

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

WEDNESDAY ,THE THIRTIETH DAY OF MARCH
TWO THOUSAND AND TWENTY TWO

PRESENT

**THE HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
THE HONOURABLE MRS JUSTICE SUREPALLI NANDA**

WRIT PETITION NO: 16285 OF 2022

Between:

M/s.Access Tough Doors (P) Ltd., B/8/9/1, 1st Floor, IDA, Gandhinagar,
Hyderabad. Rep. by its Director Mr.Mohammed Rafe

...PETITIONER

AND

1. The Additional Commissioner (ST), Office of the Commissioner of State Tax, Telangana State, Hyderabad.
2. The Appellate Joint Commissioner (ST), Hyderabad Rural Division, Hyderabad.
3. The Assistant Commissioner (ST), IDA, Gandhinagar Circle, Hyderabad.
4. The State of Telangana, Rep. by its Principal Secretary, Revenue (CT) Department, Telangana Secretariat, Hyderabad.

...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 1st respondent in passing the Stay Rejection Proceedings, dated 25/03/2022 for the tax period 2016-17 to 2017-18 (upto June, 2017) under the Telangana VAT Act, 2005, as arbitrary, contrary to law and in violation of Principles of Natural Justice and consequently set aside the Stay Rejection Proceedings of the 1st respondent, dated 25/03/2022 as null and void.

IA NO: 1 OF 2022

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 stay of all further proceedings, pursuant to the Audit Assessment Proceedings passed by the 3rd respondent, dated 26/03/2021, including Stay Rejection Proceedings of the 1st respondent, dated 25/03/2022 for the tax period 2016-17 to 2017-18 (upto June, 2017) under the Telangana VAT Act, 2005, pending disposal of the above Writ Petition, as otherwise, the Petitioner would be put to severe loss and hardship.

Counsel for the Petitioner : SRI. SHAIK JEELANI BASHA

Counsel for the Respondents : GP FOR COMMERCIAL TAX

The Court made the following : ORDER

THE HONOURABLESRI JUSTICE UJJAL BHUYAN
AND
THE HONOURABLEMRS JUSTICE SUREPALLI NANDA
WRIT PETITION No.16285 of 2022

ORDER: *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Mr. Shaik Jeelani Basha, learned counsel for the petitioner and Mr. K.Raji Reddy, learned Senior Standing Counsel for Commercial Tax for the respondents.

2. Petitioner is aggrieved by order dated 25.03.2022 passed by the 1st respondent rejecting the prayer for stay of the petitioner during pendency of appeal before the 2nd respondent.

3. Petitioner was a registered dealer under the Telangana Value Added Tax Act, 2005 (briefly referred to hereinafter as the 'TVAT Act'). For the assessment period 2016-17 to 2017-18, 3rd respondent passed assessment order dated 26.03.2021 levying a higher rate of tax on the goods supplied by the petitioner. Instead of 5%, it was held that the goods were liable to be taxed at the rate of 14.5%.

4. Aggrieved by the assessment order dated 26.03.2021, petitioner preferred appeal along with a stay petition before the 2nd respondent. For admission of the appeal, petitioner deposited the pre-requisite of 12½%. The appeal is stated to be pending. However, 2nd respondent rejected the stay petition filed by the petitioner *vide* order dated 19.02.2022.

5. Against such rejection order, petitioner preferred revision before the 1st respondent, who by order dated 25.03.2022 rejected the stay prayer of the petitioner. Aggrieved, present writ petition has been filed.

6. We have carefully perused the order dated 25.03.2022 whereby prayer for stay has been rejected by the revisional authority.

7. Section 31(1) of the TVAT Act deals with appeal to appellate authority. Sub-Section (1) enables filing of such appeal by an aggrieved dealer. As per second proviso thereto, such an appeal shall not be admitted by the

appellate authority unless the dealer produces proof of payment of tax, penalty, interest or any other amount admitted to be due to the extent of 12½% of the disputed tax, penalty, interest or any other amount for the relevant tax period in respect of which appeal has been preferred.

8. As per Clause (a) of Sub-Section (3), the appellate authority may, on an application filed by the appellant and subject to furnishing of such security, or on payment of such part of the disputed tax within such time as may be specified, order stay of collection of balance tax amount under dispute, pending disposal of the appeal. Clause (b) thereof provides for filing of revision petition to the revisional authority against an order passed by the appellate authority, refusing to order stay.

9. From a conjoint reading of the aforesaid provisions, what is discernible is that for the purpose of admission of appeal before the appellate authority, the appellant is required to deposit 12½% of the disputed tax etc., and file proof thereof before the appellate authority.

Thus, payment of 12½% of the disputed tax is a condition precedent for admission of appeal.

10. However, for the purpose of stay, the appellate authority may require furnishing of such security or payment of such part of disputed tax as may be specified, which would be in addition to payment of 12½% of the disputed tax for the purpose of admission of the appeal.

11. After hearing learned counsel for the parties and considering the materials on record, we are of the view that both the appellate authority as well as the revisional authority were not justified in out-rightly rejecting the prayer for stay of the petitioner. Power to entertain prayer for stay is incidental and ancillary to the power to hear appeal and revision. It is a discretionary power, which is required to be exercised in a fair and judicious manner balancing the interest of both the sides. Since petitioner has already deposited 12½% of the disputed tax for the purpose of admission of the appeal, we are of the view that if the petitioner deposits a further amount of 12½% of the

disputed tax, respondents shall not take coercive steps for recovery of the entire outstanding dues in terms of the order of assessment.

12. That being the position and upon thorough consideration of the matter, we direct that if the petitioner deposits further 12½% of the disputed tax within a period of 30 days from today, the demand in terms of the assessment order dated 26.03.2021 shall remain stayed till disposal of the appeal pending before respondent No.2.

13. This disposes of the Writ Petition. However, there shall be no order as to costs.

14. As a sequel, miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

SD/-P.PADMANABHA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Additional Commissioner (ST), Office of the Commissioner of State Tax, Telangana State, Hyderabad.
2. The Appellate Joint Commissioner (ST), Hyderabad Rural Division, Hyderabad.
3. The Assistant Commissioner (ST), IDA, Gandhinagar Circle, Hyderabad.
4. The Principal Secretary, Revenue (CT) Department, Telangana Secretariat, State of Telangana, Hyderabad.
5. One CC to SRI. SHAIK JEELANI BASHA Advocate [OPUC]
6. Two CCs to GP FOR COMMERCIAL TAX ,High Court for the State of Telangana at Hyderabad. [OUT]
7. Two CD Copies
8. One Spare Copy

SB
MMA

HIGH COURT

DATED:30/03/2022

ORDER

WP.No.16285 of 2022



**DISPOSING OF THE WRIT PETITION
WITHOUT COSTS.**

(10) VLV
21/4/22