[3481]

IN THE HIGH COURT OF ANDHRA PRADESH: AT AMARAVATI

(Special Original Jurisdiction)

FRIDAY, THE THIRD DAY OF MAY

TWO THOUSAND AND TWENTY FOUR

:PRESENT:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

AND

THE HONOURABLE SMT JUSTICE KIRANMAYEE MANDAVA

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.

Respondents

Petition under Article 226 of the Constitution of India is filed 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. i i . 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. 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.

IA NO: 1 OF 2023

Petition under Section 151 CPC is filed praying that in the circumstances stated in the affidavit filed in support of the writ 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.

IA NO: 1 OF 2024

Petition under Section 151 CPC is filed praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to extend interim orders dated 15 March 2023 in W.P No. 4725 of 2023, which was further extended by Order dated 04 October 2023 and list the W.P No. 4725 of 2023 for final hearing expeditiously, 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.Y.V.ANIL KUMAR (Central Government Counsel) for Respondent No.1 GP for Commercial Tax for Respondent Nos.2 to 4 and Sri.Suresh Kumar Routhu, Senior Standing Counsel for Respondent No.5, the Court made the following.

ORDER:

I.A.No.1 of 2024 is an application for extension of the interim order dated 15.03.2023 passed in the present writ petition.

2. The interim order reads as under:-

> "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."

3. The writ petition is filed challenging the show cause notice as also the Notification No.1/2017 – Central Tax (Rate), dated 28.06.2017 and Notification No.11/2017 – Central Tax (Rate), dated 28.06.2017. It is submitted that the show cause notice is issued pursuant to those notifications which notifications are ultra vires to the provisions of Section 8 of the Central Goods and Services Tax Act, 2017 (in short, CGST Act). The petitioner has submitted the reply/objection pursuant to the impugned show cause notice. It is submitted that the objections were submitted within time as directed under interim order, by 31.03.2023. The interim order was extended on 31.08.2023 fixing the matter for final hearing on 04.10.2023. However, the matter could not be

listed on 04.10.2023. Consequently, the petitioner has filed the application for extension of the interim order.

4. Learned counsel for the petitioner has placed reliance in the case of the case of ***Naveti Mahalakshmi & Ors. vs. The State of Andhra Pradesh & Ors.,*** to submit that once the matter was not listed on the date fixed, there was no question of extension of the interim order as the same shall be taken as continued till listing of the case. He submits that the respondents are proceeding further pursuant to the notice.

5. As per the report of the Registrar (Judicial) submitted pursuant to our order dated 29.04.2024, the matter could not be listed on the date fixed.

6. Learned Government Pleader prays for further time to file the counter affidavit.

7. List on 05.07.2024.

8. By that time, the counter affidavit and the reply affidavit, if any, by the petitioner, shall positively be filed.

9. The matter will be listed for hearing.

10. Considering the submissions advanced and that the petitioner has filed the objections to the show cause notice pursuant to the interim order, we provide as an interim measure that the respondent No.2, Deputy Commissioner (State Tax) before which the matter is pending shall pass final orders in accordance with law with due opportunity of hearing to the petitioner and shall file copy of such order with counter affidavit.

11. If the order so passed is against the petitioner, no coercive steps will be taken pursuant thereto till next listing.

Sd/- K. SRINIVASA RAJU
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

For

To,

1. The Secretary, Ministry of Finance, Department of Revenue, Union of India, New Delhi - 110001.
2. The 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. The Principal Secretary Revenue(CT-II) Department, State of Andhra Pradesh, Secretariat, Velagapudi, Amaravati, District - Guntur, Andhra Pradesh.
4. The 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.Y.V.ANIL KUMAR (Central Government Counsel) [OPUC]
8. One CC to Sri.Suresh Kumar Routhu, Senior Standing Counsel (OPUC)
9. Two CCs to GP for Commercial Tax, High Court of A.P.(OUT)
10. One spare copy

SRL

HIGH COURT

RNT,J & KM,J

DATED:03/05/2024

NOTE: LIST ON 05.07.2024

ORDER

WP.No.4725 of 2023

DIRECTION