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: 22810 OF 2020

Between:

M/s. Kakatiya Cement Products, 8-6-402, Kothirampur, Karimnagar, State of Telangana Rep. by its Managing Partner Mr. Billa Prabhakara Reddy.

...PETITIONER

AND

1. The Commercial Tax Officer-1, Karimnagar.
2. The State of Telangana, Rep. by its Principal Secretary, Revenue (CT) Department, Telangania 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 Wirt of Mandamus or any other appropriate writ or order or direction declaring the action of the respondent in passing the Exparte Assessment Proceedings, dated 30/03/2020 for the tax period 2015-16 under the Central Sales Tax Act 1956, without granting an opportunity of being heard to the Petitioner, and not even serving Notices, levying tax of Rs.11,45,048/- on a turnover of Rs.79,31,368/- @ 14.5% wrongly treating total turnover as interstate sales and branch transfers, as against interstate purchases of PVC Pipes from M/s. The Supreme Industries Limited, Jalgaon to a tune of Rs.68,45,231/-, interstate sales of RCC Pipes to M/s.Megha Engineering and Infrastructures Limited, Karnataka to a tune of Rs.5,37,937/-, and stock shifting from the Petitioners Godown to its work site to a tune of Rs.5,48,200/- with way bills, and issuing Arrear Notice, dated 05/11/2020 through RPAD on 18/11/2020, without even serving a copy of Assessment Proceedings, dated 30/03/2020, 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 1st respondent dated 30/03/2020 as null and void.

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 30.03.2020 of the 1st respondent, for the tax period 2015-16, under the Central Sales Tax Act 1956, including the Arrear Notice, dated 05/11/2020 issued by the respondent, served through RPAD on 18/11/2020, 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 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.22810 OF 2020

O R D E R:

(Per Sri Justice M.S.Ramachandra Rao)

In this Writ Petition, the petitioner challenges A.O.No.47110 dt.30.03.2020 passed by the 1st respondent under the CST Act, 1956 for the tax period 2015-16.

2. The petitioner contends that it received an arrear notice dt.05.11.2020 by RPAD on 18.11.2020 directing it to pay Rs.11,45,048/- for the tax period 2015-16 under the CST Act; the petitioner then approached the 1st respondent on 20.11.2020 and requested for issuance of a copy of the said Assessment Order, but the 1st respondent did not issue it suggesting the petitioner to download the same from the Portal of Commercial Tax Department; and the petitioner's Accountant then downloaded it from the Portal on 21.11.2020.

3. According to the petitioner, though the impugned Assessment Order states that a show-cause notice was issued to the petitioner apart from a reminder notice dt.19.11.2019 and final notice dt.06.03.2020 and the petitioner did not file objections thereto or avail personal hearing, none of these notices had been served on the petitioner and no personal hearing was also afforded to the petitioner. Thus, there has been violation of principles of natural justice, according to the petitioner.

4. The petitioner also asserts that the order has been passed during the lockdown period declared by the Union of India and the State

Government on account of Covid-19 pandemic and that at that time almost all Government offices, except those dealing with emergency services, were not functioning.

5. The petitioner also asserts that the impugned Assessment proceedings 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.

6. Sri M.Govind Reddy, learned Special Counsel for Commercial Taxes appearing for the respondents does not dispute that the 1st respondent had not served a show-cause notice or reminder notice dt.19.11.2019 or final notice dt.06.03.2020 on the petitioner and no personal hearing was also afforded to the petitioner.

7. Therefore, we are satisfied that there is violation of principles of natural justice and grave prejudice has been caused to the petitioner.

8. Accordingly, the Writ Petition is allowed; the impugned Assessment Order A.O.No.47110 dt.30.03.2020 passed by the 1st respondent and the arrear notice dt.05.11.2020 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 assessed to tax 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.

9. 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-1, Karimnagar.
2. The Principal Secretary, Revenue (CT) Department, State of Telangana, Telangana Secretariat, Hyderabad.
3. One CC to Sri Shaik Jeelani Basha, 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.22810 of 2020

ALLOWING THE WRIT PETITION
WITHOUT COSTS

6
04/01/2021.