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

WEDNESDAY, THE THIRTIETH 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: 22951 OF 2020

Between:

M/s. Dharmaja Industries, Rep. by its Proprietrix, Ms. Uma Rani Borra, 64/1, CIE, Gandhinagar, Hyderabad - 500 037.

...PETITIONER

AND

1. Commercial Tax Officer, Gandhinagar Circle, Secunderabad.
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 Mandamus or any other appropriate writ or order or direction –

(a) setting aside the impugned order of the Respondent bearing AO No.48470 dated 30/3/2020 uploaded on 30/3/2020 for the assessment year 2015-16 under the Central Sales Tax Act, 1956 as passed in the name of a wrong entity, in violation of principles of natural justice and on non-existent turnover

(b) as being wrongfully enforced by demand notice dated 29/10/2020 without service of an authenticated assessment order as per Rule 64 of the Telangana VAT Rules, 2005, and

(c) consequently direct the 1st Respondent to re-frame the assessment order after considering the objections and documentary evidence to be filed by the Petitioner and granting 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 all further proceedings, pursuant to the impugned order of the 1st Respondent dated 30/3/2020 and demand notice dated 29/10/2020 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 KARTHIK RAMANA PUTTAMREDDY

Counsel for Respondent No 1: SRI M. GOVIND REDDY,
SPL. SC FOR COMMERCIAL TAXES
Counsel for Respondent No 2: 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.22951 OF 2020

ORDER:

(Per Sri Justice M.S.Ramachandra Rao)

In this Writ Petition, the petitioner assails the Assessment Order A.O.No.48470 dt.30.03.2020 passed by the 1st respondent under the CST Act, 1956 for the period 2015-16.

2. According to the petitioner, the assessee is M/s. Dharmaja Industries registered under the CST Act, 1956, but the impugned Assessment Order was passed in the name of its Proprietrix Uma Rani Borra; and that the Assessment Order having been passed against a wrong entity, is vitiated.

3. It is further contended that a demand notice dt.29.10.2020 was issued to the petitioner by the 1st respondent demanding payment of tax of Rs.29,62,321/- for the year 2015-16 under the CST Act and when the petitioner enquired about the same with the 1st respondent, he was informed about the impugned Assessment Order.

4. It is further contended that though the impugned Assessment Order refers to a show-cause notice, reminder notice dt.19.11.2019 and final notice dt.06.03.2020, but none of these notices were served on the petitioner and no personal hearing was also afforded to the petitioner and this has caused serious prejudice to the petitioner.

5. Sri M.Govind Reddy, learned Special Counsel for Commercial Taxes appearing for the respondents does not dispute that the assessee is

not Uma Rani Borra, that she is only the Proprietrix of the petitioner M/s. Dharmaja Industries and the Assessment Order was passed by the 1st respondent against a wrong entity. He also does not dispute that no pre-assessment show-cause notice or other notices were served on the petitioner and no personal hearing was also afforded to the petitioner.

6. In view of these circumstances, we are of the opinion that the impugned order is vitiated and grave prejudice has been caused to the petitioner on account of violation of principles of natural justice by the 1st respondent.

7. Accordingly, the Writ Petition is allowed; the impugned Assessment Order A.O.No.48470 dt.30.03.2020 passed by the 1st respondent is set aside; the matter is remitted back to the 1st respondent for fresh consideration; the 1st respondent shall issue a show-cause notice to 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 six (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 afforded 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.

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

SD/-I.NAGALAKSHMI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,
1. The Commercial Tax Officer, Gandhinagar Circle, Secunderabad.
2. The Principal Secretary to Revenue , Revenue (CT-II) Department, State of Telangana Secretariat, Hyderabad.
3. Two CCs to GP for Commercial Taxes High Court for the State of Telangana (OUT)
4. One CC to Sri Karthik Ramana Puttamreddy Advocate [OPUC]
5. One CC to Sri M. Govind Reddy, Spl. SC for Commercial Taxes (OPUC)
6. Two CD Copies

MBC

HIGH COURT

DATED: 30/12/2020

ORDER

WP.No.22951 of 2020

ALLOWING OF THE WRIT PETITION AT

THE STAGE OF ADMISSION, WITHOUT COSTS

07/01/2021.