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

WEDNESDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY ONE

**PRESENT**

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**
**AND**
**THE HON'BLE SRI JUSTICE T.VINOD KUMAR**

**WRIT PETITION NO. 1107 OF 2021**

**Between:**

Punamchand Dularam Kularia, Proprietor of M/s.BNP Interiors, 519-520, Laxmi Mall, Laxmi Industrial Estate, New Link Road, Andheri (W), Mumbai 400 053, State of Maharashtra.

**...PETITIONER**

**AND**

1. The Commercial Tax Officer, Hydernagar-I Circle, Hyderabad Rural Division, Hyderabad.
2. The Manager, Standard Chartered Bank, Junction of Juhu & SV, B21, Sanghvi Paritosh, Vaikunthlal Mehta Road, JVPP Scheme, Vile Parle W, State of Maharashtra - 400 049.
3. The State of Telangana, Rep. by its Principal Secretary, Revenue (CT) Department, Telangana 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 1st Respondent in passing the Final Assessment Order, dated 29.03.2020 for the tax period 2015-16 under the Central Sales Tax Act 1956, during the lock down period, in the individual name instead of Proprietary concern M/s.BNP Interiors, without considering the explanations of the Petitioner, levying tax @ 14.5% on interstate purchases of Rs.41,26,980/-, without verifying the books of accounts and returns, without providing an opportunity of being heard to the Petitioner and also without service of the Final Assessment Order, is contrary to the provisions of the CST Act, 1956, as well as Telangana Value Added Tax Act, 2005, issuing Form GST DRC-13, dated 02.11.2020 to the 2nd respondent bank, without providing a copy of the same, as arbitrary, contrary to the provisions of the Central Sales Tax Act 1956, without jurisdiction, barred by limitation for the tax period April, 2015 to February, 2016, and in violation of principles of natural justice, and consequently set aside the Final Assessment Order of the 1st respondent, dated 29.03.2020, as null and void.

**IA NO: 1 OF 2021**

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 suspend the Final Assessment Order of the 1st respondent, dated 29.03.2020, for the tax period 2015-16, under Central Sales Tax Act 1956, including Garnishee Notice in Form GST DRC-13, dated 02.11.2020 issued to the 2nd respondent bank by the 1st respondent, 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 Respondent Nos. 1 & 3: SRI M. GOVIND REDDY,**
**SPECIAL STANDING COUNSEL FOR COMMERCIAL TAXES**

**Counsel for the Respondent No.2: NONE APPEARED**

**The Court made the following: ORDER**

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO**
**AND**
**THE HON'BLE SRI JUSTICE T. VINOD KUMAR**

**<u>WRIT PETITION NO.1107 of 2021</u>**

**<u>ORDER :</u>** *(per Hon'ble Sri Justice T. Vinod Kumar)*

In this Writ Petition, the petitioner is challenging the Assessment Order A.O. No. 43148 dated 29.03.2020 passed by the 1st respondent under the provisions of Central Sales Tax Act, 1956 ( in short "CST Act"] for the assessment year 2015-16.

2. The petitioner contends that it had learnt about the impugned Assessment Order passed by the 1st respondent, when a Garnishee Notice in Form GST DRC-13 dated 02.11.2020 was issued to its banker – the 2nd respondent herein; the petitioner thereafter through its authorized representative approached the 1st respondent only to learn that the 1st respondent had passed an Assessment Order raising a demand of tax of Rs. 5,98,412/- under the CST Act, for the period April, 2015 to March, 2016; as no copy of the Assessment order was being furnished, the petitioner downloaded the same from the department website; from a perusal of the Assessment Order, it is noticed that though the same refers to the show cause notice, reminder notice dated 16.11.22019 and Final notice dated 06.03.2020 respectively, however, no reference has been made to the replies / explanation filed by the petitioner thereto on 22.08.2019, 19.11.2019 and 07.03.2020 respectively, nor there is any reflection of these replies having been taken into consideration in the impugned Assessment Order. Further, the petitioner was not afforded with any personal hearing by the 1st respondent before passing the impugned order.

3. It is also further contended that while the registration stands in the name of the proprietary firm, and it is the firm which filed returns with the 1st respondent under the CST Act, the impugned Assessment Order has been passed in the name of the proprietor in his individual capacity, and is also thus, vitiated other wise. Thus, it is claimed that the impugned order passed by the 1st respondent is in violation of principles of natural justice, apart from having been passed without taking into consideration the material available on record.

4. These facts are not disputed by Sri. M. Govind Reddy, learned Special Standing Counsel for Commercial Taxes, appearing for the respondents.

5. Having regard to the above, this court is satisfied that there has been violation of principles of natural justice causing prejudice to the petitioner.

6. Accordingly, the Writ Petition is allowed; the impugned order bearing A.O. No. 43148 dated 29.03.2020 passed by the 1st respondent against the petitioner for the period 2015-16 under CST Act and the notice dated 02.11.2020 in GST DRC-13 sent to the 2nd respondent-bank, are hereby set aside; the matter is remitted back to the 1st respondent for fresh consideration; the 1st respondent shall serve a fresh show cause notice on the petitioner indicating therein the turnover proposed to be assessed to tax and also the tax proposed to be levied thereon, in accordance with Rule 64(1)(b) of the Telangana VAT Rules, 2005; the petitioner is granted six (6) weeks time from the date of receipt of such show cause notice to file their objections thereto, along with supporting

material; personal hearing shall be afforded to the petitioner by the 1st respondent; and the 1st respondent thereafter shall pass a reasoned order in accordance with law and communicate the same to the petitioner. No order as to costs.

7. As a sequel thereto, the miscellaneous petitions pending, if any, shall stand closed.

**SD/-M.MANJULA**
**ASSISTANT REGISTRAR**

**//TRUE COPY//**

**SECTION OFFICER**

**To,**

1. The Commercial Tax Officer, Hydernagar-I Circle, Hyderabad Rural Division, Hyderabad.
2. The Principal Secretary, Revenue (CT) Department, State of Telangana, Telangana Secretariat, Hyderabad.
3. One CC to Sri Shaik Jeelani Basha, Advocate [OPUC]
4. Two CCs to Sri M. Govind Reddy, Special Standing Counsel for Commercial Taxes, High Court for the State of Telangana at Hyderabad. [OUT]
5. Two CD Copies.

MP

HIGH COURT

DATED:27/01/2021

ORDER

WP.No.1107 of 2021



ALLOWING THE WRIT PETITION
WITHOUT COSTS

ASM 7
30/1/2021