HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY ,THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY

PRESENT

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

WRIT PETITION NO: 22756 OF 2020

Between:

Surya Prakash Bharadia, Proprietor of M/s. Dhaneshwari Industries, Plot No.34 and 35, Apparen Park, Gundlapochampally, Hyderabad-500 036.

...PETITIONER

AND

1. The Deputy Commercial Tax Officer, Fatehnagar Circle, Hyderabad Rural Division, Hyderabad.
2. The Branch Manager, Canara Bank, I Floor, Doshi Chambers, 3-6-327 and 328, Bashirbagh, Hyderabad - 500 029.
3. The State of Telangana, Rep. by its Principal Secretary, Revenue (CT) Department, Telangana 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 Writ of Mandamus or any other appropriate writ or order or direction declaring the action of the 1st respondent in passing the Exparte Assessment Proceedings, dated 27/03/2020 for the tax period 2015-16 under the Central Sales Tax Act 1956, copy downloaded from the C.T. Department website , without granting an opportunity of being heard to the Petitioner, and not even serving any Notice and the Assessment Proceedings, levied tax @ 14.5% wrongly on the interstate sales of Air distribution product, instead of @ 2% covered by 'C' Forms and passing Proceedings in a lock down period, more particularly in the name of Proprietor Surya Prakash Bharadia, instead of Proprietary concern M/s.Dhaneshwari Industries, and issuing Garnishee Notice, dated 11/11/2020 to the 2nd respondent bank, without serving a copy of the same and copy of Assessment Proceedings, dated 27/03/2020 on the Petitioner, as arbitrary, contrary to law, barred by limitation for the tax period April, 2015 to February 2016, the same is in violation of principles of natural justice, without jurisdiction and consequently set aside the Exparte Assessment Proceedings of the 1 respondent dated 27/03/2020 and Garnishee Notice, dated 11/11/2020, as not valid in the eye of law.

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 all further proceedings, in pursuance of the Exparte Assessment Proceedings, dated 27/03/2020 of the respondent, for the tax period 2015-16, under the Central Sales Tax Act 1956, including the Garnishee Notice, dated 11/11/2020 issued by the 1st respondent to the 2nd respondent bank, pending disposal of the above Writ Petition, as otherwise, the Petitioner will be put to severe loss and hardship.

Counsel for the Petitioner : SRI SHAIK JEELANI BASHA
Counsel for the Respondents: SRI M. GOVIND REDDY,
SPECIAL SC FOR COMMERCIAL TAXES
The Court at the stage of admission made the following: ORDER

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.22756 OF 2020

O R D E R:

(Per Sri Justice M.S.Ramachandra Rao)

In this Writ Petition, the petitioner assails the Assessment Order A.O.No.37169 dt.27.03.2020 passed by the 1st respondent under the CST Act for the tax period April, 2015 to March, 2016.

2. The petitioner states that an e-mail was received from his banker, the 2nd respondent, on 11.11.2020 enclosing the notice of garnishee dt.11.11.2020 demanding balance arrears of tax of Rs.19,92,043/-; that the petitioner then requested the 1st respondent to provide the same, but the 1st respondent asked the petitioner to download it from the Commercial Tax Department Portal. The petitioner states that he then downloaded it and then filed the Writ Petition.

3. According to the petitioner, the impugned order states that a show-cause notice was issued to him, that he did not file objections and did not avail personal hearing and a reminder notice dt.18.11.2019 and final notice dt.06.03.2020 were also issued to him. But the petitioner contends that it has not received any of these notices and no personal hearing was provided to it and there has been violation of principles of natural justice.

4. It is further contended that the proceedings of the 1st respondent is barred by limitation for the tax period April, 2015 to February, 2016 as per Sub-Rule 5A of Rule 14A of the CST (Telangana) Rules, 1957.

5. Sri M.Govind Reddy, learned Special Counsel for Commercial Taxes appearing for the respondents does not dispute that the impugned Assessment Order was passed without serving any show-cause notice or other notices on the petitioner and personal hearing was also not provided to the petitioner.

6. It is thus clear that there has been violation of principles of natural justice which has caused prejudice to the petitioner.

7. Also, the impugned order appears to have been passed in the middle of the lockdown imposed by the Union Government and State Government from 24.03.2020 on account of Covid-19 pandemic when all Government offices, except those dealing with emergency services, were closed.

8. In this view of the matter, the Writ Petition is allowed; the impugned Assessment Order No.37169 dt.27.03.2020 passed by the 1st respondent as well as the garnishee notice dt.11.11.2020 issued by the 1st respondent are set aside; the matter is remitted to the 1st respondent for fresh consideration; the 1st respondent shall serve a show-cause notice on the petitioner indicating the turnover proposed to be taxed and also the tax proposed to be levied thereon in accordance with Rule 64 of the TSVAT Rules, 2005; the petitioner is granted six (6) weeks time from the date of receipt of such notice to file objections thereto along with supporting material; a personal hearing shall be given to the petitioner by the 1st respondent; and then a reasoned order shall be passed by the 1st

respondent in accordance with law and communicated to the petitioner.

No costs.

9. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed.

SD/-K.SAILESHI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Deputy Commercial Tax Officer, Fatehnagar Circle, Hyderabad Rural Division, Hyderabad.
2. The Branch Manager, Canara Bank, I Floor, Doshi Chambers, 3-6-327 and 328, Bashirbagh, Hyderabad - 500 029.
3. The Principal Secretary, Revenue (CT) Department, State of Telangana, Telangana Secretariat, Hyderabad.
4. One CC to Sri Shaik Jeelani Basha, Advocate [OPUC]
5. One CC to Sri M. Govind Reddy, Special SC for Commercial Taxes, Advocate [OPUC]
6. Two CD Copies

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HIGH COURT

DATED:28/12/2020

ORDER

WP.No.22756 of 2020



ALLOWING THE WP

WITHOUT COSTS

4/1/21