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

WRIT PETITION NO: 22805 OF 2020

Between:

M/s. Shree Ganesh Enterprises, rep. by its Proprietor, Mr. Subhash Dhanrajaji Jain, 4-1-14/5, Near Government Hospital, Mahabubabad-506 101.

...PETITIONER

AND

1. Commercial Tax Officer, Mahabubabad Circle, Warangal Division, Warangal.
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 or order or direction quashing the impugned order of the 1st Respondent passed in AO No.37121 dated 27/3/2020 for the assessment year 2015-16 under the Central Sales Tax Act, 1956 as passed in the name of a wrong entity, as being illegal and in violation of principles of natural justice and consequently direct the 1st Respondent to re-assess the Petitioner for the year 2015-16, after giving proper show cause notice in accordance with Rule 64 of the Telangana VAT Rules, 2005 and an opportunity to file objections and a personal hearing and thereafter pass assessment order in accordance with 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 recovery of the disputed demand of Rs.4,87,25,655/- pursuant to the impugned order of the 1st Respondent dated 27/3/2020 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 the Respondents: SRI M. GOVIND REDDY.
SPECIAL COUNSEL FOR COMMERCIAL TAX

The Court made the following: ORDER

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.22805 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.37121 dt.27.03.2020 passed by the 1st respondent under the CST Act, 1956 for the period 2015-16.

2. According to the petitioner, a notice dt.10.11.2020 was received by the petitioner from the office of the 1st respondent on 16.11.2020 demanding a sum of Rs.4,87,25,655/- as an outstanding tax demand; and the petitioner then secured a copy of the Assessment Order on 16.11.2020 from the office of the 1st respondent.

3. The petitioner contends that though the impugned order refers to a show-cause notice, reminder notice dt.20.11.2019 and final notice dt.06.03.2020 and states that the petitioner did not file objections or avail personal hearing, none of these notices were served on the petitioner and personal hearing was not afforded to the petitioner.

4. Sri M.Govind Reddy, learned Special Counsel for Commercial Taxes appearing for the respondents does not dispute that no show-cause notice or other notices were served on the petitioner and no personal hearing was afforded to the petitioner.

5. We are satisfied that non-service of show-cause notice on the petitioner and denial of personal hearing caused grave prejudice to the petitioner and there has been violation of principles of natural justice

causing prejudice to the petitioner. Also, the said Assessment Order is admittedly passed after lockdown has been imposed by the State and Central Governments on account of the Covid-19 pandemic when no Government offices, except those dealing with emergency services, were functioning.

6. Accordingly, the Writ Petition is allowed; the impugned Assessment Order A.O.No.37121 dt.27.03.2020 passed by the 1st respondent and the demand notice dt.10.11.2020 issued by the 1st respondent are both set aside; the matter is remitted back 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 the tax proposed to be levied thereon in accordance with Rule 64(1)(b) of the TVAT Rules, 2005; the petitioner is granted (6) weeks time from the date of receipt of the said show-cause 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.

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

SD/-B.SATYAVATHI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Commercial Tax Officer, Mahabubabad Circle, Warangal Division, Warangal.
2. The Principal Secretary to Government, Revenue (CT-II) Department, State of Telangana, Secretariat, Hyderabad.
3. One CC to Sri S. Dwarakanath, Advocate [OPUC]
4. One CC to Sri M. Govind Reddy, Special Counsel for Commercial Taxes [OPUC]
5. Two CD Copies

CHR

HIGH COURT

DATED:28/12/2020



ORDER

W.P.No.22805 of 2020

ALLOWING THE WRIT PETITION
WITHOUT COSTS

(6) VLV 4/1/21