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

THURSDAY ,THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT

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

WRIT PETITION NO: 6671 OF 2024

Between:

M/s. Silver Oak Villas LLP, 5-4-187/3, 2nd Floor, Soham Mansion, M.G Road, Secunderabad, Telangana- 500003 Represented by the Partner, Shri. Soham Satish Modi, S/o Shri. Satish Modi, Aged 55 years, R/O. Plot No. 280, Road NO. 25, Jubilee Hills, Hyderabad-5000034, Telangana

...PETITIONER

AND

1. The Assistant Commissioner (ST), Begumpet Division, M.G. Road- S.D. Road Circle, Pavani Prestige, Above R.S. Brothers, Ameerpet, Hyderabad-500016.
2. The Additional Commissioner of Central Tax, Secunderabad Commissionerate, GST Bhawan, L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.
3. State of Telangana, Rep. by its Principal Secretary (Revenue) CT,Department, Telangana, Secretariat Buildings, Hyderabad
4. Union of India, Ministry of Finance, Represented by its Secretary, North Block, New Delhi-110 001
5. Central Board of Indirect Taxes and Customs, GST Policy Wing, New Delhi rep by its Commissioner

...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 (i)a writ, order, or direction more particularly one in the nature of a Writ of Mandamus declaring impugned Order vide Ref No. ZD361223015515R dated 08.12.2023 passed by the 1st Respondent under the provisions of CGST/TGST Act, 2017 as being void, arbitrary, illegal, without jurisdiction, violative of the principles of natural justice apart from being violative of Articles 14, 19(1)(g) and 265 of the Constitution of India, and to consequently set aside the same and pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case. (ii)a writ, order, or direction

more particularly one in the nature of a Writ of Mandamus declaring that the Notification No. 09/2023-C.T dated 31.03.2023 issued by Respondent No. 4 through Respondent No. 5 and corresponding GO Ms. No. 118 dated 25.08.2023 issued by Respondent No. 3, which extended the time limit for passing the orders, are without authority of law and ultra vires to the section 73(10) of the GST Act 2017 and Section 168A of GST Act, 2017 and violative of articles 14, 19(1)(g) 21 and 265 of the Constitution of India

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 Order vide Reference No.ZD361223015515R dated 08.12.2023 passed by the Respondent No. 1

Counsel for the Petitioner: SRI. VENKATA PRASAD P REP
SRI M. NAGA DEEPAK

Counsel for the Respondent Nos. 1to3: M/s. SWARROP OORILLA ,
SPECIAL GOVT. PLEADER FOR COMMERCIAL TAX

Counsel for the Respondent No.5: SRI DOMINIC FERNANDES, SENIOR SC

Counsel for the Respondent No.4: SRI A. KRANTI KUMAR REDDY REP
SRI GADI PRAVEEN KUMAR,
DY. SOLICITOR GENERAL OF INDIA

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE P.SAM KOSHY

AND

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

WRIT PETITION No.6671 OF 2024

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

Heard Mr.Venkata Prasad P. learned counsel representing Mr.M.Naga Deepak, learned counsel for the petitioner, Mr.Swaroop Oorilla, learned Special Government Pleader for the respondent Nos.1 to 3, Mr.A.Kranti Kumar Reddy, learned counsel representing Mr.Gadi Praveen Kumar, learned Deputy Solicitor General of India for respondent No.4 and Mr.Dominic Fernandes, learned Senior Standing Counsel for respondent No.5. Perused the material available on record.

2. The instant writ petition has been filed for the following relief:

to issue a writ, order, or direction more particularly one in the nature of a Writ of Mandamus;
I. declaring the impugned order vide Ref.No.ZD361223015515R, dated 08.12.2023, passed by the 1st respondent under the provisions of CGST/TGST Act, 2017 as being void and arbitrary.

II. declaring that the Notification No.09/202-C.T dated 31.03.2023 issued by respondent No.4 through respondent No.5 and corresponding GOMs.No.118 dated 25.08.2023 issued by respondent No.3, which extended the time limit for passing the orders, are without authority of law and ultra vires to section 73(10) of the GST Act 2017 and Section 168A of GST Act, 2017 and violative of articles 14, 19(1)(g) 21 and 265 of the Constitution of India.

3. The primary contention of the learned counsel for the petitioner assailing the show cause as also the impugned order was that the show cause notice as also the assessment order have not been signed by the 1st respondent either digitally or physically as is otherwise required under Rule 26 of the Central Goods and Services Taxes Rules (for short "CGST").

4. The learned counsel for the Department submits that he has not received any satisfactory instructions from the Department as to why the show cause notice as also the order of assessment have not been signed by the 1st respondent while issuing the same either digitally or physically.

5. It is at this juncture relevant to take note of the recent decision of the High Court for the State of Andhra Pradesh in W.P.No.29397 of 2023 and stood decided on 10.11.2023, wherein the Hon'ble Division Bench of the Andhra Pradesh High Court had

under similar circumstances in paragraph Nos.7 to 12 held as under:

> ***7.*** *On consideration of the submissions advanced and the legal provisions, we are of the view that Section 160 of CGST Act 2017 is not attracted. An unsigned order cannot be covered under —any mistake, defect or omission thereinl as used in Section 160. The said expression refers to any mistake, defect or omission in an order with respect to assessment, re-assessment; adjudication etc and which shall not be invalid or deemed to be invalid by such reason, if in substance and effect the assessment, re-assessment etc is in conformity with the requirements of the Act or any existing law. These would not cover omission to sign the order. Unsigned order is no order in the eyes of law. Merely uploading of the unsigned order, may be by the Authority competent to pass the order, would, in our view, not cure the defect which goes to the very root of the matter i.e. validity of the order.*
>
> ***8.*** *We are of the further view that Section 169 of CGST Act 2017 is also not attracted. Here, the question is of not signing the order and not of its service or mode of service.*
>
> ***9.*** *In the case of A. V. Bhanoji Row vs. Assistant Commissioner (ST) in W.P.No.2830 of 2023 decided on 14.02.2023, upon which reliance has been placed by learned counsel for the petitioner (Ex.P6), a Co-ordinate Bench of this Court has held that the signatures cannot be dispensed with and the provisions of Sections 160 and 169 of CGST Act would not come to the rescue.*
>
> ***10.*** *Paragraph 6 of A. V. Bhanoji Row (supra) is reproduced as under:- —*

> *6. A reading of Section 160 of the Act makes it very much clear and candid that the safeguards contained therein cannot be made applicable for the contingency in the present case. Section 169 of the Act, which deals with the service of notice, enables the department to make available any decision, order, Summons, Notice or other communication in the common portal. In the guise of the same, the signatures cannot be dispensed with. In the considered opinion of this court, the aforesaid provisions of law would not come to the rescue of the respondent herein, for justifying the impugned action.*
>
> ***11.** The writ petition deserves to be allowed on the first ground itself.*
>
> ***12.** Consequently, we are not entering into the merits of the second ground, leaving it open to the concerned authority to consider, if the ground as in the impugned order, is different than the one contained in the show cause notice, and if it is so, it shall be open for the Authority to issue fresh notice, if it is proposed to proceed on such ground. However, at this stage, learned counsel for the petitioner submits that the petitioner has submitted reply to the show cause notice dated 31.01.2023 and he shall also file additional reply, with respect to the alleged new ground as in the impugned order of his own, within a period of four (04) weeks from today.*

6. The similar view was also taken in yet another writ petition by the Hon'ble Division Bench of the Andhra Pradesh High Court in W.P.No.2830 of 2023 which stood decided on 14.02.2023,

wherein also the Hon'ble Division Bench had reiterated the same view wherein paragraph Nos.6 and 7 has held as under:

> *6. A reading of Section 160 of the Act makes it very much clear and candid that the safeguards contained therein cannot be made applicable for the contingency in the present case. Section 169 of the Act, which deals with the service of notice, enables the department to make available any decision, order, 4 Summons, Notice or other communication in the common portal. In the guise of the same, the signatures cannot be dispensed with. In the considered opinion of this court, the aforesaid provisions of law would not come to the rescue of the respondent herein, for justifying the impugned action.*
>
> *7. For the aforesaid reasons, this Writ Petition is allowed, setting aside the impugned order of the 1st Respondent, dated 23-11-2022 and the DRC-07 notice, dated 23-11-2022 for the tax period 2017-18,2018-19 and 2019-20, as well as the show cause notice dated 22-10-2022 and DRC-01 notice, dated 22-10-2022 issued by the 1st Respondent and uploaded in the GST common portal. However, this order will not preclude the respondents from proceeding in accordance with law, in the light of the observations made Supra. There shall be no order as to costs.*

7. There was yet another view from the Bombay High Court in W.P.No.9331 of 2022, decided on 21.09.2022, wherein under similar circumstances the Bombay High Court taking into

consideration the provisions of Rule 26(3) of the CGST Rules 2017, in paragraph Nos.43 to 45 held as under:

> *Therefore, any person aggrieved by any decision or order passed under the Act may apply to the Appellate Authority within three months from the date on which such decision or order is communicated to such person. Rule 26(3) of the Central Goods and Services Tax Rules, 2017 (the CGST Rules) and it is pari materia with Maharashtra Goods and Services Tax Rules, 2017 requires orders issued under Chapter III of the rules to be authenticated by a digital signature certificate or through Esignature or by any other mode of signature or verification notified in that behalf. Form GST-REG which was notified under the Rules for the purpose of passing order for cancellation of registration specifically requires the signature of the officer passing the order. Respondent has not denied that any order passed by respondent requires to be digitally signed and certified.*
>
> *3. It is petitioner's case that the order in original dated 14th November 2019 which was impugned in the appeal filed before Respondent No.3 has not been digitally signed. Therefore, it was not issued in accordance with Rule 26 of the CGST Rules. Hence, the time limit for filing the appeal would begin only upon digitally signed order being made available.*
>
> *4. Averments in paragraph Nos.6, 7 and 8 of the petition reads as under:*
>
> *6. With respect to the issue of limitation, the order which is appealed against, which is the Order for Cancellation of Registration dated 14*

November 2019, is not signed by the Respondent No.4 who has issued the order. The said order is merely uploaded on the GST Portal without any signature. The signature was affixed for the first time only on 19 May 2021 when Petitioner had to get an attestation from Respondent No.4 for the purposes of filing appeal. This attestation was required precisely because the Order for Cancellation of Registration dated 14 November 2019 was not signed.

7. Rule 26(3) of the Central Goods and Services Tax Rules, 2017 and the parimateria Maharashtra Goods and Services Tax Rules, 2017 requires orders issued under Chapter III of the rules to be authenticated by a digital signature certificate or through E-signature or by any other mode of signature or verification notified in this behalf. The Form GST-REG 19 which was notified under the Rules for the purposes of passing order for cancellation of registration specifically requires the signature of the officer passing the order.

8. Thus, the limitation period for filing the appeal against the Order for Cancellation of Registration dated 14 November 2019 never began because the Order was not signed in accordance with the rules. Alternatively, the limitation period began only from 19 May 2021 which is the date on which the signature of the Respondent No.4 was put on the order for the purposes of "attestation". The Order of Cancellation of Registration dated 14 November 2019 as well as the First Appeal Order dated 4 August 2021 are therefore liable to be quashed and set aside.

In the affidavit in reply it is not denied that the order in original dated

> *14th November 2019 was not digitally signed. In the affidavit in reply it is specifically stated that the show cause notice was digitally signed by the issuing authority but when it refers to the order in original dated 14th November 2019 there is .total silence about any digital signature being put by the issuing authority. Conveniently, respondent stated that petitioner cannot take stand of not receiving the signed copy because the unsigned 4/4 908-WP-9331-2022.doc order was admittedly received by petitioner electronically. However, if this stand of respondent has to be accepted, then the Rules which prescribe specifically that digital signature has to be put will be rendered redundant. In our view, unless digital signature is put by the issuing authority that order will have no effect in the eyes of law.*

8. Yet another matter came up before the High Court of Delhi in W.P.No.2872 of 2023, which stood decided on 03.02.2023, wherein in paragraph Nos.14 to 17 the High Court of Delhi has held as under:

> *Concededly, the impugned order cannot be sustained as it is unsigned. This issue is covered by the decision of a coordinate Bench of this Court in* ***Railsys Engineers Private Limited & Anr. V. The Additional Commissioner of Central Goods and Services Tax (Appeals-II) & Anr.*** *W.P.(C) 4712/2022, decided on 21.07.2022.:*
>
> *An unsigned notice or an order cannot be considered as an order as has been held by the Bombay High Court in* ***Ramani Suchit Malushte vs. Union of India and ors.*** *W.P.(C) 9331/2022, decided on 21.09.2022.*

> *In view of the above, the impugned order dated 07.06.2022 is set aside.*
>
> *Since it is stated that the show cause notice dated 06.02.2021 should be confirmed to the discrepancies as pointed out in the notice dated 01.01.2021, this Court does not consider it apposite to set aside the said show cause notice but to provide an opportunity to the petitioner to file a reply to the notice dated 01.01.2021 and 06.02.2021. The said reply be filed within a period of two weeks from today.*

9. Considering the judicial precedents referred to in the preceding paragraphs, we are of the considered opinion that the impugned order in the instant case also since it an un-signed document which lose its efficacy in the light of requirement of Rule 26(3) of the CGST Rules 2017 and also under the TGST Act and Rules 2017. The show cause notice as also the impugned order both would not be sustainable and the same deserves to be and is accordingly set aside/quashed. However, the right of the respondents would stand reserved to take appropriate steps strictly in accordance with law governing the field.

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10. Accordingly, this Writ Petition stands allowed. No order as to costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

SD/- T. JAYASREE
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Assistant Commissioner (ST), Begumpet Division, M.G. Road- S.D. Road Circle, Pavani Prestige, Above R.S. Brothers, Ameerpet, Hyderabad-500016.
2. The Additional Commissioner of Central Tax, Secunderabad Commissionerate, GST Bhawan, L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.
3. The Principal Secretary (Revenue) CT,Department, Telangana, Secretariat Buildings, Hyderabad
4. The Secretary, Union of India, Ministry of Finance, North Block, New Delhi-110 001
5. The Commissioner, Central Board of Indirect Taxes and Customs, GST Policy Wing, New Delhi
6. Two CCs to SPECIAL GOVERNMENT PLEADER FOR COMMERCIAL TAX ,High Court for the State of Telangana,at Hyderabad [OUT]
7. One CC to SRI. M. NAGA DEEPAK Advocate [OPUC]
8. One CC to SRI. DOMINIC FERNANDES, SC [OPUC]
9. One CC to SRI. GADI PRAVEEN KUMAR, DY. SOLICITOR GENERAL OF INDIA [OPUC]
10. Two CD Copies

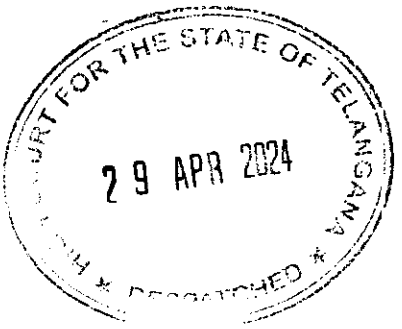
B M
GJP

HIGH COURT

DATED:14/03/2024

ORDER

WP.No.6671 of 2024



ALLOWING THE WRITPETITION
WITHOUT COSTS

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19/4/2024