APHC010183692010

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3529]**
(Special Original Jurisdiction)

WEDNESDAY,THE TWENTY NINETH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

<u>WRIT PETITION NO: 12203/2010</u>

Between:

1. M/S. NATIONAL BUILDINGS CONSTRUCTION CORPORATION LIMITED,, NBCC PLACE, PRAGATI VIHAR, BHISHMA PITAMAH MARG, NEW DELHI 110 003, REP.BY ITS DEPUTY GENERAL MANAGER, K. SUBRAMANI

...PETITIONER

AND

1. THE COMMERICAL TAX OFFICERII FAC, PRODDATUR, KADAPA DISTRICT.
2. THE A P POWER GENERATION CORPORATION LIMITED, RAYALASEEMA THERMAL POWER PLANT, V.V. REDDY NAGAR, MUDDANUR, KADAPA DISTRICT, REP. BY ITS ACCOUNTS OFFICER.

...RESPONDENT(S):

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 toto issue writ of certiorari or any other appropriate writ or order or direction - (a) quashing the order of the respondent dated 8.4.2010 as illegal, arbitrary and in violation of principles of natural justice and perverse and consequently set aside the same; (b) quash the garnishee notice dated

26.04.2010 issued by the 1st respondent to 2nd respondent for recovery of disputed demand of Rs.13,52,330/- pursuant to his order dated 26.04.2010; and (c) direct the respondent to complete the assessment in accordance with section 4(7)(c) of APVAT Act 2005

IA NO: 1 OF 2010(WPMP 15390 OF 2010

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 collection of disputed tax of Rs.13,52,330/- determined as due for the period 2007-08 by order of the respondent dated 8.4.2010, pending disposal of the writ petition as otherwise the petitioner will be put to severe loss and hardship.

IA NO: 2 OF 2010(WPMP 15391 OF 2010

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 suspending the operation of garnishee notice dated 26.04.2010 issued by the 1st respondent to 2nd respondent, pending disposal of the writ petition as otherwise the petitioner will be put to severe loss and hardship.

IA NO: 1 OF 2017(WPMP 193380 OF 2017

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

Counsel for the Petitioner:

1. S DWARAKANATH

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX (AP)
2. C RAGHU(SC FOR AP GENCO)
3. K.KRISHNABUSHAN CHOWDARY SC For APGENCO
4. SURIBABU S(SPL SC FOR CT AP)

The Court made the following order:

(Per Hon'ble Sri Justice R. Raghunandan Rao)

The petitioner, which is a Public Sector Corporation was undertaking execution of various contract works, including infrastructure projects. As part of its business, the petitioner had undertaken two contracts with Andhra Pradesh Power Generation Corporation Limited, Hyderabad for construction of cooling towers and chimney, by way of a contract executed on 18.06.2004.

2. The petitioner commenced execution of these two contracts in the year 2004-2005 and the said contracts were continued from 2005-06 to 2007-08. The petitioner, after introduction of the Andhra Pradesh Value Added Tax Act, 2005 (for short, 'the APVAT Act'), with effect from 01.04.2005, had filed an application for composition of the tax, under Section 4(7)(c) of the APVAT Act. Pursuant to this application, the petitioner paid tax at 4% on the consideration received by the petitioner during the relevant period. The assessment of the petitioner upto August, 2007 was completed on 12.10.2007 by the Commercial Tax Officer-I, Kadapa. In its assessment order, the assessment authority accepted composition form, filed by the petitioner, on 01.04.2005 and completed assessment proceedings for requiring the petitioner to pay tax at 4% on the consideration received.

3. However, the 1st respondent, to whom the file of the petitioner was transferred, refused to accept the contention of the petitioner that it was

entitled for composition under Section 4(7)(c) of the APVAT Act and passed an order of assessment, dated 08.04.2010 levying tax at 12.5% on the taxable turnover by holding that 70% of the turnover would be treated as taxable and 30% of the turnover would be exempt, by treating the same as service.

4. Aggrieved by the said order of assessment, the petitioner has approached this Court, by way of the present writ petition.

5. The 1st respondent, rejected the contention of the petitioner that it was entitled to composition on two grounds. Firstly, on the ground that no such composition application was available in the records and consequently on the ground that the petitioner would be entitled for the benefit of composition only, if the application of the petitioner had been filed before the contract commenced. The 1st respondent taking the view that the contract had been commenced during 2004-05 whereas the application for the composition was filed only on 01.04.2005.

6. In the normal course, this Court would not be inclined to adjudicate upon disputed questions of facts. However, the contention of the 1st respondent, that no application for composition had been given by the petitioner does not appear to be correct, on the face of the record. The petitioner has produced copy of the application said to have been filed by the petitioner on 01.04.2005. This application bears stamp of the Commercial Tax Officer, Kadapa. Apart from this, the Commercial Tax Officer-I, Kadapa in the

assessment order, dated 12.10.2007 had held that an application for composition had been made by petitioner and passed an order of assessment on that basis. In view of the aforesaid finding, the 1st respondent could not have held that no application was made by the petitioner, on the ground that the said application was not available in the records.

7. The finding of the 1st respondent, that the petitioner was not entitled to the benefit of composition as the petitioner had not filed the application prior to the commencement of contract, in the normal course, would be unexceptionable.

8. However, in the present case, there is a special factor recommends to be taken into account. The provision stipulates that any application for composition should be filed before the commencement of the contract. However, these provisions came into effect on 01.04.2005, by which time the petitioner had already commenced execution of the contract. In such circumstances, filing of application by the petitioner on 01.04.2005 would be sufficient to grant benefit to the petitioner under the composition scheme.

9. For these reasons, in view of the finding of the 1st respondent, in the impugned order, dated 08.04.2010, that the petitioner was not entitled to composition is incorrect and requires to be set aside.

10. Accordingly, this Writ Petition is allowed setting aside the impugned order, dated 08.04.2010 and the matter is remanded back to the authority for

passing necessary consequential orders in line with the observations of this Court in the present order. No costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

R. RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

Date: 29.04.2026
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THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 12203 of 2010

Date: 29.04.2026
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