HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE K. LAKSHMAN

<u>WRIT PETITION No. 31855 of 2018</u>

<u>ORDER:</u> (Per Sri Justice M.S.Ramachandra Rao)

1. The petitioner M/s.Riddhi Jewels is a proprietary concern.

2. It is challenging the action of respondents in illegally attaching and withdrawing Rs.4,39,210/- from its bank account by respondents to recover the arrears of VAT dues of another company M/s.Shree Ganesh Jewellery House Limited merely on the pretext that the proprietor of the petitioner was once an employee of M/s.Shree Ganesh Jewellery House Limited and had signed Form-30 at the time of registration of M/s.Shree Ganesh Jewellery House Limited.

<u>Contentions of the Petitioner</u>

3. Petitioner contends that though the proprietor of the petitioner was employed for a while with M/s.Shree Ganesh Jewellery House Limited and had signed Form-30 along with Chairman of M/s.Shree Ganesh Jewellery House Limited at the time of registration of that company at Hyderabad, he had resigned and was released from the said Company on 01-10-2013, but suddenly the petitioner's banker informed the proprietor of the petitioner on 04-07-2018 that the 2nd respondent had issued notice inform VAT 206 dt.04-07-2018 to the petitioner invoking Section 29 of the A.P.VAT Act, 2005 requesting the petitioner to make payment of

Rs.4,39,210/- from petitioner's proprietor's account towards tax arrears of M/s.Shree Ganesh Jewellery House Limited.

4. It is contended that this action of the respondents is arbitrary, illegal and cannot be sustained.

5. Petitioner contended that its Banker was informed by the 2nd respondent that it had issued notice dt.19-06-2018 to M/s.Shree Ganesh Jewellery House Limited asking the latter to pay arrears of tax amount of Rs.4,39,210/-, failing which action would be initiated under the Telangana Revenue Recovery Act, if the amount is not paid within three days ; that there was no notice either to the petitioner entity or to the proprietor of the petitioner; and respondents illegally attached the account of the petitioner company without there being any relationship between the petitioner entity and M/s.Shree Ganesh Jewellery House Limited, which has allegedly fallen in arrears of tax and the action of the respondents is arbitrary, illegal and violative of Article 300-A of the Constitution of India.

6. Petitioner contended that though the proprietor of the petitioner Company addressed a letter dt.05-07-2018 to respondents stating that proprietor of the petitioner Company had already resigned from M/s.Shree Ganesh Jewellery House Limited and was released from the said Company on 01-10-2013 and he had no connection with the said Company and requested the respondents to withdraw the notice dt.04-07-2018 issued to the petitioner's Banker, but respondents did not relent.

7. It is also pointed out that M/s.Shree Ganesh Jewellery House Limited is now subject matter of Corporate Insolvency Resolution Process by National Company Law Tribunal, Kolkata Main Branch and a moratorium has been declared by the said Tribunal on 12-02-2018 and the proceedings against the said entity have been prohibited. It is contended that though this fact was informed to the respondents, they illegally withdrew an amount of Rs.4,39,210/- from the petitioner for the dues of M/s.Shree Ganesh Jewellery House Limited.

The stand of the 1st respondent

8. Counter-affidavit was filed by 1st respondent stating that respondents were not aware that the proprietor of petitioner was an employee of M/s.Shree Ganesh Jewellery House Limited and that according to the respondents, the proprietor of the petitioner was found to be registered as 'concerned person' to represent the affairs of M/s.Shree Ganesh Jewellery House Limited and that he had failed to intimate about his resignation and his role as mere employee of the said entity.

9. It is stated that this Court should lift the corporate veil treating the proprietor of the petitioner and the assessee M/s.Shree Ganesh Jewellery House Limited as connected or related and they had conspired together to evade the taxes.

10. It is admitted that the 1st respondent did not give any notice demanding arrears of tax to the petitioner entity, but it is stated that his predecessor intimated that a notice was served on M/s.Shree Ganesh

Jewellery House Limited though R.P.A.D. *as if the said entity was represented by the proprietor of the petitioner* and the said notice was pasted in the Final Notice Register, which is normally maintained in the Department indicating the persons to whom notices to be served. He however admitted that he is unable to trace the acknowledgement due in his office.

11. It is stated that he is unaware of the proceedings before the NCLT against the entity M/s.Shree Ganesh Jewellery House Limited or any order passed therein. It was denied that respondents had withdrawn amounts without considering the letters addressed by the petitioner dt.05-07-2018 and 13-07-2018.

The consideration by the Court

12. Form VAT 206 dt.04-07-2018 was addressed by the 1st respondent to the Banker of the petitioner entity stating that the proprietor of the petitioner entity was due Rs.4,39,210/- , and to make payment of the said amount from petitioner's bank account invoking Section 29 of the Telangana VAT Act, 2005.

13. But this admittedly incorrect since the tax dues being recovered by the 1st respondent were in fact not of the petitioner entity but of M/s.Shree Ganesh Jewellery House Limited. This fact has been clearly admitted in the counter-affidavit filed by 1st respondent.

14. The plea of the 1st respondent that the proprietor of the petitioner is the person representing the affairs of M/s.Shree Ganesh Jewellery House Limited. Merely on account of the fact that at the time of registration under the VAT Act, the proprietor of the petitioner had also signed along with the Director of M/s.Shree Ganesh Jewellery House Limited, it cannot be said that he continues to represent the said entity, particularly when the petitioner has filed release letter dt.01-10-2013 stating that he was released from the very firm M/s.Shree Ganesh Jewellery House Limited with effect from that date and thereafter had nothing to do with it.

15. Admittedly, petitioner's proprietor had submitted another application under VAT Act for registration of the petitioner entity on 01-09-2009, which has been filed by 1st respondent himself showing that the proprietor of the petitioner is dealing with a separate entity and no longer with M/s.Shree Ganesh Jewellery House Limited.

16. There is no material filed by 1st respondent to show that after the petitioner was released by M/s.Shree Ganesh Jewellery House Limited on 01-10-2013, he was associated in any way with the affairs of the said entity.

17. There is no question of lifting the corporate veil treating that the proprietor of petitioner entity and the assessee M/s.Shree Ganesh Jewellery House Limited as one and the same or as entities which are connected or related.

18. Even according to the 1st respondent, notice allegedly sent by RPAD to M/s.Shree Ganesh Jewellery House Limited *as if the said entity was represented by the proprietor of the petitioner*, is not proved to be served on petitioner or on M/s.Shree Ganesh Jewellery House Limited. This also shows that action of the 1st respondent is not *bona fide*.

19. Without any material linking the proprietor of the petitioner with M/s.Shree Ganesh Jewellery House Limited, the bank account of the petitioner cannot be attached by the 1st respondent and the sum of Rs.4,31,210/-, which belongs to the petitioner entity, cannot be adjusted towards the VAT dues of M/s.Shree Ganesh Jewellery House Limited. This action of 1st respondent is patently arbitrary, illegal and violative of Article 300-A of the Constitution of India.

20. Accordingly, the Writ Petition is allowed and the 1st respondent is directed to refund to the petitioner the sum of Rs.4,39,210/- with interest @ 9% p.a. from the date of such withdrawal till date of it's payment. The respondent Nos.1 and 4 shall also pay costs of Rs.20,000/- (Rupees Twenty Thousand only) to the petitioner within four (04) weeks.

21. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J

Date: 06-01-2020

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