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

WEDNESDAY, THE SIXTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY

PRESENT

THE HON'BLE SRI JUSTICE M. S. RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

WRIT PETITION NO: 21519 OF 2020

Between:

M/s. Sri Jalaram Plastics, rep. by its Partner, Mr. Bharat C. Thakker, 3-1-257, Near Government Civil Hospital, Bodhan, Nizamabad-503 230

...PETITIONER

AND

1. Commercial Tax Officer, (Now known as Assistant Commissioner of Sales Tax), Nizamabad.
2. State of Telangana, rep. by its Principal Secretary to Government, Revenue (CT-II) Department, Secretariat, Hyderabad

...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 a Writ of Certiorari or any other appropriate writ, order or direction, quashing the impugned order of the 1st Respondent, dated 26/3/2020 and also the demand notice in Form 202, dated 5/11/2020 for the assessment year 2015-16 under the CST Act, 1956 as illegal, arbitrary, barred by time upto January 2016, in violation of principles of natural justice and consequently, direct the 1st Respondent to reconsider the assessment after giving proper opportunity to the Petitioner by serving show cause notice in accordance with Rule 64 of the VAT Rules, an opportunity to file objections and an opportunity of personal hearing

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 recovery of the disputed demand of Rs.3,03,46,479/-, pursuant to the impugned order of 1st Respondent dated 26/3/2020 and demand notice, dated 05/11/2020 for the assessment year 2015-16 under the CST Act, 1956, pending disposal of the Writ Petition as otherwise the Petitioner will be put to severe loss and hardship.

Counsel for the Petitioner: SRI S. DWARAKANATH

Counsel for Respondents: SRI J. ANIL KUMAR,
SPL. GP FOR COMMERCIAL TAXES

The Court made the following: ORDER

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.21519 of 2020

ORDER: (per Hon'ble Sri Justice M.S.Ramachandra Rao)

In this Writ Petition, the petitioner assails the final Assessment Order No.34733 dt.26.03.2020 passed by the 1st respondent for the Assessment Year 2015-16 under the Central Sales Tax Act, 1956 (for short 'the Act') and consequential demand notice in Form 202 dt.05.11.2020.

2. Petitioner contends that on 05.11.2020, petitioner received demand notice from the 1st respondent demanding Rs.3,03,46,479/- from the 1st respondent making reference to the Assessment Order No.34733 dt.26.03.2020; such Assessment Order had been passed without issuing a pre-show cause notice to the petitioner and without issuing any notice for personal hearing; and there has been gross violation of principles of natural justice which has caused serious prejudice to the petitioner.

3. It is also contended that the impugned Assessment Order insofar as it pertains to period April, 2015 to January, 2016, is barred by limitation as per Rule 14-A(5-A) of the Central Sales Tax (Telangana) Rules. Other contentions on merits are also raised.

4. It is also contended that though Rule 64 of Telangana VAT Rules does not recognize service of notice and orders by e.mail and

the 1st respondent has resorted to serve show cause notice, reminder notice and final notice through e.mail and so the impugned order be set aside.

5. According to the learned counsel for petitioner, this Court in **Soa Software Engineering India Private Limited Vs. Commercial Tax Officer**[1] and W.P.No.19487 of 2020 dt.12.11.2020 has taken a view that there has be to compliance with Rule 64 of the Telangana State VAT Rules, 2005 which requires service of notice personally or through by registered post.

6. Sri J.Anil Kumar, learned Special Counsel for Commercial Taxes appearing for respondents does not dispute the above settled legal position.

7. We are satisfied that there has been a violation of principles of natural justice on account of non-service of pre-assessment show cause notice on petitioner by the 1st respondent in accordance with Rule 64 of the Telangana State VAT Rules, 2005 and petitioner has suffered serious prejudice thereby.

8. Accordingly, the Writ Petition is allowed; the impugned Assessment Order No.34733 dt.26.03.2020 passed by the 1st respondent for the period April, 2015 to March, 2016 under the Act is set aside; the 1st respondent shall serve show cause notice on the petitioner indicating the turnover sought to be taxed and proposed tax in accordance with Rule 64 of the Telangana VAT

[1] (2013) 57 APLJ 103

Rules, 2005; petitioner is granted six (06) weeks time from the date of receipt of such show cause notice to file objections along with supporting material; a personal hearing shall be afforded to the petitioner; and then a reasoned order shall be passed by 1st respondent in accordance with law and communicated to the petitioner. No costs.

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

SD/-CH.VENKATESWARULU
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Commercial Tax Officer, (Now known as Assistant Commissioner of Sales Tax), Nizamabad.
2. The Principal Secretary, Revenue (CT-II) Department State of Telangana Secretariat, Hyderabad
3. One CC to Sri S Dwarakanath Advocate [OPUC]
4. One CC to Sri J. Anil Kumar, Spl. Standing Counsel for Commercial Taxes (OPUC)
5. Two CD Copies

MBC

HIGH COURT

DATED: 16/12/2020



ORDER

WP.No.21519 of 2020

ALLOWING THE WRIT PETITION

WITHOUT COSTS

6 SW
6 copies
Dt 23/12/2020