphites Ltd. before the Supreme Court.

VI. CONCLUSION:

34. The proceedings of the 2nd respondent dated 19.06.2014, rejecting admission of the petitioners appeal on the ground of belated payment of 12.5% of the disputed tax beyond the prescribed period for filing an appeal u/s 31 of the A.P. VAT Act, is in accordance with the law declared by the Division Bench of this Court in Ankamma Trading Company2, and as the said Division bench judgment is binding on a coordinate bench, no interference is called for in proceedings under Article 226 of the Constitution of India. The Writ Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.