HIGH COURT FOR THE STATE OF TELANGANA
(Special Original Jurisdiction)

THURSDAY, THE THIRTEENTH DAY OF AUGUST
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HONOURABLE SRI JUSTICE T. AMARNATH GOUD

WRIT PETITION NO: 12043 OF 2020

Between:

M/s. R.C.C. Sales (P) Limited, Flat No. 905, Srinivasa Tower, Begumpet, Hyderabad -500016, rep. by its Director Mr. Gordhandas D. Arora.

...PETITIONER

AND

1. The Additional Commissioner (ST), Grade-I, Office of the Commissioner of State Tax, Telangana State, C.T. Building, Opp. Gandhi Bhavan, M.J. Road, Nampally, Hyderabad-500001, Telangana.
2. The Joint Commissioner (ST), Hyderabad (Rural) Division, "Gagan Vihar", M.J. Road, Nampally, Hyderabad-500001, Telangana.
3. The Commercial Tax Officer, IDA Gandhi Nagar Circle, "Gagan Vihar", M.J. Road, Nampally, Hyderabad - 500001, Telangana.
4. The Commercial Tax Officer, Balanagar Circle, Gagan Vihar, M.J. Road, Nampally, Hyderabad -500001, Telangana.
5. The State of Telangana, rep. by the Principal Secretary to the Government, Revenue (CT) Department, Telangana Secretariat Buildings, Hyderabad, Telangana.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly in the nature of MANDAMUS declaring that the impugned Stay Rejection Order passed by the First Respondent vide his ACO No. 86/2020, dated 31-01-2020, is violative of the principles of natural justice, un-reasoned, based on improper appreciation of facts and based on incorrect understanding of facts and even on merits not sustainable, and illegal and consequently set aside the same and grant stay of collection of the disputed tax of Rs. 1,06,45,052-00 for the Assessment Year 2010-11 under the Telangana VAT Tax Act, 2005, pending disposal of the T.A. no. 289 of 2018 before the Telangana State VAT Appellate Tribunal, Hyderabad.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of collection of the disputed tax of Rs. 1,06,45,052-00 for the Assessment Year 2010-11 under the Telangana VAT Act, 2005, pending disposal of the above Writ Petition.

Counsel for the Petitioner: SRI G. NARENDRA CHETTY

Counsel for the Respondents: SRI J. ANIL KUMAR, SPL. STANDING COUNSEL FOR COMMERCIAL TAXES

The Court made the following: ORDER

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

WP.No.12043 of 2020

O R D E R: (Per Hon'ble Sri Justice M.S. Ramachandra Rao)

1. This Writ Petition is filed by the petitioner assailing the ACO order No.86/2020 dt.31.01.2020 passed by the 1st respondent rejecting the stay application filed by the petitioner pending disposal of the TA.No.289/2018 before the Telangana State VAT Appellate Tribunal, Hyderabad.

2. Petitioner is a registered Dealer under the Telangana VAT Act, 2005 and the Central Sales Tax Act, 1956.

3. The 3rd respondent had passed a common assessment order dt.18.03.2014 for the assessment years 2007-08 to 2010-11 under the AP VAT Act, 2005.

4. The 4th respondent passed another assessment order under the CST Act, 1956, for the assessment year 2010-11 granting exemption on a turnover of Rs.85,48,41,493/- relating to stock transfers covered by F-Forms.

5. Thereafter, the 2nd respondent, in exercise of its *suo motu* power of revision, passed an *ex-parte* revision order

vide JC.No.155 dt.12.03.2018 and revised the assessment order passed by the 4th respondent for the assessment year 2010-11 under the CST Act by withdrawing the exemption granted on a turnover of Rs.7,34,14,150/- (out of the turnover of Rs.85,48,41,493/-) relating to stock transfers made by the petitioner to its consignment agent M/s Vidyut Metalics Pvt. Ltd. situated in other States duly covered by F-Forms.

6. Petitioner contends that this was done by the 2nd respondent under a wrong impression that the said M/s Vidyut Metalics Pvt. Ltd. is situated only at Hyderabad and that the same turnover is to be treated as local sales turnover; and that the 2nd respondent revised the assessment order passed by the 3rd respondent under the AP VAT Act, 2005 vide another *ex-parte* Revision Order JC.No.155 dt.09.03.2019 and imposed tax on the said turnover of Rs.7,34,14,150/- by treating the same as local sales.

7. According to the petitioner, M/s Vidyut Metalics Pvt. Ltd. is having branches in Gujarat, Odisha, Chattisgarh, Tamilnadu, Bihar, Uttar Pradesh Maharashtra and Karnataka apart from Hyderabad, and

that the turnover of Rs.7,34,14,150/- relates to stock transfers/consignment sales made by it to the other branches of M/s Vidyut Metalics Pvt. Ltd. situated outside the State and were not made to it's Hyderabad branch.

8. It is contended that merely because there was a branch of M/s Vidyut Metalics Pvt. Ltd. located in Hyderabad, the 2nd respondent wrongly presumed that the above turnover relates to local sales and that the 2nd respondent did not verify the records properly.

9. Petitioner further contends that the petitioner could not file objections in reply to the pre-revision show cause notice as it had entered into a business transfer agreement with M/s Supermax Personal Care Private Limited, Mumbai, as per which the entire business of the petitioner company was transferred to the latter, but subsequently, disputes arose between the petitioner and the latter company because of which the latter company refused to hand over the books of accounts and other records to the petitioner to enable it to respond to the pre-revision show-cause notice.

10. Against the Revision order passed by the 2nd respondent vide JC.Order No.155 dt.09.03.2018, revising

assessment order passed by the 3rd respondent under the AP VAT Act, 2005 petitioner preferred statutory appeal before the Telangana State VAT Appellate Tribunal, Hyderabad vide TA.No.289 of 2018.

11. Petitioner also filed a stay application before the 1st respondent seeking stay of collection of the balance disputed tax pending disposal of the TA.No.289 of 2018 by the Telangana State Vat Appellate Tribunal, Hyderabad.

12. The 1st respondent however dismissed the stay application vide impugned order ACO.No.86/2020 dt.31.01.2020.

13. Challenging the same, this Writ Petition is filed.

14. Petitioner contends that:

(a) the impugned Stay Rejection Order was passed without granting a reasonable opportunity of hearing to the petitioner in violation of the principles of natural justice; that the Stay Petition was posted for personal hearing on 30.07.2019, on which date though the Authorized Representative/ Chartered Accountant attended the office of the First Respondent, but the First Respondent was not available and the matter was adjourned to

20.08.2019. On that day, as the petitioner's Authorized Representative/Chartered Accountant was out of station, a letter was filed seeking a short adjournment, and accordingly the matter was adjourned to 13.09.2019. On that day the Authorized Representative/Chartered Accountant of the petitioner attended the office of the First Respondent, but the First Respondent was not available. After waiting for considerable time, on being informed by his office staff that he is unlikely to take up the matters on that day and that the next date would be intimated, he left. Thereafter, without giving any further date of hearing, the impugned order was passed on 31.01.2020, by wrongly stating that neither the dealer nor the advocate and Authorized Representative appeared nor requested for any further adjournment in the matter.

(b) the impugned order was passed without properly verifying the records and the grounds of the petitioner and on wrong facts; that a bare perusal of the impugned order shows glaring irregularities on the face of the record; it is stated therein as if the petitioner had filed Appeal before the Joint

Commissioner (ST), Hyderabad (Rural) Division, against the Assessment Order passed by the CTO, Balanagar Circle, and as if the said Joint Commissioner had granted "stay confirming the stay petition in Order no.155 in R.R. no.J1/10/2016-17, dated 09.03.2018" and that aggrieved by the same the Petitioner filed the Appeal before the Tribunal, and that aggrieved by the effectual order passed by the Asst. Commissioner (CT), IDA, Gandhi Nagar Circle, dated 23-03-2018, the petitioner had approached before him. In fact, the Joint Commissioner had passed Suo Motu Revision Order revising the Assessment Order of the CTO, and against the same the appeal was filed before the Tribunal. Hence, the impugned order was passed on a totally incorrect understanding of the facts of the case. Even the disputed tax mentioned in the impugned order is incorrect.

(c) except stating "I do not find any valid reason in the grounds of appeal of the appellant-petitioner for stay of collection of disputed tax", the impugned order was passed without any discussion or reasons with regard to the merits of the case and the grounds raised by the petitioner. It is well settled that the Authority is bound to give reasons for rejecting the stay petition and simple statement that he does not find any valid grounds for grant of stay is not sufficient ;

(d) and that the 1st respondent ought to have held that petitioner had substantial chances of success in its appeal before the Tribunal and balance of convenience was in its favour for granting stay of collection of disputed tax pending disposal of the appeal.

15. According to the petitioner, it had also paid 37% of the disputed tax amounting to Rs.39,46,497/-.

16. Sri J.Anil Kumar, Special Counsel for Commercial Taxes appearing for respondents is unable to explain why in the impugned order passed by the 1st respondent on 31.01.2020, the background facts relating to the filing of the stay petition were incorrectly mentioned and that none of the grounds urged by the petitioner are even referred to or considered by the 1st respondent.

17. According to the petitioner, even the observations in the impugned order that the petitioner did not avail the opportunity of personal hearing is factually incorrect.

18. In **Xerox India Ltd. Vs. Government of A.P. and another, (2009) 23 VST 141 (AP),** it was held that while deciding the application for stay, the authority was exercising quasi-judicial function, and therefore even though he was not expected to pass a judgment like a regular court, it was his bounden duty to record some reasons indicating the application of mind to the factors which are relevant for passing or refusing an order of stay in the matter of levy and collection of taxes and an order which is silent on consideration of the relevant factors is liable to be set aside.

19. When substantial rights of parties are involved, it is not open to the 1st respondent to (i) mention wrong facts while dealing with stay application filed by the petitioner. (ii) ignore the points urged by the petitioner for seeking stay of collection of tax and (iii) dismiss the say application without giving any valid reasons, why the petitioner is not entitled to grant stay pending appeal before the Telangana State VAT Appellate Tribunal.

20. In our opinion, therefore the impugned order cannot be sustained.

21. Accordingly, the Writ Petition is allowed; the impugned AC order No.86/2020 dt.31.01.2020 passed by

the 1st respondent is set aside; the 1st respondent shall apply his mind to the facts and circumstances of the case including the contentions raised by the petitioner in the stay application filed by it, provide a personal hearing to the petitioner; and then pass a reasoned order in accordance with law and communicate it to the petitioner. No order as to costs.

22. Consequently, miscellaneous petitions, pending if any, shall stand closed.

SD/-K.MURALI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Additional Commissioner (ST), Grade-I, Office of the Commissioner of State Tax, Telangana State, C.T. Building, Opp. Gandhi Bhavan, M.J. Road, Nampally, Hyderabad-500001, Telangana.
2. The Joint Commissioner (ST), Hyderabad (Rural) Division, "Gagan Vihar", M.J. Road, Nampally, Hyderabad-500001, Telangana.
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4. The Commercial Tax Officer, Balanagar Circle, Gagan Vihar, M.J. Road, Nampally, Hyderabad -500001, Telangana.
5. The Principal Secretary to the Government, Revenue (CT) Department, State of Telangana, Telangana Secretariat Buildings, Hyderabad, Telangana.
6. One CC to Sri. G. Narendra Chetty, Advocate [OPUC]
7. Two CCs to Sri J. Anil Kumar, Special Standing for Commercial Taxes, High Court for the State of Telangana. [OUT]
8. Two CD Copies

Prk

HIGH COURT

DATED:13/08/2020

ORDER

WP.No.12043 of 2020

Allowing the WP.
without costs.

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20/8/2020