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

TUESDAY, THE NINETEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI

<u>WRIT PETITION NO: 34131 OF 2023</u>

Between:

1. M/s. Heera Retail (Hyderabad) Private Limited, (Represented by its Director), H. No. 12-6-2/268/1/2,3,4, F, Vivek Nagar, Kukatpally, Hyderabad -500072
2. Smt. Nowhera Shaik, Director M/s. Heera Retail (Hyderabad) Private Limited, H. No. 12-6-2/268/1/2,3,4, F, Vivek Nagar, Kukatpally, Hyderabad -500072

...PETITIONERS

AND

1. Commissioner of Central Tax, Medchal Coimnissionerate, Medchal GST Bhawan, Hyderabad 500004.
2. Additional Director General, Directorate of GST Intelligence, 1-63/2/212, Plot No 211 and 212, Block B, Kavuri Hills, Guttala Begumpet Madhapur, Hyderabad.
3. Serious Fraud Investigation Office, Regional Office: Hyderabad, 4th Floor, Corporate Bhawan, Bandlaguda, Hyderabad- 500068
4. Telangana State Forensic Science Laboratory, Niloufer Hospital Rd, Red Hills, Hyderabad- 500004
5. Assistant Commissioner of Police, (WCO) A Division, Detective Department, Central Crime Station, Beside L.B. Stadium Hyderabad- 500004
6. Union of India, (Represented by Secretary (Revenue)), North Block, New Delhi.

...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 an appropriate writ, order or direction in nature of writ of mandamus:

(a) Declaring the impugned Order in Original No. HYD-EXCUS-001-COM-005-23-24 dt.06.07.2023 as being arbitrary, without jurisdiction, in violation of principles of natural justice, without authority of law and violative of Articles 14, 19(1)(g) and 265 of Constitution of India and contrary to the provisions of Central Excise Act, 1944 and, Rules made thereunder;

(b) Declare the acts and omissions of 3rd, 4th and 5th Respondent in not giving the documents as violative of principles of natural justice and direct the 3rd, 4th and 5th Respondents to furnish the entire documents, data and extract of software data from tally accounting system and ERP software seized from petitioner company to facilitate proper adjudication and;

(c) Direct the 1st Respondent to adjudicate the Show Cause Notice No.02/2021-22 dt.08.04.2021 only upon receipt of entire data from the 3rd, 4th and 5th Respondents and granting sufficient opportunity to the petitioners.

IA NO: 1 OF 2023

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 stay the impugned Order in Original No. HYD-EXCUS-001-COM-005-23-24 dt.06.07.2023 issued by the 1st respondent and stay the recovery of the disputed demand, interest and penalties under the impugned order.

Counsel for the Petitioner: M/s. Y.SIRI REDDY

Counsel for the Respondent No.1 & 2: M/s. DOMINIC FERNANDES, SC FOR GST

Counsel for the Respondent No.3 & 6: SRI GADI PRAVEEN KUMAR, DEPUTY SOLICITOR GENERIAL OF INDIA

Counsel for the Respondent No.4: --

Counsel for the Respondent No.5: GP FOR HOME

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT PETITION No.34131 OF 2023

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

When the matter is taken up for hearing today, it has been informed by the learned counsel for the Department that an identical Writ Petition i.e., W.P.No.33957 of 2023 has already been rejected of *vide* order dated 16.12.2023.

2. In view of the fact that the identical matter has already been rejected by this Court, we are inclined to reject this Writ Petition also, in terms of the order passed in W.P.No.33957 of 2023 decided on 16.12.2023 on similar terms.

3. As a sequel, miscellaneous applications pending if any in these writ petitions, shall stand closed. No order as to costs.

SD/-A. PRATHIMA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to M/s. Y.SIRI REDDY, Advocate [OPUC]
2. One CC to M/s. DOMINIC FERNANDES, SC FOR GST [OPUC]
3. One CC to SRI GADI PRAVEEN KUMAR, DEPUTY SOLICITOR GENERIAL OF INDIA, High Court for the State of Telangana at Hyderabad [OPUC]
4. Two CCs to GP FOR HOME, High Court for the State of Telangana at Hyderabad [OUT]
5. Two CD Copies

(Along with the copy of order dated 16.12.2023, in W.P.No.33957of 2023)

BSR
GJP

HIGH COURT

DATED: 19/12/2023

ORDER

WP.No.34131 of 2023

REJECTING THE WRIT PETITION,
WITHOUT COSTS

8 VLV 12/1/24

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

W.P. No. 33957 of 2023

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

Heard Mr.Yammanuru Siri Reddy, learned counsel for the petitioner, Ms.B.Sapna Reddy, learned Junior Standing Counsel appearing for Mr.Dominic Fernandis, learned Senior Standing Counsel for CBIC for respondent No.1 and 2 and Mr.B.Mukharjee, learned counsel appearing for Mr.Gadi Praveen Kumar, learned Deputy Solicitor General of India, for respondent No.3

2. This Writ Petition is filed challenging the order in original passed by respondent No.1, dated 13.07.2023. The authority concerned with the said impugned order has passed an order confirming the demand of an amount of Rs.10,50,96,633/- the central excise duty payable by the petitioner on the gross sale consideration received during the period March-2016 to June-2017. In addition, the respondent No.1 has also imposed a penalty of an amount of Rs.10,50,96,633/- for committing contraventions under the statute with an intent to evade the central excise duty. In addition, there was further penalty of Rs.1 crore imposed upon

one of the Directors of petitioners company for transporting, removing, depositing, skipping, selling without payment of duty.

3. Learned counsel for the petitioner submits that the challenge to the said impugned order is on the ground that the entire order has been passed without any effective defence being provided to the petitioners. According to the petitioners all the documents which were available for the defence of the petitioner are one which were already seized by the department, as such the petitioner does not have any documents to confront or produce before the authorities concerned. He further submits that inspite of repeated request, these documents were not been made available to the petitioner which prevented him for effective defence.

4. Learned counsel for the petitioner further referred that the entire bank account also seems to have been seized by the authorities concerned and in the process, the petitioner would not be in a position to make pre-deposit of amount which is otherwise mandatorily required for preferring of an appeal.

5. At the outset, we are of the considered opinion that the instant order is one which has been passed almost about six (6) months back i.e., on 13.07.2023 under the statutory provision, the statutory appeal have to be filed within the period of three (3) months. The instant petition has

been filed much after the period of limitation for filing the appeal under Section 35 (b)(i) is lapsed. Though the writ petition was earlier filed on 10.10.2023, but due to certain defaults, the same was returned and thereafter it has now been filed.

6. Having heard the petitioner, what is also reflected from the perusal of the pleadings is that in order to properly appreciate the contentions which the petitioner has raised in the present writ petition, so far as the petitioner having not manufactured any Jewellery and as such the sale made by them if at all cannot be considered to be first sale. Infact the jewelleries which were there with the petitioner's establishment are all purchased by the petitioners from third party. For this reason also it could be clearly established that it was not their first sale which they had made and the persons from whom they purchased may be the persons who have made first sale and who have paid the entire duty payable under Central Excise Act, 1994.

7. Further, it was also the contention of the learned counsel for the petitioner that the petitioner in addition have also been selling coins both the Gold and Silver which again are the products which are not manufactured by the petitioners. All these are the facts which can be ascertained only on going through the records and the factual aspects of

the case available before the authorities concerned. The factual aspects cannot be thrashed out exercising the Writ Jurisdiction of this Court invoking Article 226 of the Constitution of India which is otherwise an extraordinary jurisdiction. The petitioners herein have a statutory alternative remedy of appeal, under statute itself.

8. At this juncture, it would be relevant to take note of the contents of paragraph No.7 of the impugned order which refers to the statement of one of the Directors of the petitioner's establishment herself, where she has accepted that the petitioner's establishment is engaged in the manufacturing of articles of Gold and further that the petitioners establishment was neither registered with the Central Excise Department nor paying any Central Excise duty upon removal of the excisable goods manufactured by them.

9. In the teeth of the aforesaid finding in the impugned order it would not be proper for this Court in exercising its writ jurisdiction at this juncture to test the veracity of the order as it would require thread bear appreciation of the facts and their affirms available with the department and also that which is available with the petitioners.

10. For the aforesaid reasons, we are not inclined to entertain the Writ Petition. Thus, this Writ Petition fails and is accordingly rejected.

Nonetheless, the right of the petitioner to prefer an appeal in accordance with the provisions of the Act, is left open.

11. As a sequel, miscellaneous applications pending if any in this writ petition, shall stand closed. No order as to costs.

P.SAM KOSHY, J

N.TUKARAMJI, J

16.12.2023.
Aqs/ssm