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

MONDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT PETITION NO: 15425 OF 2024

Between:

M/S. Shrine Engineering Private Limited, Represented by its authorized signatory, Piyush Nahajaanbhai Modhwadiya Having its Office At Altius 3 Near Shaligrambunglow, Thaltej, Ahmedabad

...PETITIONER

AND

1. Assistant Commissioner of Central Tax, Nalgonda GST Division 6-2-11, LPT Market, Blocjc 2, Hyderabad Road, Nalgonda - 508001
2. Superintendent of Central Tax, Nalgonda GST Division 6-2-11, LPT Market, Block 2, Hyderabad Road, Nalgonda 508001
3. Union of India, Ministry of Finance, Department of Revenue, Represented by Secretary, North Block, New Delhi-110001

...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 a Writ, Order or direction particularly one in the nature of a WRIT OF MANDAMUS declaring the impugned Order in Original dated 14.09.2023 bearing via DIN No. 20230956YQ000000A9CB passed by Respondent No.1 as illegal, in violation of principles of natural justice, in violation of Section 75(4) of the CGST Act. Rule 142(1) of the CGST Rules and barred by limitation as the demand for FY 2017-18 is made pursuant to the extended time limit under Section 168A of the CGST Aid vide Notification No.09/2023-Central Tax dated 31.03.2023 and Notification No 56/2023 dated 28.12.2023.

IA NO: 1 OF 2024

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 operation of impugned order dated 14.09.2023 bearing via DIN No. 20230956YQ000000A9CB passed by Respondent No.1 including any consequential recovery proceedings.

Counsel for the Petitioner : SRI PRAVEEN K NAIR

Counsel for the Respondent No.1&2 : Ms.B.SAPNA REDDY (Jr. SC FOR IT)

Counsel for the Respondent No.3 : SRI MUKHERJEE, rep.,
SRI GADI PRAVEEN KUMAR, DY.SOL.GENERAL

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE SUJOY PAUL

AND

THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT PETITION No.15425 OF 2024

ORDER *(per Hon'ble SP,J)*

Heard Sri Praveen K Nair, learned counsel for the petitioner; Ms.B.Sapna Reddy, learned Junior Standing Counsel for Income Tax Department, for respondent Nos.1 and 2; and Sri B.Mukherjee, learned counsel representing Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India, for respondent No.3.

2. With the consent, finally heard.

3. This petition is directed against the impugned Order-in-Original, dated 14.09.2023. Learned counsel for the petitioner submits that the petitioner, pursuant to a notice issued by the Department, filed his reply, dated 18.08.2022 (Exhibit P5). The respondents issued another notice, dated 17.04.2023. The petitioner could not file response to this notice. Thereafter, the respondents passed the impugned order, dated 14.09.2023 and did not give any opportunity of personal hearing.

4. The first limb of argument of learned counsel for the petitioner is based on Section 75(4) of GST Act, 2017 (for short 'the Act'), which envisages that opportunity of personal hearing can be granted if request is received in writing from the person chargeable with tax/penalty *or* where any adverse decision is contemplated against such person. The adverse decision was certainly contemplated and in that event, even if petitioner did not file its reply, it should have been given an opportunity of personal hearing.

5. The second limb of argument is that in view of judgment of Madras High Court in ***M/s.Imperial Shipping Service v. The Assistant Commissioner (ST), Chennai***[1], even if petitioner has not filed reply to the show cause notice, dated 17.04.2023, the previous reply dated 18.08.2022 should have been considered.

6. Learned counsel for the petitioner submits that the petitioner's Chartered Accountant met with an accident and because of that appeal could not be filed in time. The medical documents are filed along with a memo on 27.06.2024.

7. Ms.Sapna Reddy, learned Junior Standing Counsel, urged that the petitioner has a statutory remedy of preferring an appeal under Section 107 of the Act. The petitioner was given an

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opportunity of personal hearing, which is clear from the averments of Order-in-Original. Thus, this petition is not entertainable.

8. In the peculiar facts of this case, as the petitioner's Chartered Accountant, met with an accident, during the period of limitation for preferring an appeal, we deem it appropriate to permit the petitioner to file an appeal before the appellate authority within fifteen days from today. If the appeal is preferred within the aforesaid time, the appellate authority shall consider and decide it on merits and shall not throw it over board on the ground of delay.

9. The Writ Petition is accordingly disposed of without expressing any opinion on merits. No costs.

Interlocutory applications, if any pending, shall also stand closed.

SD/- T. JAYASREE
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Assistant Commissioner of Central Tax, Nalgonda GST Division 6-2-11, LPT Market, Blocjc 2, Hyderabad Road, Nalgonda - 508001.
2. The Superintendent of Central Tax, Nalgonda GST Division 6-2-11, LPT Market, Block 2, Hyderabad Road, Nalgonda 508001
3. The Secretary, Union of India, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001
4. One CC to SRI PRAVEEN K NAIR, Advocate. [OPUC]
5. One CC to SRI BOKARO SAPNA REDDY (Jr. SC FOR INCOME TAX). [OPUC]
6. One CC to SRI GADI PRAVEEN KUMAR, (Deputy Solicitor General of India), High Court for the State of Telangana at Hyderabad. [OPUC]
7. Two CD Copies.

BSK
GJP

HIGH COURT

DATED:08/07/2024



ORDER

WP.No.15425 of 2024

DISPOSING OF THE WRIT PETITION
WITHOUT COSTS

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L.B
4/11/24