



2025:TSHC:48499-DB

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

**WEDNESDAY, THE THIRD DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE**

PRESENT

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE SUDDALA CHALAPATHI RAO**

TAX REVISION CASE Nos : 123 and 150 OF 2009

T.R.C. No. 123 of 2009

Tax Revision Under Section 22 (1) of the Andhra Pradesh General Sales Tax Act, 1957 against the order dated 30-01-2009 in T.A.No. 470 of 2003 on the file of the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad, against the order dated 25-11-1998 in Appeal Nos. 1. A/57/98-99 2) A/58/98-99 on the file of the Appellate Deputy Commissioner (CT) Secunderabad Division, Hyderabad. preferred against the order dated 12-11-1996 in CCT's Ref. Enf. CTO (Int) -VII 18/96-97G.I.No.11098/96-97/APGST on the file of the Commercial Tax Officer, (Intellegence) No. VII Enforcement Wing, Hyderabad.

Between:

The State of Andhra Pradesh, Rep. by the State Representative before STAT D.No. 5-4-404 to 408 Nampally, Andhra Pradesh, Hyderabad

...PETITIONER

AND

M/s. Ampower Equipment, 11-4-649/2, A.C.Guards, Hyderabad.

...RESPONDENT

Counsel for the Petitioner: SRI. DANTU SRINIVAS(SPL SC FOR CT)

Counsel for the Respondent: SRI KARTHIK RAMANA PUTTAMREDDY



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T.R.C. No. 150 of 2009

Tax Revision Under Section 22 (1) Read with Rule 10 of the APGST Rules U/s. APGST Act against the order dated 30-01-2009 in T.A.No. 469 of 2003 on the file of the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad, against the order dated 25-11-1998 in Appeal Nos. 1. A/57/98-99 2) A/58/98-99 on the file of the Appellate Deputy Commissioner (CT) Secunderabad Division, Hyderabad. preferred against the order dated 12-11-1996 in CCT's Ref. Enf. CTO (Int) –VII 18/96-97G.I.No.11098/96-97/APGST on the file of the Commercial Tax Officer, (Intellegence) No. VII Enforcement Wing, Hyderabad.

Between:

The State of Andhra Pradesh, Rep. by the State Representative before STAT D.No. 5-4-404 to 408 Nampally, Andhra Pradesh, Hyderabad

...PETITIONER

AND

M/s. Ampower Equipment, 11-4-649/2, A.C.Guards, Hyderabad.

...RESPONDENT

Counsel for the Petitioner: SRI. DANTU SRINIVAS(SPL SC FOR CT)

Counsel for the Respondent: SRI KARTHIK RAMANA PUTTAMREDDY

The Court made the following Common Order :



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IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD

HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

TAX REVISION CASE NOS.123 AND 150 OF 2009

DATE: 03.12.2025

Tax Revision Case No.123 of 2009:

Between:

The State of Andhra Pradesh,
Rep.by the State Representative before STAT,
Nampally, Andhra Pradesh, Hyderabad

.... Petitioner

And
M/s.Ampower Equipment,
11-4-649/2, A.C.Guards, Hyderabad.

.... Respondent

COMMON ORDER: *(per Hon'ble Sri Justice Suddala Chalapathi Rao)*

Tax Revision Case No.123 of 2009 is filed by the petitioner/
Revenue to revise the order of the Sales Tax Appellate Tribunal,
Andhra Pradesh, Hyderabad (for short, 'STAT') in Tribunal Appeal
No.470 of 2003, dated 30.01.2009 for the assessment year 1996-97.

2. Tax Revision Case No.150 of 2009 is filed by the petitioner/
revenue to revise the order of the STAT in Tribunal Appeal No.469 of
2003 dated 30.01.2009 for the assessment year 1995-96.

3. Since both the Tax Revision Cases arise out of common questions of law and the parties are one and the same except for different assessment years, the same are heard together and are being disposed of by this common order.

4. The brief facts are that the respondent/assessee is in the business of the sale of generator sets and also sale of spare parts of the generator sets, apart from its installation. The respondent/assessee is a registered dealer under APGST Act and on the rolls of Commercial Tax Officer, Agapura Circle, Hyderabad, and in the instant cases, the Commercial Tax Officer (Int) Enforcement Wing, alleged to have inspected the business premises of the respondent/assessee on 18.09.2006 and observed that assessee paid concessional rate of tax on sales of generator sets, chemical storage tanks etc., @ 3% and found that respondent/assessee has erroneously claimed exemption under G.O.Ms.No.1272, dated 31.12.1994 and G.O.Ms.No.252 dated 19.05.1995. Further, as the generator sets fall under entry 38 and installation under 10 of First Schedule is exigible to 16% tax on the turnover, the Assessing Authority has re-assessed provisional assessments for the years 1995-96 and 1996-97 on the respective turnovers and levied tax @ 16% w.e.f. 01.04.1995 on



generator sets and treated installation of generators treated as works contract and imposed of levy of tax @ 16%.

5. Assailing the orders passed by the Assessing Authority, dated 12.11.1996, the respondent/assessee has filed appeals before the Appellate Deputy Commissioner (CT), Secunderabad Division, Hyderabad, and the Appellate Deputy Commissioner after proper enquiry, has allowed the said Appeals filed by the respondent/assessee *vide* Appeal Nos.A/57/98-99 and A/58/98-99 dated 25.11.1998 by setting aside the orders of the Assessing Authority. Further, the said orders of the Appellate Deputy Commissioner were revised by the Additional Commissioner (CT) (Legal), Office of the Commissioner of Taxes, Andhra Pradesh, Hyderabad, in CCT's Ref.L.III(1)/504/99-2, dated 16.11.2002 by restoring the orders of the re-assessment passed by the Commercial Tax Officer, Aagapur, by imposing tax @ 16% on the generators and also 16% on the installation works of generator carried on by the respondent/assessee.

6. Further, the orders of the Additional Commissioner (CT) (Legal), Office of the Commissioner of Commercial Tax Department,

Hyderabad were challenged before the STAT *vide* T.A.Nos.470 of 2003 and 469 of 2003.

7. The learned STAT after appreciation of the evidence on record and in pursuance of various Government Orders issued by the Government from time to time has set aside the orders passed by the Additional Commissioner (CT), Office of the Commissioner of Commercial Taxes, Hyderabad and has consequently quashed the orders of the original Assessing Authority by affirming the orders of the Appellate Deputy Commissioner dated 25.11.1998.

8. Now by the instant Tax Revision Cases, the petitioner/revenue has challenged the orders passed by the learned STAT in T.A.Nos.469 of 2003 and 470 of 2003, dated 30.01.2009 and the said Revisions were admitted for the following substantial questions of law:

- 1) Whether the G.O.Ms.No.252, dated 19.05.1995 is applicable to the generators sets or not ?
- 2) Whether the supply of generator sets falls under the sale contract or works contract ?

9. We have heard learned Assistant Government Pleader Mr. Chaitanya Kiran for petitioner/revenue and Mr. Karthik Ramana



Puttam Reddy for respondent/assessee and having given earnest consideration to their submissions, perused the material on record.

10. The basic contention of the petitioner/revenue is that the specific entry for generator set is at entry 38 of the First Schedule and that the rate of tax for the entry-38 of First Schedule is 16% and for installation of generators shall be also @ 16% that being of works contract. It is contended that the learned STAT has not properly appreciated the facts in the light of specific entry under 38 and took the general entry at 83 under First Schedule placing reliance on the Government Orders granting exemption to the assessee. Further, it is contended that specific entry will always prevail over the general entry and that G.O.Ms.No.252, dated 19.05.1995 is not applicable in the case of present case, more so, when there is a specific entry in the First Schedule bringing the generators into ambit of entry 38, they are exigible to tax @ 16% on the turnover for the respective assessment years and as such, the orders in granting exemptions to the respondent/assessee in pursuance of the G.O.Ms.No.252 dated 19.05.1995, which is an extension issued to G.O.Ms.No.1272 Revenue (CT.II) Department dated 31.12.1994, is erroneous. It is also contended by the learned Assistant Government Pleader for petitioner/assessee, that the STAT grossly erred in setting aside the

well considered view of the Additional Commissioner (CT) (Legal) Office of the Commissioner of Commercial Tax under misconception of law granted exemption without proper appreciation of the facts and law.

11. For better understanding and adjudication, the said G.Os., relied upon in the instant cases, have been extracted as under:

"G.O.Ms.No.1272, Revenue (CT-II) Department, dated 31.12.1994:

NOTIFICATION

" In exercise of the powers conferred by sub-section (1) of Section 9 of the APGST Act, 1957 (AP Act VI of 1957), the Governor of Andhra Pradesh hereby directs that the tax leviable under the said Act shall in respect of all kinds of machinery propelled or operated by any kind of power or fuel, but excluding component parts, spare parts and accessories of such machinery used in the manufacture of goods in the State for sale, which are liable to tax in the State, be reduced to three paise in the rupee, subject to the following conditions namely:-

(1) The person claiming this concessional rate shall file a certificate from the buyer, in the prescribed proforma, duly attested by the assessing authority in whose jurisdiction the dealer purchasing such machinery is registered under the Act;

(2) The selling dealer shall also obtain a copy of the Registration Certificate from the buying dealer.

This notification shall come into force from the 1st January, 1995.



NOTIFICATION-XXXV

In exercise of the powers conferred by sub-section (1) of Section 9 of the APGST Act, 1957 (Act VI of 1957), the Governor of Andhra Pradesh hereby directs that where a tax has been paid on the purchase of gold inside the State, the tax leviable under the Act, on the sales of Jewellery manufactured out of such tax paid gold and sold in the State, shall be reduced by the amount of tax so paid on such gold.

It shall be deemed to have come into force with effect from 01.04.1995.

NOTIFICATION-XXXVI of G.O.Ms.No.252, dated. 19.05.1995

In exercise of the powers conferred by sub-section (1) of section 9 of the APGST Act, 1957 (AP Act VI of 1957) AND IN SUPERSESION OF THE Notification issued in G.O.Ms.No.1272, Revenue, dated 31.12.1994, the Governor of Andhra Pradesh hereby directs that the tax leviable under the said Act shall in respects of all kinds of machinery propelled or operated by any kind of power or fuel, but excluding component parts, spare parts and accessories of such machinery used in the manufacture of goods the State for sale, which are liable to tax in the State, be at the reduced rate of three paise in the rupee, subject to the following conditions namely:-

- 1) The person claiming this concessional rate shall file a certificate from the buyer, in the prescribed proforma, duly attested by the assessing authority in whose jurisdiction the dealer purchasing such machinery is registered under the Act;
- 2) The selling dealer shall also obtain a copy of the Registration Certificate from the buying dealer.

12. *Per contra*, learned counsel appearing for the respondent/ assessee would submit that reasoning of the Additional Commissioner (CT) with regard to the specific entry for generator at item-38 of First Schedule is under misconception and principles relied upon by the petitioner/revenue that specific entry overrides the general entry has no bearing on the case of the respondent/ assessee. It is contended that the assessment years in the instant cases are 1995-96 and 1996-97 and that the in the specific entry of item-38 of First Schedule, the generators were removed from item No.38 w.e.f. 01.04.1995 and that view of the matter, the Notification- XXXVI of G.O.Ms.No.252 would provide concessional rates of tax @ 3% on the turnover. The same was appreciated properly by the Appellate Deputy Commissioner and as the generator is a machine that is propelled by electricity, is eligible for concessional rates of tax in pursuance of the G.O., referred supra, and also contended that the STAT after appreciating the evidence in proper perspective has allowed the Appeals and the interference of this Court is unwarranted.



13. The main contention of the petitioner/revenue is that the generator is not a machine and is included at specific entry-38 of First Schedule and that when there is a specific entry, the same will prevail over a general entry or Government Order. As the generators are specified under entry 38 of the First Schedule, they would be exigible to tax at 16%.

14. Insofar to arrive at a conclusion, we have verified the entry 38 of First Schedule items and found that the generator has been removed from the said entry w.e.f. 01.04.1995 and as the instant cases, the assessment years are of 1995-96 and 1996-97, the entry 38 of First Schedule has no application, as the generators are removed from the said entry w.e.f. 01.04.1995. More particularly, G.O.Ms.No.1272 dated 31.12.1994 had been issued under which the generators were given concessional rates and made exigible to tax at 3% only, as all kinds of machinery propelled or operated by any kind of power or fuel were exigible to tax at 3% and it is only subsequently that G.O.Ms.No.252 dated 19.05.1995 was issued in continuation of G.O.Ms.No.1272 dated 31.12.1994. As such, the contention of the learned counsel for petitioner/revenue that the generators are under entry 38 of First Schedule is not tenable,



deserves no merit in view of fact that the generators are removed from entry 38 of First Schedule only w.e.f. 01.04.1995.

15. In considered opinion of this Court, the Tribunal is justified in allowing the Appeals by setting aside the orders passed by the Additional Commissioner (CT) (Legal), Office of the Commissioner of Commercial Taxes, Hyderabad dated 16.11.2002 and the interference of this Court in the well considered orders of the learned STAT are unwarranted and the Tax Revision Cases filed by the petitioner/revenue are liable to be dismissed.

16. Therefore, in view of the above, the Tax Revision Cases are hereby dismissed by confirming the orders passed by the STAT in T.A.Nos.469 of 2003 and 470 of 2003 dated 30.01.2009.

17. There shall be no order as to costs. Pending miscellaneous applications if any shall stand closed.

Sd/- MOHD. ISMAIL
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Sales Tax Appellate Tribunal, Hyderabad.
2. The Appellate Deputy Commissioner (CT), Secunderabad Division, Hyderabad.
3. The Commercial Tax Officer, (Intelligence) No. VII Enforcement wing, Hyderabad.
4. One CC to Sri Dantu Srinivas Special SC for Commercial Tax (OPUC)
5. One CC to Sri P. Karthik Ramana, Advocate(OPUC)
6. Two CD Copies.



2025:TSHC:48499-DB

HIGH COURT

DATED:03/12/2025

COMMON ORDER

TREVC.Nos.123 and 150 of 2009



DISMISSING THE TAX REVISION CASES

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1/12/25
17/12/25