THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No. 35521 OF 2017

DATED 20TH NOVEMBER, 2017

Between:

M/s. Badruka Exim Private Limited,
No. 15-9-495, Mahboobgunj,
Hyderabad – 500012, Telangana,
Rep. by its Managing Director Vineet Badruka,
S/o Balkishan Badruka, R/o Hyderabad … Petitioner

AND

Commercial Tax Officer,
Agapura Circle, Abids Division,
Hyderabad, and others … Respondents

Counsel for the petitioner : Sri Tej Prakash Toshniwal

Counsel for the respondents : Sri T.Vinod Kumar

THE COURT MADE THE FOLLOWING

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This Writ Petition is filed for issue of *mandamus* to declare the action of respondent No. 1 in passing the assessment order dated 31-07-2017 for the period 2014-15 and 2015-16 without considering the reply dated 04-07-2017 as illegal and arbitrary. The petitioner sought for a consequential relief of setting aside the said order.

2. The petitioner is a registered VAT dealer on the rolls of respondent No. 2. Respondent No. 1 issued proceedings *vide* TIN: 36770144343 dated 19-06-2017 proposing to complete the assessment of the petitioner for the years 2014-15 and 2015-16 by levying VAT of Rs.3,51,25,426/- under Section 21 (5) of the Telangana State Value Added Tax Act, 2005. The petitioner was required to file its objections, if any, against the said proposal within seven days. By the impugned order passed on 31-07-2017, respondent No. 1 confirmed the proposal under the revised show-cause notice. In the said order, he observed as under:

> *"Accordingly a revised show cause notice dt: 19-06-2017 was issued and served on 21-06-2017. In response to the said notice, dealer vide letter dt: 28-06-2017 requested for time 15 days. The dealer in spite of availing the time did not file any objections. Hence a 1st Personal hearing dt: 10-07-2017 was given to them and was not attended but fled a dealer letter dt: 14-07-2017*

requesting for time of 15 days. Further they were given a 2nd Personal hearing dt: 22-07-2017 but the dealer failed to attend the same. Instead the dealer vide letter dt: 21-07-2017 requested for time 15 days to file their objections to the proposed taxes. 3rd Personal hearing was granted on dt: 29-07-2017 but was not attended and instead filed letter dt: 29-07-2017 stating that they have not received the files from enforcement wing and have requested to give time to submit all data. The objection filed by the dealer is verified and noticed that the dealer every time requested for some time but did not file any documentary evidence or objections against the proposed assessment. Therefore it is construed that they have no objections against the turnovers proposed in the show cause notice."

Feeling aggrieved by this order, the petitioner filed this Writ Petition.

3. Sri Tej Prakash Toshniwal, learned counsel for the petitioner, submitted that on receipt of the show-cause notice dated 19-06-2017, his client sent its objections, wherein it is *inter alia* mentioned that the petitioner produced certain records which respondent No. 1 failed to verify; that its books of accounts were taken by the Deputy Commercial Tax Officer – IV, O/o Additional Commissioner, Enforcement Wing, Hyderabad (T.S.), for scrutiny of accounts of VAT issued in Form VAT 304 dated 02-06-2017, that it was unable to produce the documentary evidence in respect of transit sales and that whenever their books are released, they are ready to submit the same. He has further argued that despite a specific reason put forth

by the petitioner for its inability to produce certain documents, respondent No. 1 failed to advert to the same and observed that from the failure of the petitioner to produce the documents, it is construed that they have no objection against the turnovers proposed in the show-cause notice. Sri T.Vinod Kumar, learned Special Standing Counsel for Commercial Taxes (T.S.), while not disputing the fact that certain records pertaining to the assessment period of 2014-15 and 2015-16 were in the custody of enforcement wing, he has however submitted that during pendency of the Writ Petition, notice was issued to the petitioner to take back all the records and that so far, it has not done so.

4. Having regard to the fact that certain records pertaining to relevant assessment years were taken by the Office of Additional Commissioner, Enforcement Wing, which remained undisputed, we are of the opinion that respondent No. 1 is not justified in drawing an adverse inference that the petitioner has no objection to the turnovers proposed in the show-cause notice. It is clearly evident from the admitted facts of the case that the petitioner was disabled from producing the records as the same were seized by the competent authority. Hence, the impugned assessment made by

respondent No. 1 without awaiting production of records by the petitioner after its release from the competent authority cannot be sustained. Accordingly, the impugned order is set aside. As the petitioner was offered to take return of the records by the enforcement wing, it shall take return of the records within one week from today. Within one week thereafter, it shall produce the records. If such records are produced within the stipulated time, respondent No. 2 shall pass a fresh order of assessment after considering the said records. Conversely, if the petitioner fails to produce the records within two weeks, the impugned order would stand automatically revived and become enforceable.

5. The Writ Petition is accordingly allowed.

6. As a sequel to disposal of the Writ Petition, W.P.M.P.No. 44018 of 2017 shall stand closed as infructuous.

C.V.NAGARJUNA REDDY, J.

T.AMARNATH GOUD, J.

Date: 20-11-2017.
JSK