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**(2014) 08 AHC CK 0262**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ (Tax) Petition No. 427 of 2014

Asian P.P.G. Industries Ltd.

APPELLANT

Vs

Commercial Tax Tribunal

RESPONDENT

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**Date of Decision :** 26-08-2014

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 18A(5)

**Citation :** (2014) 8 ADJ 685

**Hon'ble Judges :** Surya Prakash Kesarwani, J

**Bench :** Single Bench

**Advocate :** Suyash Agarwal and Rakesh Ranjan Agrawal, Advocate for the Appellant

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## **Judgement**

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Surya Prakash Kesarwani, J.—Heard Sri R.R. Agarwal, learned Senior Counsel assisted by Sri Suyash Agarwal, learned counsel for the petitioner and Sri B.K. Pandey, learned Standing Counsel for the State respondent. This writ petition has been filed against the order dated 24/26.6.2014 passed by Commercial Tax Tribunal, Bench-II, Ghaziabad in Appeal No. 385 of 2014 for the Year 2011-12.

2. By the impugned order passed under Section 18A(5) of the Central Sales Tax Act, 1956, the Tribunal has directed to deposit 1/3rd of the disputed amount of tax for entertaining the stay application of the petitioner.

Submission of Sri R.R. Agarwal is that Section 18A(5) does not provide for pre-deposit to entertain the stay application or to pass stay order. He submits that the impugned order of the tribunal is wholly misconceived and therefore, deserves to be set aside and a direction needs to be issued to the Tribunal to decide the stay application of the petitioner in accordance with law within a time bound period and till then recovery may not be made by the respondents.

3. Learned Standing Counsel submits that as per provision of Section 18A(5) of the Act, the Tribunal is empowered to direct the appellant to deposit an amount

prior to admission of the appeal and therefore, Tribunal has rightly passed the impugned order.

4. I have carefully considered the submissions of learned counsel for the parties. The controversy involved in the present writ petition is with regard to interpretation of Section 18A(5) of the Central Sales Tax Act, 1956 which is reproduced below:

"Notwithstanding anything contained in a State Act, the highest appellate authority of a State may, on the application of the appellant and after considering relevant facts including the deposit of any amount towards local or Central Sales Tax in other States on the same goods, pass an order of Stay subject such terms and conditions as it thinks fit, and such order may, inter alia, indicate the portion of tax as assessed, to be deposited prior to admission of the appeal."

5. By the impugned order, the Tribunal has directed the petitioner to deposit 1/3rd of the disputed tax and to produce proof of deposit and only thereafter the stay application shall be considered.

6. Section 18A(5) of the Act empowers the Tribunal to pass an order of Stay subject to such terms and conditions as it thinks fit, and such order may, inter alia, indicate the portion of tax as assessed, to be deposited prior to admission of the appeal. A bare reading of the said provision makes, it makes clear that the word used "such order" means an order of stay in which the tribunal may put such terms and conditions as it thinks fit and may indicate the portion of tax as assessed to be deposited prior to admission of the appeal. Therefore, in my view, no pre-deposit is required to be made under Section 18A(5) of the Act for consideration of stay application. In the stay order the tribunal may indicate the portion of assessed tax to be deposited. Tribunal may pass an order of stay subject to such terms and conditions as it thinks fit but cannot require an appellant to pre-posit 1/3rd of the disputed amount of tax for entertaining his stay application. While passing order on stay application the Tribunal may grant stay of disputed amount either in part or in full or even may reject the stay application. It may pass stay order subject to such terms and conditions as it may think fit under the facts and circumstances of the case before it. In view of the above clarification of law, the writ petition is allowed. The impugned order of Tribunal dated 24/26.6.2014 passed in Appeal No. 385 of 2014 is hereby set aside. Tribunal is directed to decide the stay application of the petitioner in accordance with law within a week from the date of production of certified copy of this order. For a period of 10 days from today, no coercive action shall be taken by the respondent No. 2 pursuant to the orders impugned before the tribunal in appeal. It is made clear that this Court has neither consider the merits of the case nor prima facie case nor balance of convenience for grant of any interim relief.