THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

and

THE HONOURABLE SRI JUSTICE T. AMARNATH GOUD

<u>Writ Petition No.28405 of 2019</u>

<u>ORDER</u> : (per Hon'ble M.S. Ramachandra Rao)

Heard the counsel for petitioner, and Sri M. Govind Reddy, learned Special Counsel for Commercial Taxes, for respondents.

2. The petitioner's firm is engaged in the business of purchase and export of spare parts of borewell rigs and automobiles to its related companies in Zambia.

3. The petitioner herein is a registered dealer under the Telangana VAT Act and also under the G.S.T. Act.

4. Exports made by petitioner are not liable to tax but any sales which occur domestically would be subjected to tax.

5. The petitioner's partner claim to have left for Zambia on 29.05.2019 and returned on 19.09.2019.

6. In the mean time, the 1st respondent issued four show-cause notices dt.22.07.2019 proposing to levy tax to the best of judgment for the years 2014-15, 2015-16, 2016-17 and 2017-18 (up to 30.06.2017) proposing to levy VAT disregarding the fact that the turnovers reported in the returns related to international exports.

7. The show-cause notices allegedly sent by 1st respondent were returned because the partner of petitioner-Firm was in Zambia and other partners were not in town.

8. After returning from Zambia, the petitioner obtained copies of show-cause notices from the Office of 1st respondent on 24.09.2019.

9. The partner of petitioner-Firm contended that after receiving show-cause notices he requested the 1st respondent to complete the assessment on the basis of his Books of Account and export documents, and he also made an oral request for ten (10) days' time to produce the records.

10. According to petitioner, the 1st respondent refused to grant any further time and refused to receive the Books of Accounts and export documents being produced by petitioner and passed the impugned assessment orders on 27.09.2019, served on 04.12.2019, confirming the levy of tax indicated in the show-cause notices aggregating to Rs.28,09,546/-. The petitioner further contended that the impugned order is contrary to Article 286 and Section 5 of the Telangana VAT Act, and is wholly without jurisdiction, and is passed in violation of principles of natural justice.

11. Sri M. Govind Reddy, learned Special Counsel for Commercial Taxes, appearing for respondents, however supported the order passed by 1st respondent.

12. From the facts narrated above, it is clear that the Assessment Order passed by 1st respondent is an *ex parte* assessment order. May be notices were sent to petitioner on 22.07.2019 by the 1st respondent for levy of tax to the best of his judgment for the assessment years in question and they were returned on the ground that the partner of the petitioner-Firm left the premises. But, when the partner returned to India from Zambia and obtained copies of the show-cause notices dt.22.07.2019 and requested for time, the 1st respondent ought to have granted some time.

13. It is not in dispute that the assessment order was passed on 27.09.2019, but it was communicated to petitioner only on 19.12.2019, i.e., 2 ½ months later.

14. Why it took such unreasonable time for the 1st respondent to dispatch the order passed by him on 27.09.2019 is not explained by the learned Government Pleader, appearing for respondents.

15. If the 1st respondent is any way going to dispatch the order 2 ½ months after the order was passed by him on 27.09.2019, he could have at least granted ten (10) days' time to petitioner to reply to the show-cause notice and file material in support of his contention that he is an exporter.

16. Therefore, we are of the opinion that there has been a violation of principles of natural justice causing serious prejudice to the petitioner.

17. Accordingly, the Writ Petition is allowed. The order dt.27.09.2019 in Assessment Order No.43760, passed by the 1st respondent, is set aside; and the matter is remitted back to 1st respondent for fresh consideration.

18. The petitioner is granted four (04) weeks' time from the date of receipt of copy of the order to file an explanation along with supporting documents to the show-cause notices issued by 1st respondent; and the 1st respondent shall then consider the same and pass a reasoned order in accordance with law and communicate his decision thereon to the petitioner. No order as to costs.

19. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

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JUSTICE M.S.RAMACHANDRA RAO

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JUSTICE T. AMARNATH GOUD

Date: 04.02.2020
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