

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

MONDAY, THE THIRTY FIRST DAY OF OCTOBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

AND

THE HONOURABLE SRI JUSTICE PULLA KARTHIK

WRIT PETITION NO: 15239 OF 2007

Between:

M/S. KARTHIKA ENTERPRISES, Secunderabad rep by its Proprietrix Smt. G. Geetha

...PETITIONER

AND

The Deputy COMMERCIAL TAX OFFICER RP ROAD CIRCLE SEC'BAD,
R.P. Road Circle, Secunderabad

...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 Writ of Mandamus or any other appropriate Writ or order or direction declaring the action of the respondent in revising the order for the assessment year 2002-2003 on mere change of opinion without there being any material dehors the assessment records and also demanding the amount from the surety without being the revision order on the petitioner is arbitrary, contrary to law, weight of evidence and also in violation of principles of natural justice and contrary to the decisions of this Hon'ble Court and consequently set aside the revised order dt 04-01-2006 as null and void and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

LA. NO: 1 OF 2007(WPMP. NO: 19229 OF 2007)

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 grant stay of all further proceedings pursuant to the revised proceedings of the respondent dated 04-01-2006 for the assessment year 2002-2003 as otherwise the petitioner will be put to sever loss and hardship.

Counsel for the Petitioner : SRI. P GIRISH KUMAR

Counsel for the Respondents: DANTU SRINIVAS(SPL SC FOR CT)

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE T. VINOD KUMAR
AND
THE HON'BLE SRI JUSTICE PULLA KARTHIK

Writ Petition No. 15239 of 2007

ORDER: *(per the Hon'ble Sri Justice T. Vinod Kumar)*

1. In this Writ Petition, petitioner is challenging the correctness of the proceedings, dt.04.01.2006, termed as revised assessment proceedings for the period 2002-03 under the APGST Act, 1957.
2. Heard learned counsel for petitioner, Sri K.Raji Reddy, learned Special Standing Counsel for Commercial Taxes appearing for the respondent and perused the record.
3. Petitioner contends that based on the returns filed by it for the relevant assessment year, the respondent-authority had assessed the petitioner to tax vide his proceedings dt.07.07.2003 determining an excess tax of Rs.4,600/-; that on the assessment year coming to an end on 31.03.2003, petitioner has closed his business activity and had surrendered his registration certificate by submitting a letter, dt.01.04.2003, to the respondent, received by the said authority on 07.04.2003; that while the petitioner had closed its business activity, the

respondent had sought to revise the assessment made for the year 2002-03 under the Act purportedly in exercise of power under Section 14(4) of the Act proposing to raise an additional demand of tax in a sum of Rs. 1,29,312/- on the ground that the work orders received by the petitioner for supply, erection and commissioning of sound system in the cinema theatres, are to be classified as 'contract for sale' and not 'works contract'.

4. Sri P.Girish Kumar, learned Senior Counsel appearing on behalf of the learned counsel for petitioner contends that the respondent had sought to revise the assessment order on mere change of opinion as to the classification of the work orders, which were already on record and that there is neither any change or fresh material *de hors* the assessment record that has come into the possession of the respondents for initiating revision proceedings. He further contends that on mere change of opinion as to the classification of the work orders received by the petitioner, the respondent could not have invoked the reassessment power under Section 14(4)(C) of the Act.

5. Learned Senior Counsel further contends that this court consistently held that only when relevant material, which is not available on record, has come to the notice of the authority from other sources, it would be justifiable ground to exercise the

power under Section 14(4)(C) of the Act; that a reading of the impugned proceeding, on the otherhand, would indicate that there was no change of material or no further material that has come in possession of the respondents for issuing revised assessment proceedings by invoking the provisions under Section 14(4)(C) of the Act and it is only on the basis of the material/work orders which are already on record and only on account of change of opinion as to the classification of the said contracts, the impugned revised assessment order came to be passed and the same cannot be sustained.

6. In support of the above contention, learned counsel for the petitioner has placed reliance on the decision of this Court in **Girdharlal and Company v. State of Andhra Pradesh¹** and **The Principal Commissioner Of Income Tax-4, Mumbai v M/S S.G. Asia Holdings (India) Pvt. Ltd.²**

7. Per contra, Sri K.Raji Reddy, learned Special Standing Counsel for Commercial Taxes appearing for the respondents, would submit that since the 1st respondent at the time of passing assessment order, dt.07.07.2003, had wrongly considered the transaction as 'work contract' while the true

¹ (1995) 97 STC 442 (AP)

² 2018(6) SCC 685

nature of the work appears to be a 'contract for sale of goods' simplicitor, the authority was justified in revising the said order in exercise of power under Section 14(4)(C) of the Act by passing the revised assessment order.

8. We have taken note of the respective contentions urged by the counsel appearing for both the parties.

9. This Court had an occasion to consider similar issue in WP.No.22377 of 2006 wherein this Court having regard to the law laid down in **Girdharlal and Company**'s case(¹ supra), and the decision of this Court in **State of Andhra Pradesh v. Kedia Vanaspati (P) Limited**² and also taking note of the judgment in WP.No.753 of 2017, dt.14.08.2018 and a similar decision of this Court in **Jitender Roller Flour Mills, Hyderabad v. Assistant Commissioner (CT) LTU, Charminar Division, Hyderabad**⁴, held that in order to exercise power under Section 14 of the Act to revise an assessment order already passed, the authority should come into possession of fresh material, from that of the material available on record basing on which the original assessment order was passed.

¹ (1994) 95 STC 208

² (2012) 54 APSTJ 252

10. In **Jitender Roller Flour Mills**'s case(⁴ supra), this Court while referring to the decision in **Girdharlal and Company**'s case(¹ supra) has observed as under:

"This Court clarified that for exercise of power under Section 14(4) reliance should be made not on the material on record but on the material *de hors* the record which came to the notice of the assessing authority subsequent to the assessment. Very categorically this Court held that non-application of mind by the assessing authority to the material on record at the time of assessment is not justifiable ground to invoke power under Section 14(4) of the 1957 Act....."

11. In view of the above settled position of law and also having regard to the facts of the present case, since it is evident that there is no change or fresh material *de hors* the assessment record, the exercise of power under Section 14(4)(C) of the APGST Act, 1957, by the respondent authority in issuing the impugned revised assessment proceeding cannot be countenanced, for it to be upheld.

12. Accordingly, this Writ Petition is allowed and the impugned revised/re-assessment proceeding, dt.04.01.2006, is set aside. No order as to costs.

13. Consequently, miscellaneous petitions pending, if any, shall stand closed.

//TRUE COPY//

SDI-N.RAJGOPAL
ASSISTANT REGISTRAR
SECTION OFFICER

To,

1. The Deputy Commercial Tax Officer R.P. Road Circle Secunderabad, R.P. Road Circle, Secunderabad.
2. One CC to SRI. P GIRISH KUMAR Advocate [OPUC]
3. One CC to SRI. 9459/DANTU SRINIVAS(SPL SC FOR CT) Advocate [OPUC]
4. Two CCs to GP FOR COMMERCIAL TAX ,High Court for the State of Telangana. [OUT]
5. One CC to SRI K.RAJI REDDY Advocate (SPL SC FOR CT) [OPUC]
6. Two CD Copies

BS

HIGH COURT

DATED: 31/10/2022

ORDER

WP.No.15239 of 2007



ALLOWING THE WP
WITHOUT COSTS

⑨^{PM}
26/12