HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.357 OF 2016

ORDER: (*Per* Hon'ble Sri Justice M. Satyanarayana Murthy)

The petitioner filed this writ petition to declare that the Assessment Order No.43104, dated 27.11.2015, passed by the first respondent, for the period from 01.01.2015 to 09.06.2015 under the provisions of Central Sales Tax Act, 1956 (for short, 'CST Act, 1956') is without jurisdiction, arbitrary and violative of principles of natural justice.

02. The petitioner is a registered dealer on the rolls of the first respondent with effect from 01.01.2015 and is in the business of cutting and polishing of rough granites and sale of polished granites. While the petitioner is still in the process of constructing buildings etc., and erecting machines, to start his business, the petitioner received a phone call from the Office of the first respondent that the petitioner carrying on business by generating E-way bills. Immediately, the petitioner verified E-way bill account of the petitioner, found that 103 E-way bills were generated in the name of petitioner, but in fact they were not generated by the petitioner from the AP VAT portal. The petitioner complained the same to the police, while requesting the respondents to co-operate with the petitioner in unearthing the fraud committed by the unknown persons, informed that the petitioner did not generate E-way bills except two E-way bills, which were used for purchase of machinery and spares. While the petitioner taking necessary steps to find out who generated E-way bills, the petitioner received a notice from the first respondent dated 22.07.2015 alleging that as many as 105 E-way bills were generated by the petitioner during the period from 16.04.2015 to 09.06.2015 and out of the said E-way bills 89 E-way bills used for transportation of granite slabs, 14 E-way bills for purchase of ceramic tiles and two E-way bills for purchase of

machinery.

03. On receipt of the complaint from the petitioner, the Station House Officer, Chimakurthy Police Station, registered a case in Crime No.71 of 2015, but the same was transferred to the Inspector of Police, Ongole Rural, for further investigation as the Station House Officer, Chimakurthy, is incompetent. During investigation, the Inspector of Police arrested the accused, produced before the Special Judicial Magistrate of First Class, Excise, Ongole, along with the remand report, having found prima facie material against the accused who hacked the official website of Commercial Taxes Department by securing access to the accounts of the petitioner, who is about to start business by resetting the account user ID and password, and it is still under investigation.

04. Since the complaint is under investigation, the petitioner submitted reply dated 19.08.2015 to the show cause notice informing that the petitioner had no knowledge about the transactions covered by 89 CST E-way bills for transportation of granite slabs and 14 E-way bills for purchase of glazed ceramic tiles, admitted about generation of 2 E-way bills and requested to postpone passing of Assessment Order. But the first respondent without granting sufficient time and without considering reply to the show cause notice, ignoring the complaint and remand report, passed the impugned assessment order dated 27.11.2015 in over haste and that the said Assessment Order is illegal, arbitrary and violative of principles of natural justice, since the first respondent passed the said order without conducting inquiry into the actual generation of E-way bills. Hence, prayed for the aforesaid reliefs.

05. The first respondent filed counter affidavit denying the material allegations, while admitting about issue of show cause notice, receipt of reply to the show cause notice, passing of Assessment Order dated 27.11.2015, assessing the petitioner to

tax. It is specifically contended that one Smt. Vem Bhadramma, D/o.Sri Venkata Reddy Terati, residing at D.No.1/102, Theegalaveni Village, Gudur Mandal, Warangal District, Telangana State, obtained registration under the AP VAT Act, 2005 and CST Act, 1956, authorized by Sri Penna Srinivasulu, S/o. Peddanagaiah and obtained TIN No.37651122143 with effect from 01.01.2015 for manufacture and sale of granite slabs in the name and style of M/s.Arjun Granites, situated at Survey No.81, besides Revanth Exports, Budawada Village, Chimakurthy Mandal, Prakasam District.

06. The respondents issued audit notice in Form VAT 304, dated 09.06.2015 and requested the petitioner to make available all records pertaining to all business activities for verification. The authorized representative of the petitioner gave statement before the respondent on the said date informing that the proprietor of the firm, Smt. Vem Bhadramma, is residing at Warangal and would shortly intimate her availability at the business premises to the first respondent. During audit it was noticed that from January 2015 to April 2015 the petitioner had declared NIL turnover both under the AP VAT Act, 2005 and under the CST Act, 1956. Further it was noticed that for the period from 16.04.2015 to 09.06.2015 the petitioner had utilized 89 CST E-way bills and the turnover declared in the said E-way Bills is to the extent of Rs.1,38,79,627/- for transportation of granite slabs, and obtained 16 E-way bills out of which two E-way bills were utilized for the purchase of machinery amounting to Rs.25,55,250/- and the balance 14 E-way bills were utilized for the purchase of glazed ceramic tiles, but the same were not reflected in the monthly returns filed under the CST Act, 1956.

07. The first respondent also issued show cause notice proposing the petitioner subject the above turnover to tax @ 14.5% amounting to Rs.20,12,546/- and the petitioner filed objections wherein it was contended that some unknown persons logged into the account of the petitioner knowing

password and generated E-way bills and requested to provide additional security measures to minimize the problem. Since some of the dealers are depending on net cafes to generate E-way bills and to stop the intrusion etc. Pursuant to the letter, the petitioner appears to have filed complaint to the police, Chimakurthy Police Station, Prakasham District, the same was registered as a case in Cr.No.71 of 2015 dated 16.06.2015, issued F.I.R. and the same was enclosed to the writ petition. The complaint discloses that the petitioner made an attempt to download the E-way bill, the said account was not getting opened and therefore they got the password reset and obtained new password from the Department on 19.05.2015 and when the petitioner made an attempt to download another E-way bill on 08.06.2015, they encountered the same problem and the petitioner's account was not opened. Thus, the allegations made in the FIR are totally in variance with the allegations made IN the writ petition and that the person to whom user ID and password are provided alone can access the account of the petitioner, and he himself responsible for such accessing to the account of the petitioner and generating bills. Again when the account of the petitioner was not opened on 08.06.2015 when the petitioner tried to generate another E-way bill, the petitioner again reset the password for generation of E-way bills. On 19.05.2015 they download E-way bill No.371505192579391. It is again noticed on 09.06.2015 the account of the petitioner was not open when the petitioner tried to download E-way bill, again reset the password for second time and generated E-way bill No.371506099158194. It is the contention of the petitioner that when they tried to generate E-way bill on 19.05.2015 the account was not getting opened, but the petitioner filed its monthly return for the month of April, 2015 on 19.05.2015. It is evident that the petitioner was able to access the account even on 19.05.2015. There is no truth in the allegations made in the writ petition by third party access to the account of the petitioner and generated E-way bills.

08. Even after the receipt of the show cause notice, the petitioner filed objections, admitting utilization of E-way bills No.CST3715005192579391 dated 19.05.2015 and Bill No.CST371506099158194 dated 09.06.2015 for purchase of machinery to install, in the petitioner's factory. Thus, it is clear that the petitioner had logged to his account in the website of Commercial Taxes Department on 19.05.2015 as well as on 09.06.2015, generated E-way bills periodically, but when it was noticed by the first respondent about generating huge quantity of E-way bills the petitioner alleged to avoid tax liability and the said complaint is frivolous. Therefore the first respondent rightly passed the impugned Assessment Order under the CST Act, 1956 and not liable to be quashed.

09. One of the contentions of the first respondent is that the petitioner did not approach the Court with clean hands and that the petitioner is entitled to avail statutory remedy provided under Section 31 of AP VAT Act, 2005. Therefore, by invoking extraordinary jurisdiction under Article 226 of the Constitution of India, the petitioner is not entitled to claim discretionary relief in a petition filed under Article 226 of the Constitution of India and prayed for dismissal of the writ petition.

10. The petitioner filed a reply to the counter affidavit almost reiterating the allegations made in the writ petition regarding the purchase of machinery under two CST E-way bills generated by the petitioner while denying generation of 103 E-way bills periodically during the assessment period and filing of frivolous complaint etc., and annexed the press note and news item published in Eenadu, Andhra Jyothi, Sakshi Telugu daily, and Business Standard and other newspapers.

11. During the course of hearing, Sri P. Vishnuvardhan Reddy, learned counsel for the petitioner, would contend that when the petitioner did not generate E-way bills, the petitioner is not under obligation to pay tax, but the first respondent without considering the objections to the show cause notice,

more particularly, with regard to hacking of the petitioner's account accessing to the Commercial Taxes website by the third party, made the petitioner liable to pay taxes to the first respondent and even did not defer passing of the Assessment Order till completion of the investigation in the case, and prayed to set aside the same.

12. Per contra, Sri S. Suri Babu, learned standing counsel for the Commercial Taxes, contended that the petitioner logged to the account of the petitioner and generated 105 E way bills, evidencing purchase of ceramic tiles and machinery etc., amounting to Rs.1,38,79,630/-, but in the returns, the petitioner did not disclose generation of any E-way bills under AP VAT Act, 2005 or under CST Act, 1956, admitted generation of 2 CST E-way bills utilized for the purpose of transporting machinery from Rajasthan to install the same in the factory premises.

13. When the petitioner accessed or logged to the account for generating CST E-way bills, immediately the account disclose the number of E-way bills generated by the petitioner, but conveniently did not report about the alleged hacking and generation of E-way bills by the third parties, this itself indicates that the allegations made in the writ petition are prima facie false. Therefore, the petitioners are liable to pay tax to the respondents and that when the petitioner did not approach the Court with clean hands, discretionary relief under article 226 of the Constitution of India cannot be granted and prayed for dismissal of the writ petition.

14. The petitioner is registered as TOT dealer undisputedly, but his contention before us is that it has not commenced its business, installing machinery etc., and business is at the feotus stage. If the business is not commenced and it is a start up business as contended by the petitioner, nothing prevented to register as start up under Rule 9 of AP VAT Rules 2005 to claim benefits of start up registration. Once registered as TOT dealer, it is not open to

the petitioner to contend that the business is not yet commenced. When the petitioner became registered dealer, the first respondent provided account for generating E-way bills both under AP VAT Act, 2005 and CST Act, 1956, furnishing user ID and password to the petitioner and the person who knows the user ID and password alone can access the account of the petitioner with the Commercial Taxes Department Website. But the contention of the petitioner is that the third parties hacked the website of Commercial Taxes Department, logged on to the account of petitioner, generated 105 E-way bills.

15. In fact, as per the provision of AP VAT Act, 2005 and Rules framed, the Department introduced the system of generating E-way bills to ensure the collection of tax from the dealers to avoid evasion of tax by the dealers based on '0' sales. Section 6 of the Information Technology Act, 2000 obligates the authority of Government to provide such facility either by itself or its agencies, it reads as follows:

> **"6. Use of electronic records and electronic signatures in Government and its agencies:-**
> (1) where any law provides for –
> a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;
> b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;
> c) the receipt or payment of money in a particular manner,
> then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.
> 2) The appropriate Government may, for the purpose of such-section (1), by rules, prescribe-
> a) the manner and format in which such electronic records shall be filed, created or issued:
> b) the manner or method of payment of any fee or charges for filing, creating or issue any electronic record under clause (a)."

16. Thus, in view of specific provision of AP VAT Act, 2005, facility of generating E-way bills was provided under Section 6 of the Information Technology Act, 2000 and such record is to be accepted. Section 16 of the said Act, obligates the Central Government for the purpose of Section 14 and 15 (Secure Electronic Record and Secure Electronic Signature) prescribe procedure and practice. Accordingly necessary security procedures were provided to the Commercial Taxes Website providing user ID and password to the account holder. If for any reason, the third party hacked the website, accessed to the account of the petitioner, such person is liable for punishment under Section 66(c), 66(e) and (f) of the Information Technology Act, 2000, but the petitioner cannot avoid liability to pay tax to the respondents.

17. In the present case, user ID and password are known to the representative of the petitioner alone and he admittedly accessed and generated two CST E-way bills, but surprisingly he did not verify the account of the petitioner to find out number of CST E-way bills and VAT E-way bills were generated. If really the account was not accessed and re-set the password, nothing prevented the petitioner to give complaint to the police concerned after due verification of the petitioners account. But strangely on receipt of show cause notice in Form VAT 305A, the story of third parties accessing to the account of petitioner and generation of E-way bills is invented conveniently. Maintaining silence for more than four months though 105 E-way bills were generated from the account of the petitioner is itself indicates that the petitioner is unmindful about disclosing the turnover by filing 'NIL' turnover for those months. Accessing the account of the petitioner, generating two CST E-way bills on 16.04.2015 and 09.06.2015 and filing return on April with 'NIL' turnover itself suffice to conclude that the petitioner is aware about the accessing of account and the E-way bills generated from the Commercial Taxes website. Even according to the material on record, the petitioner generated the following E-way bills-

S.No.	LEAF NO.	DATE	AMOUNT (in Rs.)	COMMODITY
1	**CST371504164157060**	**16.04.2015**	**875294**	**Ceramic Tiles and Glazed Tiles and Earthen Tiles.**
2	**CST371504209633074**	**20.04.2015**	**878832**	
3	**CST371504308265058**	**30.04.2015**	**440640**	
4	**CST371505164319515**	**06.05.2015**	**860854**	
5	**CST371505076598404**	**07.05.2015**	**423569**	
6	**CST371505129693271**	**12.04.2015**	**798333**	
7	**CST371505211408676**	**21.05.2015**	**428400**	
8	**CST371505214231676**	**21.05.2015**	**430848**	
9	**CST371505217780620**	**21.05.2015**	**433296**	
10	**CST371505281211396**	**28.05.2015**	**414202**	
11	**CST371505289067293**	**28.05.2015**	**421056**	
12	**CST371505289668207**	**28.05.2015**	**416160**	
13	**CST371506066109538**	**06.06.2015**	**93024**	
14	**CST371506067721884**	**06.06.2015**	**146880**	
15	**CST371505192579391**	**19.05.2015**	**2550000**	**Machinery**
16	**CST371506099158194**	**09.06.2015**	**5250**	**Granite Machinery Trolley Track**
	Total purchases		**9616638**	

18. As seen from the information available and furnished from the Assessment Order, two CST E-way bills were generated from 16.04.2015, but in the VAT online return filed in Form VAT 200, the petitioner reported the turnover as NIL and extracted hereunder:

A	**Purchases**	**Turnover**	**Input tax**
1.	**Exempt/Non Creditable Purchases**	**NIL**	**NIL**
2.	**14.5% Purchases**	**NIL**	**NIL**
3.	**5% Purchases**	**NIL**	**NIL**
B	**Sales**	**Turnover**	**Output Tax**
1.	**Zero rated sales – International Exports**	**NIL**	**NIL**
2.	**Zero rated sales (CST Sales)**	**NIL**	**NIL**
3.	**14.5% sales**	**NIL**	**NIL**
4.	**5% Sales**	**NIL**	**NIL**
	Total	**NIL**	**NIL**

19. But on verification, the petitioner was found generation of 16 CST E-way bills for value of Rs.96,16,638/-, purchased Ceramic tiles by M/s.Arjun Granites, therefore, assessed the petitioner to tax at 14.5% on the sale value and added 5% tax on gross profit. Non disclosure of generation of CST E-way bills, though the petitioner generated two CST E-way bills on 19.05.2015 and 09.06.2015, is suffice to conclude that the petitioner accessed his account.

20. When the petitioner purchased machinery under two E-way bills dated 19.05.2015 and 09.06.2015 and Ceramic tiles on various dates under the E-way bills, the petitioner is liable to pay tax, on the estimated sale value.

21. One of the contentions by the petitioner is that the first respondent has to wait till completion of trial in the criminal case when the serious allegation is made against the third party for hacking account of the petitioner, generating of E-way bills, but the first respondent is not under obligation to wait till completion of criminal proceedings. Even otherwise, the petitioner admittedly generated two CST E-way bills on 19.05.2015 and 09.06.2015, the petitioner would have disclosed the said fact in VAT form 200 filed through online, but surprisingly filed NIL turn over return. Therefore, the petitioner conveniently suppressed, even generating two CST E-way bills referred above on 19.05.2015 and 09.06.2015 for Rs.25,55,250/-, in the turnover. Originally manual way bill are accepted but to plug in lope holes in Manual system and to avoid loss of revenue, the Commercial Sales Tax Department by exercising power under Section 77 and 78 of AP VAT Act issued circular regarding issue of E-way bills, making it mandatory to transact business by any VAT or TOT dealer. The petitioner did not dispute transacting business by E-way bills and admitted about generating CST E-way bills from the AP Sales Tax Department web portal, but pleaded ignorance about misusing way bill till receipt of notice. When user ID and password are provided to the dealer, dealer alone is expected to generate E-way bills and nobody can log in to the petitioner’s account to generate E-way bills in view of privacy. Therefore, the petitioner cannot avoid tax liability on the pretext of pending criminal proceedings. Hence, the respondents rightly fixed liability of the petitioner. The order under challenge does not suffer for any illegality warranting interference of this Court. As such, the petitioner did not approach this Court with clean hands, conveniently suppressed the turnover and purchase,

thereby the petitioner is disentitled to claim discretionary relief under Article 226 of Constitution of India. Consequently we are unable to exercise power of judicial review, to grant relief to the petitioner.

22. The main endeavor of the learned counsel for the petitioner is that the petitioner is not liable to pay VAT and CST as the petitioner did not generate the E-way bills except two CST E-way bills referred above on 19.05.2015 and 09.06.2015, more particularly, when those E-way bills were generated by the third party and criminal complaint was filed against the person who hacked the Commercial Taxes Website and generated E-way bills.

23. The complaint filed against un-known, but during investigation, arrested the accused on suspicion, produced before the Magistrate along with remand report may at best, the allegation made against those persons, for commission of alleged offence, till it is proved beyond reasonable doubt before the criminal court, it is difficult to accept the contention of the petitioner. Therefore, in those circumstances, the petitioner who was provided with user ID and password and maintaining privacy of the account as per the norms affixed by the Central Government, the petitioner cannot be exonerated from liability to pay tax on the turnover covered by E-way bills which was generated by the petitioner. Therefore, we find no ground to exercise judicial discretion to grant any relief in this writ petition.

24. One of the contentions of the first respondent is that an effective alternate remedy of appeal is available to the petitioner and when such remedy is available the petitioner is not entitled to claim discretionary relief under Article 226 of the Constitution of India. Hacking of website, accessing the account of the petitioner by the third parties, generation of E-way bills covering an amount of Rs.1,38,79,630/- is a fact to be decided by the appellate court. Since it is a pure question of

fact and the appropriate remedy available to the petitioner is only by way of appeal before the appellate authority under the Act, the impugned Assessment Order dated 27.11.2015 and by now the limitation for filing appeal is over, in such circumstances, it is not appropriate to direct the petitioner to approach the appellate authority for redressal on their grievance.

25. On overall consideration of entire material and in view of aforesaid reasons, we find no merits in the writ petition and the writ petition is liable to be dismissed.

26. Accordingly the writ petition is dismissed. No costs.

27. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 29.04.2016
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