

**IN THE HIGH COURT FOR THE STATE OF TELANGANA,
HYDERABAD**

*** * ***

WRIT PETITION No.7361 of 2021

Between:

Refex Energy Limited.

Petitioner

VERSUS

Assistant Commissioner (ST) and Ors.

Respondents

ORDER PRONOUNCED ON: 21.09.2023

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes

P.SAM KOSHY, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**
AND
THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY
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Refex Energy Limited.

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Assistant Commissioner (ST) and Ors.

Respondents

! Counsel for Petitioner(s)	: Mr. V.Murali Manohar
^Counsel for the respondent(s)	: Mr. Rajashekar Rao Salvaji Special Standing Counsel for Commercial Tax Department.

<GIST:

> HEAD NOTE:

? Cases referred

1. [2010] 9 SCC 496
2. W.P.(s).No.3144 of 2011

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY
WRIT PETITION No. 7361 of 2021

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

Heard Mr.V.Murali Manohar, learned counsel for the petitioner and learned Government Pleader for Commercial Tax. Perused the material on record.

2. The instant writ petition has been filed assailing the order dated 19.02.2021 passed by the 1st respondent under the Telangana Value Added Tax, 2005 (for short the Act). The tax period in the instant case is 2013-14 and 2014-15 under the Act.

3. The primary challenge to the show cause notice is on the ground of the same being an un-reason and non-speaking show cause notice.

4. Learned counsel for the petitioner submits that according to the petitioner on a notice of reassessment under the Act for the period of 2013-14 and 2014-15, the petitioner had entered appearance and had submitted a detailed reply taking various contentions and grounds in respect of the proceedings drawn. The initial reply was filed on 10.12.2019 and the subsequent was filed on 21.01.2021 respectively. In spite of various contentions and objections that were raised by the

petitioner in their reply, the authorities concerned have not dealt with any of those contentions whatsoever. It is the further contention of the petitioner that the 1st respondent vaguely passed the impugned order by one line observation that “the undersigned construed that there is no valuable reasons to drop the show cause notice”.

5. Though the learned counsel for the respondents has filed their counter affidavit and try to justify the action on the part of the 1st respondent. Nevertheless, there is no dispute to the fact that the impugned order does not reflect the consideration of the reply that the petitioner had submitted to the show cause notice that was initially issued.

6. For ready reference, the operative part of the order under challenge is reproduced herein under:

Accordingly issued and served a show cause notice in VAT FORM 305 A, Dt.02.12.2020 with a request to file their written objections if any on the proposed turnovers and taxes in the notice. Having received the show cause notice, the dealer filed a letter for time (7) days. After expiry of time the undersigned issued Personal Hearing Notice on 11.12.2020 to attended on 21.12.2020. The dealer attended Personal Hearing on 23.01.2021. The undersigned construed that there is no

valuable reasons to drop the show cause notice. Hence, passed the orders on the proposed turnovers and taxes in the show cause notice.

7. The impugned order runs into 14 pages, from page Nos.1-14 except for the operative part is only reproduction of the contents of the show cause notice that has been issued.

8. A bare perusal of the reply that the petitioners have submitted would go to show that they had submitted their detailed reply to the show cause notices raising various contentions and objections in respect of the proceedings initiated and the issuance of the show cause notice, but the impugned order is totally silent on these aspects nor is there any reference of those contentions and objections which have been raised by the petitioner in their reply to the show cause notice.

9. So far as the issue of an order to be a reasoned order, so also an order to be a speaking order is by now a well settled position of law, where reasons are considered to be the essence of order. The authorities concerned are not expected to act in a mechanical manner.

10. In the case of **Kranti Associates (P) Limited vs. Masood Ahmed Khan**¹ the Hon'ble Supreme Court held as under:

¹ (2010) 9 SCC 496

Summarizing the above discussion, this Court holds:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial authority must record reasons in support of its conclusions.
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- g. Reasons facilitate the process of judicial review by superior Courts.
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to [Article 6](#) of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

11. In W.P.(s).No.3144 of 2011, the High Court of Chhattisgarh, Bilaspur, held as under:

In the case of East Coast Railway and Another Vs. Mahadev Appa Rao and Others with K. Surekha Vs. Mahadeo Appa Rao and Others (reported in 2010 (7) SCC 678), the Supreme Court in a very categorical terms has held that Arbitrariness in making of an order by an authority can manifest itself in different forms. Every order passed by a public authority must disclose due and proper application

of mind by the person making the order. Application of mind is best demonstrated by disclosure of mind by the authority making the order and disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable. In the absence of reasons in support of the order it is difficult to assume that the authority had properly applied its mind before passing of the order.

9. Likewise, again in case of Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and Brothers (reported in 2010 (4) SCC 785), the Supreme Court has held that “recording of reasons is an essential feature of dispensation of justice. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighted with the authority in rejecting him claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to that order.”

12. Given the aforesaid legal pronouncement on the said issue, it becomes necessary to look into the impugned order. The relevant portions of which is being reproduced herein under:-

Accordingly issued and served a show cause notice in VAT FORM 305 A, Dt.02.12.2020 with a request to file their written objections if any on the proposed turnovers and taxes in the notice. Having received the show cause notice, the dealer filed a letter for time (7) days. After expiry of time the undersigned issued Personal Hearing Notice on 11.12.2020 to attended on 21.12.2020. The dealer attended Personal Hearing on 23.01.2021. **The undersigned construed that there is no valuable reasons to drop the**

show cause notice. Hence, passed the orders on the proposed turnovers and taxes in the show cause notice.

We do not have any hesitation in reaching the conclusion that the impugned order is an un-reason and non-speaking order. The same being without there being any discussion of any of the contentions and objections raised in replies to the show cause notice issued. The impugned order, therefore, to the aforesaid extent only on the technical ground of the same being an un-reason and non-speaking order deserves to be and is accordingly set aside/quashed. The matter stands remanded back to the 1st respondent for passing of fresh speaking order on due consideration of the contentions and objections that the petitioner had raised in the reply to the show cause notice.

13. Accordingly, this Writ Petition is allowed. No order as to costs.

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

P.SAM KOSHY, J

LAXMI NARAYANA ALISHETTY, J

21st September, 2023
Aqs/hfm

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE A. LAXMI NARAYANA

WRIT PETITION No. 7361 of 2021

(per the Hon'ble Sri Justice P.SAM KOSHY)

21st September, 2023
Aqs/hfm