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

TUESDAY, THE TENTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY THREE

**PRESENT**

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY**
**AND**
**THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

**<u>WRIT PETITION NO: 31967 OF 2022</u>**

**Between:**

Sri Hari Raju Penmatsa, Proprietor of M/s.Sneha Graphics, Chikkadpally, Hyderabad - 500 020. Rep. by its Manager Mr.P.Vankata Ramaiah.

**...PETITIONER**

**AND**

1. The Commercial Tax Officer, Gandhinagar Circle, Secunderabad Division, Hyderabad.
2. 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 Writ of Mandamus or any other appropriate Writ or Order or direction declaring the action of the 1St Respondent in passing the Original Assessment Proceedings, dated 30/03/2020 for the tax period April, 2017 to June, 2017 under the Central Sales Tax Act 1956, in the name of Sri Hari Raju Penmatsa, instead of M/s.Sneha Graphics, which is a proprietary concern, without serving Notice and without granting sufficient opportunity of being heard to the Petitioner, without assigning any good and sufficient reasons, as arbitrary, contrary to law, barred by limitation for the tax period April, 2017 to June, 2017, the same is in violation of Principles of Natural Justice, without jurisdiction, and consequently set aside the Assessment Proceedings of the 1g respondent, dated

30/03/2022, which was served on the Petitioner on 08/06/2022 by RPAD, as null and void.

**IA NO: 1 OF 2022**

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 operation of the Assessment Proceedings of the 1St Respondent, dated 30/03/2022 passed Exparte, for the tax period April, 2017 to June, 2017 under Central Sales Tax Act 1956, 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 Respondents: GP FOR COMMERCIAL TAX (TG)**

**The Court made the following: ORDER**

**THE HON'BLE SRI JUSTICE P.SAM KOSHY**

**AND**

**THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

**W.P. No. 31967 of 2022**

**ORDER**: *(per Hon'ble Sri Justice **P.SAM KOSHY**)*

Heard learned counsel for the petitioner and the learned Special Standing Counsel for Commercial Tax appearing for the respondents. Perused the record.

2. The instant writ petition has been filed by the petitioner assailing the order dated 30.03.2020 which is an effectual order passed by respondent No.1 consequent to revisional order being passed on 30.03.2022.

3. The point of issue raised by the learned counsel for the petitioner in the present writ petition is that under the provisions of Section 32(4) of the Telangana Value Added Tax Act, 2005 (hereinafter referred to as 'the Act'), the Revisional Authority could have revised the order within a period of four (4) years i.e, four years starting from the date of the order in original passed. The revisional order and the effectual order both have been passed much after a period of four years. Both being much beyond the period of four years prescribed under Section 32 (4) of the Act. The Department seems to have proceeded with

the revision in terms of an amendment brought to Section 32 (4) of the Act, extending the period of limitation from four (4) years to six (6) years. However, the said amendment to Section 32 (4) of the Act itself was subjected to challenge in a batch of writ petitions before the Division Bench of this Court in case of ***Sri Sri Engineering Works and Others Vs. Deputy Commissioner (CT) and others.*** The leading case of which is W.P.No.7893 of 2021. The Division Bench of this Court vide order dated 05.07.2022 had held the amendment to be unconstitutional and devoid of legislative competence. The High Court, as a consequence, had set aside/quashed the notices issued therein and orders passed under Section 32 (3) of the Act and allowed the batch of writ petitions.

4. Though it has been submitted that the above said order passed by the Division Bench of this Court is under challenge before the Hon'ble Supreme Court, however, there is no interim order staying the effect of operation of the said order. As a consequence, undisputedly, the amended provision does not exist after the judgment of the Division Bench of this Court in the case of ***Sri Sri Engineering Works (supra)*** has been passed. That after, the same had been declared unconstitutional by the Division Bench of this Court and the same could not had

been invoked by the respondent authorities for exercising the revisional powers. It is in this respect that the Bench hearing the writ petition at the admission stage had granted an interim protection vide order dated 05.09.2023. The aforesaid factual matrix of the case is undisputed and is factual in nature so far as revisional order and the effectual order having been passed beyond a period of four years and as the period prescribed under Section 32 (4) of the Act (unamended) and the provision which as on the date is in operation.

5. So far as the amendment to the period of four years limitation prescribed under the said Act having been extended to six years, the same as has been said earlier has already been struck down by this Court in the aforesaid batch of writ petitions. The order of the Division Bench, striking down the amended provision has not been interfered with or stayed by the Hon'ble Supreme Court in case of ***Sri Sri Engineering Works (Supra)***. The amended provision once when it has been struck down by the Division Bench of this Court, the same provision could not had been brought into force by the respondents and the action therefore *per se* is without jurisdiction and competence.

6. We have no hesitation in reaching to the conclusion that the effectual order and the revisional order on the basis of which the effectual order has been passed, being beyond the period of four years as is required under Section 32 (4) of the Act are not sustainable and the same deserves to be and are accordingly set aside/quashed.

7. Accordingly, the Writ Petition stands allowed. No order as to costs.

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

**SD/- K. AMMAJI**
**ASSISTANT REGISTRAR**

**//TRUE COPY//**

**SECTION OFFICER**

**To,**

1. The Commercial Tax Officer, Gandhinagar Circle, Secunderabad Division, Hyderabad.
2. The Principal Secretary, Revenue (CT) Department, Telangana Secretariat, State of Telangana, Hyderabad
3. One CC to SRI SHAIK JEELANI BASHA, Advocate. [OPUC]
4. Two CCs to GP FOR COMMERCIAL TAX, High Court for the State of Telangana at Hyderabad. [OUT]
5. Two CD Copies.

BSK
GJP

HIGH COURT

DATED:10/10/2023

ORDER

WP.No.31967 of 2022



ALLOWING THE WRIT PETITION
WITHOUT COSTS

8

02/11/2023