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

WEDNESDAY ,THE THIRTIETH 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: 22961 OF 2020

Between:

M/s. V. Kiran Industries, Rep. by its Proprietor, Mr. Vadnala Ravi, 6-25-2412/3, Null, Shradhanand Gunj, Nizamabad-503 001

...PETITIONER

AND

1. Commercial Tax Officer-II, Nizamabad
2. State of Telangana, Rep. by its Principal Secretary to Government, Revenue (CT-II) Department, Secretariat, Hyderabad
3. The Bank Manager, Axis Bank, Hyderabad Road, Nizamabad.

...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 –

(a)quashing the impugned assessment order in AO No.34145, dated 23/3/2020 passed by the 1st Respondent in the name of Vadnala Ravi, the Proprietor, instead of passing it in the name of the Petitioner M/s V. Kiran Industries, Nizamabad as illegal, arbitrary in violation of principles of natural justice, in violation of Rule 64 of the Telangana VAT Rules for the assessment year 2015-16 under the Central Sales Tax Act, 1956. and

(b)quash the garnishee notice under Section 29 of the Telangana VAT Act, dated 25/11/2020 issued by 1st Respondent to the 3rd Respondent as illegal, arbitrary and contrary to the assessment order itself.

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 suspension of the garnishee notice, dated 25.11.2020 issued by the 1st Respondent to the 3rd Respondent, pending disposal of the Writ Petition, as otherwise the Petitioner will be put to severe loss and hardship.

Counsel for the Petitioner:SRI.P. KARTHIK RAMANA

Counsel for the Respondent Nos. 1 & 2: SRI. M. GOVIND REDDY,
SPECIAL COUNSEL FOR CT

Counsel for the Respondent No. 3: --

The Court made the following:

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.22961 OF 2020

ORDER:

(Per Sri Justice M.S.Ramachandra Rao)

In this Writ Petition, the petitioner assails the Assessment Order A.O.No.34145 dt.23.03.2020 passed by the 1st respondent for the period 2015-16 under the CST Act, 1956.

2. The petitioner is a Proprietary concern which is registered as a VAT dealer on the rolls of the 1st respondent under TVAT Act, 2005. However a show-cause notice was issued to the petitioner's Proprietor on 07.06.2019 by the 1st respondent, that too by e-mail, which is not a proper mode of service of notice under Rule 64 of the TVAT Rules.

3. According to the petitioner, it filed online response on 16.03.2020 submitting C Forms, but thereafter the petitioner did not hear anything from the 1st respondent; surprisingly, the petitioner's banker, i.e., the 3rd respondent was served a notice under Section 29 of the TVAT Act, 2005 for recovery of a sum of Rs.32,07,468/- on 25.11.2020; that the petitioner then verified with the 1st respondent and was informed that the demand pertains to the impugned Assessment Order dt.23.03.2020.

4. Learned counsel for the petitioner contends that the petitioner applied for the said order, but the 1st respondent claimed that the order had been dispatched to the petitioner on 10.06.2020 itself, but it was never served on the petitioner.

5. The petitioner contends that the impugned order is passed in the name of its Proprietor, while the business entity which should have been assessed is the petitioner by name M/s. V. Kiran Industries, Nizamabad, and that the returns had also been filed in the said name; and therefore, the Assessment Order could not have been passed in the name of an incorrect taxable entity, according to the petitioner.

6. Learned counsel for the petitioner contends that the 1st respondent has not considered the C Forms submitted by the petitioner on 16.03.2020; and though the order refers to a personal hearing in which the petitioner is alleged to have been participated on 16.03.2020, the petitioner had not participated in the personal hearing because the date of personal hearing was not communicated to it.

7. The petitioner contends that the 1st respondent did not care to give credit to the tax paid by the petitioner and the issuance of garnishee notice by the 1st respondent without even serving the Assessment Order cannot be sustained.

8. Sri M.Govind Reddy, learned Special Counsel for Commercial Taxes appearing for the respondents admits that the dealer in question who is to be assessed is the petitioner and not the Proprietor of the petitioner, and that the impugned order has been passed against an incorrect taxable entity. He also could not explain why the reply dt.16.03.2020 filed by the petitioner along with C Forms was also not considered by the 1st respondent. He did not deny that personal hearing was also not provided to the petitioner.

9. On account of these circumstances, we are satisfied that the impugned order is vitiated and cannot be sustained.

10. Accordingly, the Writ Petition is allowed; the impugned Assessment Order A.O.No.34145 dt.23.03.2020 passed by the 1st respondent and also the garnishee notice dt.25.11.2020 issued by the 1st respondent to the 3rd respondent are both set aside; the matter is remitted back to the 1st respondent for fresh consideration; the 1st respondent is directed to 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 permitted to file objections thereto within six (6) weeks from the date of receipt of the said show-cause notice 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.

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

SD/-B.SATYAVATHI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. Commercial Tax Officer-III, Nizamabad
2. The Principal Secretary to Government, Revenue (CT-II) Department, State of Telangana, Secretariat, Hyderabad
3. The Bank Manager, Axis Bank, Hyderabad Road, Nizamabad.
4. One CC to Sri. P. Karthik Ramana, Advocate [OPUC]
5. One CC to Sri.M. Govind Reddy, Spl. GP for CT (OPUC)
6. Two CD Copies.

PM

HIGH COURT

DATED:30/12/2020

HIGH COURT FOR THE STATE OF TELANGANA
06 JAN 2021
DESPATCHED

ORDER

WP.No.22961 of 2020

Allowing the WP
Without costs.

05/01/2021