IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(SPECIAL ORIGINAL JURISDICTION)

[3408]

WEDNESDAY ,THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY THREE

:PRESENT:

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
AND
THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

WRIT PETITION NO: 4725 OF 2023

Between:

Mytrah Energy India Private Limited, represented through its authorized representative, Shri Krishna Rachuri S/o. Prabhakar Rachuri Aged 43 years, Having its Registered Office at 8001, Q-City, Nanakramguda, Gachibowli, Hyderabad, Telangana - 500032 and Principal Place of Business at Sy No. 292/2, Jutur Village, Pattikonda Mandal, Kurnool, Andhra Pradesh - 518380.

Petitioner

AND

1. Union of India, Through Secretary, Ministry of Finance, Department of Revenue, New Delhi - 110001.
2. Deputy Commissioner (State Tax), Offices of the Joint Commissioner (State Tax), Kurnool Survey No. 7/B, Near Indus Montessori School, Gooty Road, Kurnool, Andhra Pradesh - 518002.
3. State of Andhra Pradesh, Through its Principal Secretary Revenue(CT-II) Department, Secretariat, Velagapudi, Amaravati, District - Guntur, Andhra Pradesh.
4. Goods and Services Tax Council, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi-110 001.
5. The Central Board of Indirect Taxes and Customs, North Block, Department of Revenue, Ministry of Finance, Government of India, New Delhi - 110001.

Respondent

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 more particularly.

i. A writ of Mandamus or any other order or direction to declare the impugned Explanation inserted vide Notification No. 24/2018 - Central Tax (Rate) dated 31.12.2018 appended to Sl. No. 234 of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being manifestly arbitrary and violative of Article 14, Article 19(1)(g) and Article 265 of Constitution of India, 1950.

ii . A writ of Mandamus or any other order or direction to declare the impugned Services Explanation inserted vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 appended to Sl. No. 38 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017,and the corresponding notifications issued under the APGST Act and IGST Act, as being manifestly arbitrary and violative of Article 14, Article 19(1)(g) and Article 265 of Constitution of India, 1950.

iii. A writ of Mandamus or any other order or direction to declare Section 16 (2) (c) of the CGST Act and the corresponding Section 16(2) (c) of the APGST Act ,as being arbitrary and violative of Article 14 and Article 19(1)(g) of Constitution of India, 1950 since the same imposes an unreasonable condition which is impossible to be performed by the Petitioner.

iv. A writ of Mandamus or any other order or direction to declare the impugned Circular as being arbitrary and violative of Article 14 and Article 19(1)(g) of Constitution of India, 1950 since the same seeks to create substantive disabilities on a retrospective basis not contemplated under the CGST Act.

v. In the alternative to prayer clause (i) supra., a writ of Mandamus or any other order or direction reading down the impugned Explanation inserted vide Notification No. 24/2018 - Central Tax (Rate) dated 31.12.2018 appended to Sl. No. 234 of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017,and the corresponding notifications issued under the APGST Act and IGST Act, as being not mandatory and to that extent allowing taxpayer to compute the value of supplies on actual basis.

vi. In the Alternative to prayer clause (ii) supra., a writ of Mandamus or any other order or direction reading down the impugned Services Explanation inserted vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 appended to Sl. No. 38 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017,and the corresponding notifications issued under the APGST Act and IGST Act, as being not mandatory and to that extent allowing taxpayer to compute the value of supplies on actual basis.

vii. A writ of Mandamus or any other order or direction to quash and set aside the impugned notice dated 19.12.2022 issued to the Petitioner being and quash the same as illegal, arbitrary, without jurisdiction and unconstitutional.

viii. Costs of the petition.

ix. Any other order which this Hon'ble Court may deem fit in the interest of justice, equity and good conscience.

<u>IA NO: 1 OF 2023</u>

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 grant interim relief in the form of a direction to the Respondent No. 2 refrain from adjudication of the impugned notice dated 19.12.2022 as also from initiating any precipitative action pursuant to the impugned notice dated 19.12.2022, Pending disposal of WP 4725 of 2023, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of Sri Sai Sundeep Manchikalapudi Advocate for the Petitioner, Sri Harinath.N, Deputy Solicitor General of India for the Respondent No.1, GP for Commercial Tax for the Respondent Nos. 2 & 3, Sri Suresh Kumar Rout, senior counsel for respondents No.4 & 5 , the Court made the following

ORDER

"Print the name of Sri Suresh Kumar Rout, senior counsel for respondents No.4 & 5.

Learned Government Pleader seeks time for filing counter. Let the needful be done.

List the matter on 31.03.2023 for counters.

In the meanwhile, since the matter is only at the stage of show cause notice issued by 2nd respondent, the petitioner is directed to submit its reply/objections on or before 31.03.2023. Till such date, the 2nd respondent shall not take any coercive action against the petitioner pursuant to the show cause notice."

Sd/- G. HELA NAIDU
ASSISTANT REGISTRAR

//TRUE COPY//

For SECTION OFFICER

To,

1. Secretary, Ministry of Finance, Union of India , Department of Revenue, New Delhi - 110001.
2. Deputy Commissioner (State Tax), Offices of the Joint Commissioner (State Tax), Kurnool Survey No. 7/B, Near Indus Montessori School, Gooty Road, Kurnool, Andhra Pradesh - 518002.
3. Principal Secretary Revenue(CT-II) Department, State of Andhra Pradesh , Secretariat, Velagapudi, Amaravati, District - Guntur, Andhra Pradesh.
4. Goods and Services Tax Council, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi-110 001.
5. The Central Board of Indirect Taxes and Customs, North Block, Department of Revenue, Ministry of Finance, Government of India, New Delhi - 110001.(1 to 5 by RPAD)
6. One CC to Sri Sai Sundeep Manchikalapudi Advocate [OPUC]
7. One CC to Sri Harinath.N, Deputy Solicitor General of India [OPUC]
8. Two CCs to GP for Commercial Tax, High Court of AP [OUT]
9. One CC to Sri Suresh Kumar Rout, senior counsel [OPUC]
10. Two spare copies.

RVK

HIGH COURT

UDPRJ & VGKRJ

DATED:15/03/2023

LIST THE MATTER ON 31.03.2023 FOR COUNTERS

ORDER

WP.No.4725 of 2023

DIRECTION

HIGH COURT OF ANDHRA PRADESH
SPECIAL CELL
24 MAR 2023
DESPATCHED