



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

MONDAY, THE FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND**

THE HONOURABLE SRI JUSTICE SUDDALA CHALAPATHI RAO

WRIT PETITION NOS: 13863 AND 13864 OF 2008

W.P.No.13863 of 2008

Between:

SRINIVASA RESORTS LTD., BEGUMPET, HYDERABAD, the Companies Act, 1956, having its Registered office at 6-3-1187, Begumpet, Hyderabad-500016 rep.by its Financial Controller and Company Secretary Mr.S.Sankar.

.....PETITIONER

AND

1. THE STATE OF AP., COMMERCIAL TAX DEPT., Commercial Taxes Department, Andhra Pradesh Secretariat Hyderabad.
2. The Commercial Tax Officer, Abids Circle, Abids Division, 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 a writ more particularly a writ of or in the nature of mandamus or any other appropriate writ order or direction declaring that- i.the impugned order in Form VAT 305 dated 26.5.2008 assessing Values Added Tax issued by the Respondent No.2 herein viz., the Commercial Tax officer, Abids Circle, Abids Division, Hyderabad is arbitrary, illegal, without jurisdiction non est in law and void ab initio and set aside the same ii. the provisions of section 64(4)(ii) of the AP Value Added Tax Act 2005 as arbitrary, and violative of Articles, 14,.19(1)(g) and 265 of the Constitution of India and thus unconstitutional iii Value Added Tax



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under the AP Valued Added Tax Act 2005 shall not be levied on the service tax amount in the bills issued by the petitioner to its customers.

I.A.NO:1 OF 2008 (WPMP.NO:17897 OF 2008)

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 suspend the operation of the impugned order in Form VAT 305 dated 26.5.2008 assessing Value Added Tax issued by the Respondent No.2 herein viz the Commercial Tax officer, Abids Circle , Abids, Division, Hyderabad pending disposal of the writ petition.

Counsel for the Petitioner : SRI G.V.S.GANESH

Counsel for the Respondents : SRI SWAROOP OORILLA, SPL. GP FOR COMMERCIAL TAX

W.P.NO:13864 OF 2008

Between:

SRINIVASA RESTORTS LTD., HYD., Companies Act, 1956 having its Registered Office at 6-3-1187, Begumpet, Hyderabad- 500 016, rep. by its Financial Controller and Company Secretary, Mr. S.Sankar.

.....PETITIONER

AND

1. THE STATE OF A.P., COMMERCIAL TAX DEPT., HYD. AND ANO., Taxes Department, A.P.Secretariat, Hyderabad.
2. The Commercial Tax Officer, Abids Circle, Abids Division, 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 a writ, more particularly a writ of or in the nature of Mandamus, or any other appropriate writ, order or direction, declaring that- (i) the impugned order in Form VAT 305 dated 26-5-2008 assessing penalty and interest issued by the respondent No.2 herein viz., the Commercial Tax Officer, Abids Circle, Abids Division, Hyderabad, is arbitrary, illegal, without jurisdiction, non est in law and void ab initio and set aside the same (ii) the provisions of Section 64(4)(ii) of the



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AP Value Added Tax Act, 2005 as arbitrary and violative of Article 14, 19(1)(g) and 265 of the Constitution of India and thus unconstitutional (iii) Value Added Tax under the AP Value Added Tax Act, 2005 shall not be levied on the service tax amount in the bills issued by the petitioner to its customers and pass

I.A. NO: 1 OF 2008(WPMP. NO: 17898 OF 2008)

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 suspend the operation of the impugned order in Form VAT 305 dated 26-5-2008 assessing penalty and interest issued by the respondent No.2 herein viz., the Commercial Tax Officer, Abids Circle, Abids Division, Hyderabad, pending disposal of the writ petition.

Counsel for the Petitioner : SRI G.V.S.GANESH

**Counsel for the Respondents : SRI SWAROOP OORILLA, SPL. GP FOR
COMMERCIAL TAX**

The Court made the following COMMON ORDER



IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

WP.Nos.13863 and 13864 of 2008

Dt.01.12.2025

Between:

Srinivasa Resorts Limited

.... Petitioner

And

The State of Andhra Pradesh
and another.

...Respondents

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

Since the petitioner and the *lis* involved in both the writ petitions is one and the same, they are being taken up for hearing together and disposed by this Common Order.

W.P.No.13863 of 2008

2. The Writ Petition *vide* WP.No.13863 of 2008 has been filed challenging the impugned order in Form VAT 305, dt.26.05.2008 issued by the 2nd respondent, whereby VAT was levied under the AP Value Added Tax Act, 2005 (for short 'VAT Act') on the Service Tax collected by the petitioner from its customers by including the same as sale price under Section 2(29) of VAT Act, and also the



validity of Section 64(4)(ii) of the VAT Act of the Advance Ruling *vide* reference No.AR.Com/144/2006, dt.13.11.2006, as being arbitrary, violative of Article 14 of Constitution of India and principles of natural justice.

W.P.No.13864 of 2008

3. The Writ Petition *vide* WP.No.13864 of 2008 has been filed challenging the consequential impugned order issued by the 2nd respondent levying penalty and interest on the VAT levied in Form VAT 305, dt.26.05.2008 on the Service Tax collected by the petitioner from its customers, as illegal, *void-ab-initio*; prayed to set aside both the impugned orders of the 2nd respondent.

Brief facts of both the writ petitions:

4. The petitioner is engaged in the business of setting up and running hotels and resorts and the petitioner owns and runs a Five Star Hotel in the name and style of 'ITC Hotel The Kakatiya - The Luxury Collection' at Hyderabad. The petitioner is a registered dealer under the provisions of VAT Act *vide* TIN No.28880160409 and has been filing its return from time to time by paying tax to the authorities. Further, the petitioner deals with sale of food and beverages to its customers with the catalogues, as follows:



- a) Sale to guests staying in the Hotel;
- b) Sale to customers in the hotel who business the restaurants; and
- c) Sale in the course of providing catering services in the banquet halls and business centers, which are provided for organizing the business meetings, conferences, marriages and other functions along with food and other facilities.

5. It is further contended by the learned counsel for the petitioner that while sale transactions under item (a) and (b) are mere sale of food/beverages, VAT was paid on food value, but however, the transactions under item (c) involve both supply of food and provision of services, for which the petitioner receives lump-sum considerations based on number of persons attending such meetings/functions, and the said lump sum consideration is inclusive of charges towards supply of food and beverages and also for the services, and thus the said amounts comprehensively covers all the goods including services.

6. It is further contended by the petitioner that at banquet halls and business centers along with food and beverages are exigible to service tax under the head of 'Mandap Keeper Services' and 'outdoor catering services'. Accordingly, the petitioner collects and pays service tax @ 12.36 % on the amounts charged to the customers and thus, the said transactions are inclusive of service factor not merely sale of any food or beverages.



7. It is further contended by the petitioner that as the services, food and beverages form total part of the sale transaction, the petitioner discharged its liability under the VAT Act by paying VAT on the 60% of the consideration charged towards supply of food and beverages, deducting the service tax amount and paid @ 12.5% as per Section 4(9) of VAT Act.

8. It is further contended that on 06.02.2008 during the course of an audit conducted by the respondents authorities, books of accounts of the petitioner-company were verified and the 2nd respondent having found certain variations, issued notice of Assessment of VAT in Form 305A, dt.07.03.2008, stating that since the petitioner collected service tax from the customers, which is reflected in the bills issued to the customers, the petitioner is required to pay VAT on service tax in view of the interpretation of expression 'sale price' as defined under Section 2(29) of the VAT Act r/w the definition of expression 'taxable turnover' under Section 2(38) of the VAT Act, as the total amount set out in the sale bill except the amount of the VAT paid or payable, is taxable, including the service tax, and contends that it is *ex facie* illegal and capricious, as it amounts to levy of 'tax on tax', militating against the basic tenets of the taxation.



9. It is further contended by the petitioner that the 2nd respondent, who issued a purported notice of Assessment of VAT, also issued notice of Penalty and Interest, both dt.07.03.2008 in Form VAT 305A, and the petitioner submitted its detailed reply, dt.21.04.2008 and also filed additional submissions *vide* letter, dt.19.05.2008, with the 2nd respondent by categorically stating that in all the invoices, the service tax was shown separately, and in as much as the same is the amounts collected towards service tax out of the fixed consideration received from the client/customers, the service tax so collected is not exigible to VAT tax and it amounts to double taxation and is violative of the provisions of the constitution of India and also violative of due procedures as contemplated under law.

10. It is further contended by the petitioner that under the guise of Advance Ruling given by the Authority for Clarification *vide* proceedings CCT's Reference No.A.R.Com/86/2006, dt.26.02.2007, in the case of M/s GAIL (India) Limited, Rajahmundry, by which it was clarified that service tax, which is collected from the customers shall form part of 'sale price' and is taxable turnover for the purpose of levy of VAT under the VAT Act, and also the provision of Section 2(29) of VAT Act, which defines

'sale price', the 2nd respondent without appreciating the factual issues mentioned in the explanations, dt.21.04.2008 and dt.19.05.2008, has passed the impugned orders, dt.26.05.2008, directing the petitioner to pay a sum of Rs.15,95,017/- towards VAT and Rs.3,90,681/- towards penalty and interest, within a period of (30) days of receipt of the said orders and thus, the orders passed by the 2nd respondent are violative of due procedures of law and against to the basic tenets of law it is that orders passed by the 2nd respondent, are assailed in the present writ petitions.

11. The 2nd respondent filed counter affidavit *inter alia* contending that against the impugned assessment order, the petitioner has an efficacious alternative remedy of appeal under the provisions of the Act, and without availing such statutory remedy, the petitioner has directly approached this Hon'ble Court under Article 226 of the Constitution of India, assailing the order of the assessment and consequential orders, which are not maintainable. Also contended that it is the settled position of law, as consistently held by the Hon'ble Apex Court and this Hon'ble Court, that the extraordinary jurisdiction of this Court under



Article 226 cannot be invoked by surpassing the statutory remedies provided under the statute.

12. It is further contended that the Andhra Pradesh General Sales Tax Act, 1957, which was in force from 1957 to 31.03.2005, was repealed and in its place the Andhra Pradesh Value Added Tax Act, 2005, was brought into force with effect from 01.04.2005. As per Section 4(9) of the Act, every dealer running a restaurant, eating house, catering establishment, hotel, coffee shop, sweet shop or any similar establishment, and any club supplying food or other articles for human consumption or drink, is liable to pay tax @ 12.5% on 60% of the taxable turnover, and only the VAT collected under the said provisions of the VAT Act, is excluded.

13. It is further contended that the petitioner being engaged in the business of establishing and operating hotels and resorts and a registered dealer under the Act, has been filing VAT returns as per the provisions of the VAT Act and there is no suppression or evasion of tax by the petitioner. The authorities upon verification of the books of accounts of the petitioner, found that the petitioner collected service tax from its customers and also reflected it in the invoices raised and has also shown in the profit and loss accounts



for the years 2005-06 and 2006-07 as expenditure and no suppression of tax is found by the authorities.

14. It is further stated that as per the said provisions of the VAT Act, only such items as are specifically excluded therein are not includable in the sale price of goods and all other items of expenditure and statutory levies payable by the dealer form part of the sale price. Hence, the service tax collected by the petitioner from its customers is includable in the sale price for the purpose of levy of VAT, but the petitioner failed to pay VAT on the service tax component contending that such collections, being statutory in nature and remitted to the Government of India, do not form part of the sale price and contended that there is no impediment in the assessment order and the inference of this Court is unwarranted.

15. The 2nd respondent placed reliance on a Full Bench judgment of this Hon'ble Court in **State of Andhra Pradesh v. N. Ranga Rao and Sons**¹ wherein it was held that the sales tax collected by the seller from the buyer forms part of the taxable

¹ 8 STC 114



turnover, which was affirmed by the Hon'ble Apex Court in **George Oakes (P) Ltd. v. State of Madras**² and a similar view was taken by the Apex Court in **Central Wines v. Special CTO**³. Further in **A.P. Rural Development Cess case**⁴ it was held that cess paid on purchase of paddy forms part of taxable turnover. In the light of these precedents and the ruling given by the Advance Ruling Authority, it is contended that the service tax collected from the customers forms part of the sale price and is taxable turnover for the purpose of levy of VAT.

16. It is further contended that the petitioner's challenge to the constitutional validity of Section 67(4)(iii) is invalid, *ultra vires* and is untenable in view of the judgment of the Hon'ble Apex Court in **State of A.P. v. McDowell and Co.**⁵ that an enactment can be declared unconstitutional only on two grounds, namely, (i) lack of legislative competence, or (ii) violation of fundamental rights or other constitutional provisions, and in the instant case, the Advance Ruling Authority is a statutory authority constituted under Section 67 of the Act and there is no violation of any right,

² 12 STC 476

³ 4 APSTJ 77

⁴ 32 APSTJ 107

⁵ AIR 1996 SC 1627

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as such they are binding on subordinate authorities, however appealable before the competent forum. It is further contended that the writ petition is devoid of merit and liable to be dismissed.

17. We have heard the submissions of Sri G.V.S.Ganesh, learned counsel for the petitioner and Sri Swaroop Oorilla, learned Special Government Pleader for State Tax appearing for respondents/revenue

Contentions of the petitioner in W.P.No.13863 of 2008

18. Insofar as the contention of the learned counsel for the petitioner that the instant writ petition relates to category (c), which involves supply of food along with provision of services such as catering, maintenance, and hall arrangements and as the consideration received being a lump-sum amount, it includes both the value of food and beverages, on one part, and the service element, on the other part. Further, the service tax collected was remitted to the Government of India under the taxable heads "Mandap Keeper Services" and "Outdoor Catering Services" at the applicable rate of 12.36%. Therefore, only point which arises for consideration before us is, whether the service tax shown in the invoices, by segregating the same from the lump sum



consideration, forms part of sale price. That since, the petitioner had already discharged VAT liability in terms of Section 4(9) of the VAT Act, by paying tax at 12.5% on 60% of the gross consideration towards food and beverages, levy of VAT on the service tax component amounts to 'tax on tax' on the same transaction.

Contentions of the petitioner in W.P.No.13864 of 2008:

19. Insofar as the levy of penalty and interest is concerned, learned counsel for the petitioner contended that the authorities failed to appreciate that the alleged short payment arose purely due to inadvertence and not from any deliberate attempt to evade tax. It was submitted that the component of service tax was clearly and separately shown in the invoices, evidencing *bona fides* on the part of the petitioner. Reliance was placed on the judgments in **Hindustan Steel Ltd. v. State of Orissa**⁶, **State of Rajasthan v. Jaipur Udyog Ltd.**⁷, and **Dilip N. Shroff v. CIT**⁸, to contend that penalty cannot be imposed unless there is willful concealment or false representation. It was urged that where two possible views exist, penal provisions cannot be invoked.

⁶ (1970) 25 STC 211(SC)

⁷ (1972) 30 STC 565

⁸ (2007) 6 STC (SC) 329



Therefore, even assuming without admitting any liability, the imposition of penalty and interest without a categorical finding of deliberate evasion is wholly unsustainable, and the impugned order levying the same in W.P. No. 13864 of 2008 is liable to be set aside.

20. Learned counsel for the petitioner also placed reliance on the decisions of the Hon'ble Apex Court in ***Imagic Creative (P) Ltd. V. Commissioner of Commercial Taxes & Others***⁹, the decision of a Division Bench of the erstwhile High Court of Andhra Pradesh in ***RAK Ceramics (India) Private Limited, rep. by its Finance Controller, MNr. Om Prakash Samalkot and Others. V. Assistant Commissioner (CT)-VI, enforcement Wing, Hyderabad***¹⁰, the order of the Andhra Pradesh Taxation Special Tribunal in ***Indian Commerce & Industries Co. Pvt. :td. V. State of Andhra Pradesh***¹¹ and the order of the Andhra Pradesh Sales Tax & VAT Appellate Tribunal, Hyderabad in ***M/s Netafim***

⁹ (2008) 2 Supreme Court Cases 614

¹⁰ 2013(6) ALT 723 (DB)

¹¹ TA.No.433 of 2011, dt.02.07.2012



Irrigation India (P) Ltd., Balanagar, Hyderabad v. The State of Andhra Pradesh¹².

Contentions of the respondents in both the writ petitions:

21. *Per contra*, the learned Special Government Pleader for State Tax appearing for the respondents/Revenue submitted that, in view of Section 2(29) of the VAT Act, the total amount set out in a bill of sale is taxable, and any sum charged by the dealer, regardless of its description, name or object thereof, forms part of the sale price. In the instant case, as the petitioner collected service tax from customers for supply of food and beverages under the heads of 'Mandap Keeper', 'Outdoor Catering', and 'Boardroom Sales', and included the same in the invoices issued to the customers, 60% of the total consideration shown in the invoices is liable to VAT, except under the Explanation to Section 2(29) of the VAT Act, the value-added tax charged or chargeable shall not form part of sale price and further it is contended that as the VAT tax is only excludable in the total turnover and that in the audit only it was found, the levy of penalty and interest are proper and the judgments relied on by the petitioner are thus distinguishable on

¹² TA.No.545 of 2011, dt.15.05.2013



facts of the present case and prayed to dismiss both the Writ Petitions.

22. **We have given earnest consideration to the submissions on both sides and perused the record.**

23. The question that falls for consideration before us are:

- i) *Whether the service tax, which was collected from the customers and shown separately in the invoices, amounts to sale price and whether VAT is to be levied on the said amount of sales, shown in the invoices?*
- ii) *Whether the imposition of penalty and interest by the 2nd respondent vide order dated 07.03.2008, is correct and property?*

24. Before going to determine the question of law fallen for our consideration, the provisions of Section 2(29) and 2(38) of VAT Act are extracted as follows:

"Sec 2(29): **"Sale price"** means:-

- (a) the total amount set out in the tax invoice or bill of sale; or
- (b) the total amount of consideration for the sale or purchase of goods as may be determined by the assessing authority, if the tax invoice or bill of sale does not set out correctly the amount for which the goods are sold; or
- (c) if there is no tax invoice or bill of sale, the total amount charged as the consideration for the sale or purchase of goods by a VAT dealer or TOT dealer either directly or through another, on his own account or on account of others, whether such consideration be cash, deferred payment or any other thing of value and shall include,-
 - (i) xxxx
 - (ii) xxxx
 - (iii) xxxx

Explanation-1: Subject to such conditions and restrictions, if any, as may be prescribed in this behalf, any cash or other



discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the sale price;

Explanation-II: For the purpose of determination of sale price and levy of Value Added Tax, the Value Added Tax charged or chargeable shall not form part of Sale Price;

XXXX

Sec 2(38): “**Taxable turnover**” means –
the aggregate of sale prices of all taxable goods.”

Findings in WP.No.13863 of 2008:

25. The assessment years, which are disputed for collection of VAT, are from 2005 to 2008. There was an amendment for the definition of the “sale price” *w.e.f.*, 01.04.2015, by which on the service tax collected separately, no VAT is applicable or payable. But, in the instant case, as the assessment years are before the said effective date of amendment, the said amendment would not be applicable to the present facts of the case.

26. The case of the petitioner is that generally the customers so far as category (c), pay the consideration in lump sum, based on the number of persons attending the meetings or functions, which includes charges for both the supply of food and beverages and the provision of services.



27. Although the petitioner separated the service tax in the invoices and paid VAT on 60% of the turnover excluding service tax component, under the definition of "sale price" in Section 2(29) of the VAT Act, the total amount set out in the bill constitutes the sale price. The *proviso* under Explanation-II of Section 2(29) of the VAT Act excludes only VAT charged or chargeable from the sale price, and not the service tax, and as such in our considered opinion, the total amount under the invoices including the service tax component is 'sale price', and VAT should be on the total turnover of 60% as per Section 4(9) of the VAT Act.

28. In ***Imagic Creative (P) Ltd.***'s case (supra), the Hon'ble Apex Court observed that the contract under consideration was an indivisible contract, and consequently, the service component thereof was held to be liable to service tax, and not sales tax, on the incidental transfer of goods. The Court's conclusion was based on the fact that the contract did not separately identify the service and goods components. But, in the present case, service tax has been separately indicated in all invoices issued by the petitioner, but, however the amounts were paid in lump sum consideration, on which service tax was separately shown in the invoices. Further, as noted above, the *proviso* to Explanation-II of Section



2(29) of the VAT Act excludes only VAT charged or chargeable from the sale price, and does not extend to service tax. Therefore, the facts of the present case are distinguishable from those in ***Imagic Creative (P) Ltd.***'s case (supra), and it does not apply.

29. Since the petitioner received lump-sum amounts for the services rendered under "Mandap Keeper Services", "Outdoor Catering," and "Boardroom Sales", and included the same in the invoices, the total amount in the bill constitutes the sale price for the supply of food. Consequently, the petitioner is liable to pay VAT on 60% of the consideration charged towards food and beverages, as provided under Section 4(9) of the VAT Act and though the petitioner shown the service tax component separately by segregating from the lump sum consideration received from the customers, the total bill amount will be sale price.

30. Further, the Advance Ruling in the case of M/s GAIL (India) Ltd., Rajahmundry (CCT's Reference No.A.R.Com/86/2006, dt.26.02.2007) has already clarified that service tax collected from customers forms part of the sale price and taxable turnover for VAT purposes, and the said advance ruling was not challenged within the prescribed period under Section 64(4) of the VAT Act



and it is therefore binding on both the authorities and the petitioner.

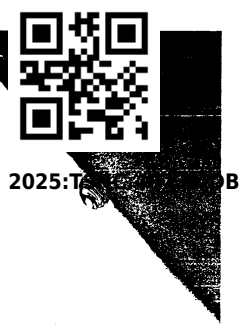
31. The petitioner's challenge to the constitutional validity of Section 67(4)(ii) of the VAT Act is untenable in the light of the judgments of the Hon'ble Apex Court in **McDowell and Co.'s** case(supra) as well as this Court in consistently upholding the Vat Act, as there is no violation of the Constitution of India or the provisions of the Statute. Further, inasmuch as the advance ruling has not been challenged, the impugned order(in WP.No.13863 of 2008) passed by the 2nd respondent is in accordance with the Advance Ruling and the statutory provisions, and thus, the reliance placed by the learned counsel for the petitioner on the decision of a Division Bench of the erstwhile High Court of Andhra Pradesh in **RAK Ceramics (India) Private Limited's** case(supra) is of no assistance to the case of the petitioner, being distinguishable on facts and in law.

32. Insofar as the reliance placed by the counsel for petitioner in the decisions rendered by the Tribunal in **Indian Commerce & Industries Co. Pvt. Ltd.** and **M/s Netafim Irrigation India (P) Ltd.'s** case (supra), it is well settled that the decisions of statutory



tribunals, being quasi-judicial in nature, are binding on the parties before them but do not operate as binding precedent on this Court. While such decisions may be considered persuasive and may provide guidance in the interpretation of law, this Court, in exercise of its constitutional and statutory jurisdiction, is not obligated to follow the conclusions of a Tribunal. This position is rooted in the principle of judicial hierarchy, whereby tribunals are under the supervision and control of High Court, and the High Court retains the power to examine, modify, or depart from the reasoning adopted by a Tribunal, particularly where questions of law or constitutional validity arise.

33. Further, in **George Oakes (P) Ltd.**'s case (supra), relied upon by the learned Special Government Pleader appearing for the respondents, the Hon'ble Apex Court observed that in calculating the total turnover, there is no infirmity in treating tax as part of the turnover, since the term "turnover" refers to the amount of money which is turned over in the business. The Court, therefore, upheld the decision of the Deputy Commissioner in including the tax in the total turnover. The principles laid down in the said decision are squarely applicable to the facts of the present case. In the instant matter, the assessee, though separately segregated



service tax from the lump sum in the invoices raised, did not include the said amount of service tax in the calculation of total turnover, and therefore the rationale of **George Oakes (P) Ltd's** case(supra) applies to the facts of the instant case in favour of the respondents.

34. In view of the above findings, we are of the considered view, that there is no error or impediment in the orders passed by the 2nd respondent and the writ petitioner has not substantiated its case for interference of this Court and the Writ Petition No.13863 of 2008 is devoid of merit and is liable to be dismissed.

Findings in WP.No.13864 of 2008:

35. Insofar as the levy of penalty and interest by the 2nd respondent *vide* order dated 07.03.2008, directing the petitioner to pay 10% of the tax as penalty along with interest at 1% per month, it is contended by the learned counsel for the petitioner that non-payment of tax was neither willful nor deliberate and prayed to set aside the aforesaid order imposing penalty and interest.

36. As per Section 53 of VAT Act, any dealer, who has under declared tax, despite there being no fraud or willful neglect



committed, is liable to pay penalty. For convenience sake, the said provision is reproduced as under:

"53. (1) Where any dealer has under-declared tax, and where it has not been established that fraud or willful neglect has been committed and where under-declared tax is,-

(i) less than ten percent of the tax, a penalty shall be imposed at ten percent of such under-declared tax;

(ii) more than ten percent of the tax due, a penalty shall be imposed at twenty five percent of such under-declared tax.

(2) Where any dealer, prior to the detection by any authority prescribed, voluntarily declares that tax due for a tax period is under-declared and he pays the tax due along with interest, no penalty shall be imposed provided that such declaration is made within the time limit and in the manner prescribed.

(3) Any dealer who has under-declared tax, and where it is established that fraud or willful neglect has been committed, he shall be liable to pay penalty equal to the tax under-declared; besides being liable for prosecution:

Provided that before levying penalty under this section, the authority prescribed shall give the dealer a reasonable opportunity of being heard.

In view of the above provision of law and in the facts of the present case, in our considered view, there appears to be no error committed by the 2nd respondent in passing the impugned order,

dt.25.06.2008. Furthermore, the judgments relied upon by the petitioner are distinguishable on facts. In the cited cases, the disputes arose under the Sales Tax Act and the Income Tax Act, whereas the present proceedings are governed by the VAT Act, which contains a specific statutory provision enabling the imposition of penalty even in the absence of fraud or willful neglect. As such, we are not inclined to interfere with the order passed by the 2nd respondent in imposing penalty and interest, and the Writ Petition is liable to be dismissed.

Conclusion:

37. Accordingly, both W.P.No.13863 of 2008 and W.P.No.13864 of 2008 are dismissed. No order as to costs.

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

SD/-A. SRINIVASA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One fair copy to the HON'BLE SRI JUSTICE P.SAM KOSHY
(For His Lordship's Kind Perusal)

AND

One fair copy to the HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO
(For His Lordship's Kind Perusal)

To

1. 11 L.R. Copies.
2. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
3. The Secretary, Telangana Advocates Association Library, High Court Buildings, Hyderabad.



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4. One CC to SRI SWAROOP OORILLA, SPL. GP FOR COMMERCIAL TAX, Advocate (OPUC)
5. One CC to SRI G.V.S.GANESH, Advocate [OPUC]
6. Two CD Copies

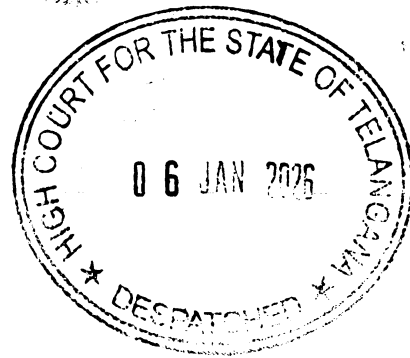
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2025:TSHC:48738-DB

HIGH COURT

DATED:01/12/2025



COMMON ORDER

**WP.Nos.13863 AND
13864 of 2008**

**DISMISSING THE WRIT PETITIONS
WITHOUT COSTS.**

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