HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

W.P.No.629 of 2021

Between:
M/s Sri Gajalakshmi Paints,
D.No.25/51/2, 3rd Cross Road,
Kabela Road, Ramarajya Nagar,
Vijayawada – 520 012, Krishna District, Andhra Pradesh.
Rep. by its Proprietor K. Sambasiva Rao.

.. Petitioner

And

The Commercial Tax Officer,
Bhavanipuram Circle No.1 Division,
Vijayawada, Krishna District and four others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 15.02.2023

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

U. DURGA PRASAD RAO, J

T. MALLIKARJUNA RAO, J

***HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**
AND
HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

+W.P.No.629 of 2021

%15.02.2023

M/s Sri Gajalakshmi Paints,
D.No.25/51/2, 3rd Cross Road,
Kabela Road, Ramarajya Nagar,
Vijayawada – 520 012, Krishna District, Andhra Pradesh.
Rep. by its Proprietor K. Sambasiva Rao..

.. Petitioner

Vs.

$ The Commercial Tax Officer,
Bhavanipuram Circle No.1 Division,
Vijayawada, Krishna District and four others.

.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner: Sri Girish Kumar

Counsel for respondents: Learned Advocate General

? CASES REFERRED:

1. (2006) 12 SCC 138
2. AIR 1985 SC 585 = MANU/SC/0387/1985
3. AIR 2004 SC 4139 = MANU/SC/0604/2004
4. MANU/SC/0903/2002 = AIR 2003 SC 250
5. AIR 1957 SC 657
6. MANU/SC/0097/1957 = AIR 1957 SC 907
7. MANU/SC/0113/1966 = AIR 1966 SC 1342
8. MANU/SC/0283/1968 = AIR 1970 SC 1173
9. MANU/SC/0279/1988 = AIR 1989 SC 611
10. AIR 1992 SC 224 = MANU/SC/0052/1992
11. MANU/SC/0844/1998 = (1998) 1 SCC 384
12. MANU/SC/0483/2000 = AIR 2000 SC 2905
13. MANU/SC/1605/1999 = AIR 1999 SC 1275
14. MANU/SC/0789/2018 = AIR 2018 SC 3606
15. AIR 1956 SC 354 = MANU/SC/0037/1956
16. AIR 1999 SC 22 = MANU/SC/0664/1998

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
AND
THE HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

Writ Petition No.629 of 2021

ORDER: (*Per Hon'ble Sri Justice U. Durga Prasad Rao)*

The petitioner seeks writ of mandamus

(a) declaring the action of respondents 2 and 3 in levying tax U/s 4(1) of the AP VAT Act on the same turnover which has already suffered tax U/s 4(2) for the tax periods June, 2015 to August, 2016 as arbitrary, without jurisdiction, barred by limitation and violative of Article 265 of the Constitution of India.

(b) declaring the words "any dealer make purchases or sales in the course of inter-state trade or commerce" in Clause (b) of Sub-Section 5 of Section 17 of AP VAT Act is *ultra vires* to Sub-Sections 3 and 7 of Section 17 of AP VAT Act and

(c) consequently set aside the Assessment of VAT for the tax periods April, 2013 to August, 2016 levied by the 3rd respondent vide proceedings dated 04.08.2018 and confirmed by the 2nd

respondent vide AO No.ZH371020OD80888, dated 22.10.2020 and pass such other orders.

2. Petitioner's case succinctly is thus:

(a) Petitioner is doing business in paints and a registered turnover tax (TOT) dealer U/s 17(7) of AP VAT Act. For the tax period from 01.04.2013 to 30.09.2016 the petitioner filed returns regularly and paid tax @ 1% of its turnover in terms of Section 4(2) of the Act.

(b) The 3rd respondent while conducting audit of petitioner's accounts having found that the petitioner made one purchase of paint on 06.06.2015 worth of Rs.54,000/- from Sri Anantha Padmanabha Swami Enterprises, Hyderabad, passed a best judgment assessment order on 04.08.2018 treating the petitioner as a VAT dealer in terms of Section 17(5)(b) of the VAT Act w.e.f 06.06.2015 and levied tax @ 14.5% U/s 4(1) of the Act for the tax period from 06.06.2015 to 31.09.2016 and raised a demand of Rs.8,27,315/- and also imposed 100% penalty by separate order dated 18.09.2019.

(c) Petitioner submits that he never involved in regular inter-state trade and commerce in any purchase or sale of paints or any other goods from outside the State of Andhra Pradesh. Prior to June, 2014 the petitioner was purchasing paints from dealers situated in Hyderabad but however the petitioner stopped purchases from Hyderabad after division of composite State w.e.f. 02.06.2014. While so, one of the dealers at Hyderabad from whom the petitioner was earlier purchasing paints, has, by mistake sent one consignment of paints during June, 2015 which was inadvertently accepted by the clerk of the petitioner. Except the one and only inter-state trade worth of Rs.54,000/- on 06.06.2015, the petitioner has not involved in the inter-state trade or commerce. As such, the petitioner is not liable to pay the tax as VAT dealer.

(d) The further case of the petitioner is that even assuming that the petitioner failed to get registered as a VAT dealer in terms of Section 17(5)(b), the maximum punishment U/s 49(2) of the AP VAT Act will be a penalty of 25% of the amount of the tax due prior to the date of registration and the petitioner will not eligible for Input Tax Credit (ITC) for the sales made prior to date from

which registration is affected. However under no circumstances tax can be levied again on the same turnover U/s 4(1) since the said turnover has already suffered tax U/s 4(2) of the Act.

(e) Aggrieved by the action of 3rd respondent, the petitioner filed appeal before the 2nd respondent. However the appeal was unjustly dismissed by the 2nd respondent. Hence the writ petition.

3. The 1st respondent filed counter and opposed the writ petition *inter alia* contending thus:

(a) The writ petition is not maintainable as the petitioner has alternative and efficacious remedy of appeal before VAT Appellate Tribunal, Visakhapatnam.

(b) The petitioner is a TOT dealer and for the tax period from 01.04.2013 to 30.09.2016, the petitioner filed TOT returns in Form-007 before the 4th respondent and paid tax @ 1% on the turnover.

(c) Thereafter, the 3rd respondent conducted audit of petitioner's accounts and found that the petitioner has made one purchase of paint on 06.06.2015 worth of Rs.54,000/- from Sri

Anantha Padmanabha Enterprises, Hyderabad vide Waybill No.361506064318672, dated 06.06.2015, but failed to obtain VAT registration and accordingly assessed the petitioner treating him as VAT dealer for the period from October, 2014 to August, 2016 U/s 17(5)(b) r/w Rule 5(2) of AP VAT Act and its rules and raised demand of Rs.8,94,082/- levying tax @ 14.5%. The 3rd respondent has given credit of the TOT tax of Rs.66,967/- paid by the petitioner and arrived at net tax due at Rs.8,27,315/- in the assessment order in Form VAT 305 vide A.O.No.127838, dated 04.08.2018.

(d) Aggrieved, the petitioner filed appeal before the 2nd respondent but the appeal was dismissed vide order dated 22.10.2020 holding that the petitioner is liable to obtain VAT registration in terms of Section 17(5) of AP VAT Act.

(e) The contention of the petitioner that Section 17(5)(b) is ultra vires to Section 17(3)(7) is an untenable contention for the reason that there is no bar to apply the provisions of Section 17(5) of the AP VAT Act even for a single purchase transaction made from outside the State. Therefore, the petitioner is liable to be

registered as VAT dealer and since he has not done so, the 3rd respondent was right in treating the petitioner as VAT dealer and assessing him as such.

(f) The contention of the petitioner that for the non-compliance of the provisions of Section 17(5)(b) only 25% penalty is attracted in terms of Section 49(2) of AP VAT Act is unsustainable. Since the petitioner purchased from outside the State, he is liable to pay tax as VAT dealer and no set off of tax paid on inter-state purchase was allowed when the sale is affected in the State of Andhra Pradesh. He is liable to pay penalty at 100%. The petitioner is not entitled to input tax credit also because he was not a VAT dealer but only TOT dealer.

(g) The contention of the petitioner that the Assessment Order dated 04.08.2018 is barred by limitation U/s 21(4) for the tax period from April, 2013 to July, 2014 is not correct since the petitioner failed to comply with the provisions of Section 17(5) of the VAT Act and failed to migrate as a VAT dealer from TOT dealer and not disclosed the VAT sales turnover. The provisions of

Section 21(5) apply to the present case. Hence the writ petition is not maintainable and the same may be dismissed.

4. Heard Sri P. Girish Kumar, learned counsel for the petitioner and learned Advocate General representing respondents.

5. Learned counsel for the petitioner firstly argued that for a stray act of purchase of goods from outside the State in the circumstances narrated by the petitioner, the 3rd respondent cannot legally compel him to obtain VAT registration and assess him as VAT dealer. Section 17(5)(b) contains only the plural words "purchases or sales" but not "purchase or sale". Learned counsel would alternatively argue that for the single transaction as aforesaid, at the best he can be treated as a casual trader U/s 2(7) of the AP VAT Act and can be assessed to tax on that single item U/s 4(6) of the APVAT Act but not as a VAT dealer for all the transactions from the date of purchase of single item from outside State.

Secondly, challenging the imposition of 100% of penalty by the 3rd respondent, learned counsel would argue that even assuming

that the petitioner was required to obtain registration as VAT dealer on account of a single transaction of purchase from outside the State, the maximum penalty that can be imposed U/s 49(2) of the AP VAT Act is 25% on the amount of tax due but not 100% and hence the penalty of 100% imposed is illegal.

Thirdly he argued that the assessment made by the 3rd respondent covering the period April, 2013 to July, 2014 is barred by limitation U/s 21(4) of the AP VAT Act.

Nextly he argued that Section 17(5)(b) of the AP VAT Act without reference to the quantum of the turnover is *ultra vires* to sub-section (3) & (7) of Section 17 as well as charging Section 4(2) of the AP VAT Act and is therefore liable to be struck down.

6. Per contra, while supporting the impugned assessment order and the appellate order confirming the assessment, learned Advocate General would submit that Section 17(5)(b) being an exception to Section 17(2)(3)(4), it cannot be said that the said provision is inconsistent with the other sub-sections. Learned Advocate General argued that Section 17(2) to (4) would operate

when the dealer makes business of purchase and sale of goods within the State and falls within sub-sections (2) (3) or (4). However, if the dealer purchases or sales goods during the course of interstate trade or commerce, he will come within the ambit of Section 17(5) of the Act and he will be required to be registered as VAT dealer, but not as TOT dealer. He would argue that there is no mutual inconsistency between Sections 17(2)(3) and (4) on one hand and Section 17(5) on the other. Both would operate in two difference spheres. Sub-sections (2), (3) and (4) would operate when the dealer is doing intra-state business of purchasing and selling goods within the State, whereas the latter provision i.e., Section 17(5) comes into play when the dealer imports goods from outside the territory of India or if he is doing interstate trade or commerce by purchasing or selling goods outside the State and in that regard the taxable turnover has no significance. The touchstone will be only whether he is doing business of purchase and sale of goods within the State or outside the State. Learned Advocate General would emphasize that even a single instance of sale or purchase from outside the State will be sufficient to treat such

dealer as a VAT dealer for assessment purpose. He would thus parore, when there is no dichotomy or inconsistency between Section 17(2) (3) (4) & (7) on one hand and Section 17(5) on the other, it would be preposterous to argue that Section 17(5), which is only an exception to the earlier provisions, is inconsistent with other provisions and liable to be struck down. On the aspect of the construction of different provisions of the statute, learned Advocate General relied upon on **Padma Ben Banushali v. Yogendra Rathore**[1]. So far as the argument of the petitioner that the assessment for the period April 2013 to July 2014 is time barred, learned Advocate General would submit that since the petitioner wilfully evaded payment of tax and also failed to obtain registration as VAT dealer, 3rd respondent can seek aid of Section 21(5) and assess the entire period from 2013 to 2016. He thus prayed to dismiss the writ petition.

7. The points for consideration in this writ petition are:

> **(1) Whether Section 17(5)(b) without reference to quantum of turnover is ultra vires to Section 17(2)(3)(4)(7) as well as charging Section 4(2) of AP VAT Act and liable to be struck down?**

[1] (2006) 12 SCC 138

(2) If point No.1 is held negatively, still whether the petitioner is to be assessed as ToT dealer only for his single transaction of purchase of goods from outside the State and for that single transaction the petitioner shall be assessed to tax as a casual trader under relevant provisions of the AP VAT Act?

(3) Whether the assessment for the period April, 2013 to July 2014 is barred by limitation under Section 21(4) of the AP VAT Act?

(4) If point No.1 is held negatively, whether penalty can be imposed at 25% only on the tax due as per Section 49 of AP VAT Act?

(5) Whether the writ petition is not maintainable due to availability of alternative, efficacious remedy of appeal?

8. **Point No.1:** The crux of the issue lies in the interpretation of Section 17(5)(b) of the AP VAT Act. This Act is a consolidated law for levying Value Added Tax on sale or purchase of goods in the State of Andhra Pradesh. For the purpose of present case, the dealers can be divided into two categories i.e., (i) VAT dealers and (ii) TOT dealers. Under Section 2(43) of the AP VAT Act, a VAT dealer means a dealer who is registered for Value Added Tax (VAT), whereas, under Section 2(41) a Turn Over Tax dealer or TOT dealer is a dealer who is registered or liable to be registered for TOT.

(a) Then, Section 4 which is a charging Section draws distinction between the two dealers in the context of their tax liability. As per Section 4(1), every VAT dealer shall be liable to pay tax on every sale of goods in the State (*emphasis supplied*) at the rates specified in the schedules. Whereas under Section 4(2), a dealer who is registered or liable to be registered for TOT or whose taxable turnover in a period of 12 consecutive months exceeds Rs.5,00,000/- but does not exceed Rs.40,00,000/-, shall pay tax @1% on the taxable turnover.

(b) Apart from above, under Section 13 of the Act, a VAT dealer shall be entitled to Input Tax Credit (ITC) for the tax paid in respect of all the purchases of taxable goods made by him during the tax period, if such goods are for the use in his business. However under Section 10 of the AP VAT Act, ITC facility is not extended to a TOT dealer and he shall not be eligible to issue a tax invoice.

The above is the basic distinction between a VAT dealer and a TOT dealer.

9. Then Section 17 deals with the requirement of registration of a dealer.

17. Registration of Dealers:

(1) Every dealer other than a casual trader shall be liable to be registered in accordance with the provisions of the Act.

(2) Every dealer commencing business and whose estimated taxable turnover for twelve consecutive months is more than Rs.40,00,000/- (Rupees forty lakhs only) shall be liable to be registered as a VAT dealer before the commencement of business.

(3) Every dealer whose taxable turnover in the preceding three months exceeds Rs.10,00,000/- (Rupees ten lakhs only) or in the twelve preceding months exceeds Rs.40,00,000/- (Rupees forty lakhs only), shall be liable to be registered as a VAT dealer.

(4) Every dealer whose taxable turnover during the period from 1st January, 2004 to 31st December, 2004 is more than Rs.40,00,000/- (Rupees forty lakhs only), shall be liable to be registered as a VAT dealer.

(5) Notwithstanding anything contained in sub-sections (2), (3) and (4), the following classes of dealers shall be liable to be registered as VAT dealers irrespective of their taxable turnover namely:-

(a) every dealer importing goods in the course of business from outside the territory of India;

(b) every dealer registered or liable to be registered under the Central Sales Tax Act 1956, or any dealer making purchases or sales in the course of inter-state trade or commerce or

dispatches any goods to a place outside the State otherwise than by way of sale;

(c) every dealer residing outside the State but carrying on business within the State and not having any permanent place of business;

(d) every dealer liable to pay tax on goods listed in Schedule VI.

(e) every commission agent, broker, delcredere agent, auctioneer or any other mercantile agent by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any non-resident principal;

(f) every dealer availing sales tax deferment or sales tax holiday;

(g) every dealer executing works contract exceeding Rs.5,00,000/- (Rupees five lakhs only) for the State Government or local authority or every dealer opting to pay tax by way of composition on works contract;

(h) every dealer liable to pay tax under sub-section (9) of section 4 of the Act;

(6) xxxx

(7) xxxx

(8) xxxx

(9) xxxx

(10) xxxx

(11) xxxx

(a) As per Section 17(2), every dealer who is commencing the business and whose estimated taxable turnover for 12

consecutive months will be more than Rs.40,00,000/- shall be registered as a VAT dealer before commencement of the business. So under Section 17(2), a dealer who commences business can, on the estimate that his taxable turnover for the coming 12 consecutive months will exceed Rs.40,00,000/-, register as VAT dealer. It is an anticipatory registration.

(b) Then Section 17(3) says that every dealer whose actual taxable turnover in the preceding 3 months exceeds Rs.10,00,000/- or in the 12 preceding months exceeds Rs.40,00,000/-, shall be liable to be registered as VAT dealer. Thus, registration under Section 17(3) is based on actual taxable turnover.

(c) Under section 17(4), every dealer whose taxable turnover during the period from 01.01.2004 to 31.12.2004 is more than Rs.40,00,000/-, he shall be liable to be registered as VAT dealer. This sub-section deals with the status of a dealer before the commencement of the AP VAT Act. As per Section (1)(3) of the AP VAT Act, Section 17 came into force w.e.f. 31.01.2005. Section 17(4) says that in the preceding calendar year, if the taxable

turnover of a dealer exceeded Rs.40,00,000/-, he shall be liable to be registered as VAT dealer.

(d) Then Section 17(5) is in the form of an exception to sub-sections (2) (3) & (4). I*nter alia,* it lays down that notwithstanding anything contained in Sub Sections (2)(3) and (4), the classes of dealers enumerated in clauses (a) to (h) shall be liable to be registered as VAT dealers irrespective of their taxable turnover (emphasis applied). The dealers enumerated in clause (b) is germane for our purpose because admittedly petitioner does not fall within the categories of (a), (c), (d), (e), (f), (g) and (h).

(e) Clause (b) says that every dealer registered or liable to be registered under the Central Sale Tax Act, 1956 or any dealer making purchases or sales in the course of interstate trade or commerce or dispatches any goods to a place outside the State otherwise than by way of sale shall be registered as VAT dealer. Thus, in essence, if a dealer makes purchases or sales in the course of interstate trade or commerce, then irrespective of his taxable turnover, he shall be liable to be registered as a VAT dealer.

10. As stated supra, the petitioner impugns Section 17(5)(b) on the ground that the said provision deprives a dealer his privilege of being a TOT dealer, the moment he conducts the interstate trade or commerce, irrespective of his annual taxable turnover being less than Rs.40,00,000/- and thereby Section 17(5) directly contravenes Sub Sections (2) to (4) & (7) and makes them otiose. The petitioner thus claims that Section 17(5)(b) being ultra vires to Sub Sections (2)(3)(4) and (7) shall be set aside.

11. We find no much force in the above contention. A close scrutiny of Section 17(5) would show, as argued by learned Advocate General, it is in the nature of an exception to Sub Sections (2) to (4). It must be reminded that a "proviso" or "an exception" is a legislative device in the hands of statute framers to except some class of persons, things, situations from out of the operation of an enactment. An exception or proviso sometimes will be employed after a general section so as to restrict the operative sphere of the said general enactment. Thus an exception as a legislative device is adopted only to exclude a part from the whole, which but for the exclusion, continues to be a part of it.

(a) In **S. Sundaram Pillai v. V.R. Pattabiraman**[2] the Apex Court made a survey of decisions on the aspect of interpretation of proviso / exception. It is mentioned that:

> **"**36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.
>
> 37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.
>
> 38. Apart from the authorities referred to above, this Court has in a long course of decisions explained and adumbrated the various shades, aspects and elements of a proviso. In State of Rajasthan v. Leela Jain (1965) 1 SCR 267, the following observations were made:
>
> > "So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part.
>
> 39. In the case of Sales Tax Officer, Circle I, Jabalpur v. Hanuman Prasad MANU/SC/0226/1966 : [1967]1SCR831 , Bhargava, J. observed thus:

---

[2] AIR 1985 SC 582 = MANU/SC/0387/1985

> "It is well-recognised that a proviso is added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the legislature desires should be excluded.

42. In Hiralal Rattanlal etc. v. State of U.P. and Anr. etc. MANU/SC/0553/1972 : [1973]2SCR502 this Court made the following observations:

> "Ordinarily, a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so-called proviso has substantially altered the main section."

The Apex Court ultimately summed up the different purposes of proviso as follows:

> "1) qualifying or excepting certain provisions from the main enactment;
>
> 2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;
>
> 3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

> 4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

(b) In **Union of India v. Sanjay Kumar Jain**[3] the Apex Court observed that the normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which, but for the proviso would be within the purview of the enactment.

12. With the above jurisprudence when 17(5) is looked into, the said provision states that the dealers enumerated in Clause (a) to (h) shall be liable to be registered as VAT dealers irrespective of their taxable turnover and notwithstanding anything contained in Sub Sections (2), (3) and (4). As stated supra, we are concerned with 17(5)(b). It has now to be seen whether there is any apparent conflict or inconsistency between 17(5)(b) and sub-sections (2)(3)(4) & (7) and if so, how the conflict has to be resolved by applying the rule of construction.

---

[3] AIR 2004 SC 4139 = MANU/SC/0604/2004

In the above context, in **Padma Ben Banushali**'s case (1 supra), cited by Advocate General, the Apex Court while resolving the alleged conflict between Section 47 and Order XXI Rule 2 CPC, evolved following principles of construction.

> **"14.** This rule of construction which is also spoken of as "*ex visceribus actus*" helps in avoiding any inconsistency either within a section or between two different sections or provisions of the same statute.
>
> **15.** On a conspectus of the case-law indicated above, the following principles are clearly discernible:
>
> (1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.
>
> (2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.
>
> (3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. *This is the essence of the rule of 'harmonious construction'*.
>
> (4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.
>
> (5) To harmonise is not to destroy any statutory provision or to render it otiose.**"**

With the aid of above principles, when Section 17 is comprehensively studied, it does not appear that 17(5)(b) has totally

negated the operation of Sub Sections (2)(3)(4) and (7), rather it has limited their operation by carving out an exception. In other words, Sub Sections (2)(3)(4) and (7) are still operable so long as they do not fall within the groove of exception. Therefore, the petitioner cannot contend that Section 17(5)(b) has taken away the right conferred under Sub Sections (2)(3)(4) and (7). We find no conflict or inconsistency between sub-section (5) and other sub-sections and therefore, vires of Section 17(5) cannot be questioned. This point is answered accordingly.

13. **POINT No.2:** As it is held in the preceding point that Section 17(5)(b) is valid and not inconsistent with other provisions, the alternative argument of the petitioner is that still he does not fall within the mischief of Section 17(5)(b) and hence he shall be treated as TOT dealer. As per Section 17(5)(b), if a dealer falls within one of the following three categories, he shall be liable to be registered as VAT dealer. They are:

(i) a dealer registered or liable to be registered under CST Act, 1956 or

(ii) any dealer making purchases or sales in the course of inter-state trade or commerce or

(iii) dispatches any goods to a place outside the State otherwise than by way of sale

(a) First category is concerned, it has to be seen whether petitioner is liable to be registered under CST Act, 1956. Section 7 of CST Act, 1956 lays down, every dealer liable to pay tax under the said Act shall make an application for registration. Then Section 6 explains the person who is liable to pay tax under the CST Act. The said Section says that every dealer shall be liable to pay tax under the said Act on all Sales of goods other than electrical energy effected by him in the course of inter-state trade or commerce during any year on and from the date so notified. The cumulative effect of Section 6 and 7 is that a dealer who effects sale of goods during the course of inter-state trade or commerce shall be liable to be registered. In the instant case the petitioner admittedly made a single purchase of paints from a dealer from Hyderabad but he did not effect sale of goods in the course of inter-state trade or commerce. Therefore, the petitioner is not liable to be registered as dealer under CST Act, 1956 and consequently he will not fall within the first category.

(b) Third category is concerned, it is nobody's case that the petitioner dispatches goods to a place outside the State otherwise than by way of a sale. So the petitioner can be safely excluded from this category also.

14. Second category is concerned, the contention of the petitioner is that since he was involved in only a stray or single transaction of purchase from outside the State, he will not come under the second category because in Section 17(5)(b) the words "purchases or sales" are only employed but not "purchase or sale". Per contra, learned Advocate General would argue that even for such a single transaction the petitioner is liable to be registered as VAT dealer.

15. The above rival contentions involve the interpretation of tax statutes. A tax is imposed for public purpose for raising general revenue of the State. As per Article 366(28) of the Constitution of India, the term "taxation" includes the imposition of any tax or impost, whether general or local or special and the tax shall be construed accordingly. The term "impost" means a compulsory

levy. Since imposition of tax involves a compulsory levy or exaction of money by Government, the same is not permissible except by or under the authority of a statutory provision.

In **Hindustan Times v. State of U.P.**[4], the Apex Court observed thus:

> "In any event, the State cannot make any compulsory exaction from any citizen unless there exists a specific provision of law operating in the field. In relation to a compulsory payment, it is well-settled, there is no room for any intendment.

That is why Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. As the fiscal statutes involve exaction of money by the State from the subjects, the judicial pronouncements exhorted that they require strict construction.

(i) In **Tenant v. Smith (1892 AC 150)** Lord Halsbury and Lord Simonds observed that the subject is not to be taxed without clear words for that purpose and also that every act of Parliament must be read according to the natural construction of its words.

(ii) In **A.V.Fernandez v, The State of Kerala**[5], the Apex Court referred the judgment in **Inland Revenue Commissioners v. Duke**

[4] MANU/SC/0903/2002 = AIR 2003 SC 250

of Westminister [(1936) A.C. 24], wherein Lord Russell of Killowen observed thus:

> "I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a Court's view of what it considers the substance of the transaction, the Court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case"

The Apex Court in the above judgment ultimately held thus

> **"29.** It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter."

(iii) In **Kanai Lal Sur v. Paramnidhi Sadhukhan**[6], the Apex Court observed thus:

---

[5] AIR 1957 SC 657
[6] MANU/SC/0097/1957 = AIR 1957 SC 907

> 7. xxxxx.. However, in applying these observations to the provisions of any statute, it must always be borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction. It is only in such cases that it becomes relevant to consider the mischief and defect which the Act purports to remedy and correct.xxxxx"

(iv) In **Commissioner of Income Tax, Patiala v. Shahzada Nand & Sons**[7], the Apex Court referred the judgment in **Cape Brandy Syndicate v. Inland Revenue Commissioner** [(1921) 1 K.B. 64], wherein Rowlatt, Judge observed:

[7] MANU/SC/0113/1966 = AIR 1966 SC 1342

> **"**In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

Ultimately the Apex Court held thus:

> "**12.** To this may be added a rider: in a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. But even so, the fundamental rule of construction is the same for all statutes, whether fiscal or otherwise. "The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just or expedient."

(v) In **J.K.Steel Limited v. Union of India**[8], the Apex Court while interpreting certain terms in Central Excises and Salt Act, 1944 referred to judgment in **C.A. Abraham v. I.T.O, Kottayam [MANU/SC/0124/1960 = (1961) 41 ITR 25 (SC)** wherein it was observed:

> **"**In interpreting a fiscal statute the Court cannot proceed to make good deficiencies if there may be any; the court must interpret the statute as it stands and in case of doubt in a manner favourable to the tax payer**"**

[8] MANU/SC/0283/1968 = AIR 1970 SC 1173

The Apex Court also referred its own judgment in **Commissioner of Income Tax v. Karamchand Premchand Ltd, Ahmedabad** [MANU/SC/0186/1960 = (1960) 40 ITR 106 (SC) wherein it was observed that if there is any ambiguity of language in a fiscal statute, the benefit of that ambiguity must be given to the assessee

(vi) In **Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution v. Andhra Pradesh Rayons Ltd.**[9], the Apex Court observed:

> "**6.** It has to be borne in mind that this Act with which we are concerned is an Act imposing liability for cess. The Act is fiscal in nature. The Act must, therefore, be strictly construed in order to find out whether a liability is fastened on a particular industry. The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to its natural construction of words. See the observations in Re Micklethwait [1885] 11 Ex 452. Also see the observations in Tenant v. Smith [1892] AC 150, and Lord Halsbury's observations at page 154. See also the observations of Lord Simonds in St. Aubyn v. AC [1951] 2 All E.R. 473. Justice Rowlatt of England said a long time ago, that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One has to look fairly at the language used. See

[9] MANU/SC/0279/1988 = AIR 1989 SC 611

> the observations in Cape Brandy Syndicate v. IRC [1921] 1 KB 64. This Court has also reiterated the same view in Gursahai Saigal v. C.I.T. Punjab MANU/SC/0190/1962 : [1963] 1 ITR 48(SC) ; C.I.T. Madras v. V. MR. P. Firm, Muar MANU/SC/0143/1964 : [1965] 56 ITR 67(SC) and Controller of Estate Duty Gujarat v. Kantilal Trikamlal : [1976] 10 ITR 92(SC) .
>
> **7.** The question as to what is covered must be found out from the language according to its natural meaning fairly and squarely read. See the observations in IRC v. Duke of Westminster [1936] AC 1, and of this Court in AV Fernandez v. The State of Kerala MANU/SC/0093/1957 : [1957] 1 SCR 837 . Justice Krishna Iyer of this Court in Martand Dairy & Farm v. Union of India MANU/SC/0452/1975 : [1975] Supp. SCR 265 has observed that taxing consideration may stem from administrative experience and other factors of life and not artistic visualization or neat logic and so the literal, though pedestrian, interpretation must prevail.**"**

(vii) In **Saraswathi Sugar Mills v. Haryana State Board**[10]**,** the Apex Court was considering the issue whether the industries manufacturing sugar from sugarcane are covered by entry 15 of Schedule I to the Water (Prevention and Control of Pollution) Cess Act, 1977 (for short, 'the Cess Act'). Entry 15 of Schedule 1 reads "processing of animal or vegetable products industry". Referring

[10] AIR 1992 SC 224 = MANU/SC/0052/1992

the several decisions, the Apex Court held the sugar industries would not come under the term ‘vegetable products industry”. It observed thus:

> “**24.** Construction of words and the meaning to be given for such words shall normally depend on the nature, scope and purpose of the statute in which it is occurring and to the fitness of the matter to the statute. **The meaning given to the same word occurring in a social security measure or a regulating enactment may not be apposite or appropriate when the same word is interpreted with reference to a taxing statute (emphasis supplied)**. The Cess Act is a fiscal enactment. In the context in which the word 'vegetable' is used in Entry 15 'vegetable product' means product of or made of or out of vegetable. 'Vegetables' as understood in common parlance are not products of manufacture unless we say that agriculture is an industry for certain purposes and vegetables are products of that industry. In order to bring an industry within any of the entries in Schedule I it has to be seen what is the end product produced by that industry. Sugar cane is not a vegetable though it may be an agricultural product. If the botanic meaning of vegetable as referring to any and every kind of plant life is to be given then some of the industries listed in Schedule I like Paper Industry and Textile Industry and even chemical industry which are covered by other entries could also be brought within Entry 15. The word vegetable in the context does not attract the botanic meaning. The sugar manufacturing industry do not, therefore, come within Entry 15 of Schedule I of the Cess Act.”

(viii) In **Commissioner of Wealth Tax, Gujarat-III, Ahmedabad v. Ellis Bridge, Gymkhana**[11], the Apex Court observed thus:

> **"5.** The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.**"**

(ix) In **The Federation of Andhra Pradesh Chambers of Commerce & Industry v. State of Andhra Pradesh**[12], the Apex Court had an occasion to examine the correctness of the interpretation made by a Bench of Five judges of the Andhra Pradesh High Court of the clause "**where the land is used for any industrial purpose**" in section 3 of the A.P. Non-agricultural Lands Assessment Act, 1963 (the Act, 1963). The five judges Bench of A.P. High Court while concurring with the view of three Judges Bench which was referred to them, opined that the word "used" in section 3 of the Act, 1963 has to be interpreted in a wider sense to mean not only "actually used" but also "meant to be used" or "set apart for being used". The larger Bench observed that if the

---

[11] MANU/SC/0844/1998 = (1998) 1 SCC 384
[12] MANU/SC/0483/2000 = AIR 2000 SC 2905

word used has to be given the limited meaning as "actually used" it will not be in tune with the intendment of the legislature. The said decision was challenged before the Hon'ble Apex Court. After discussing the principles of construction of taxing statutes, the Apex Court disagreed with the judgment of five judges Bench and held thus:

> "**9.** We are in no doubt whatever, therefore, that it is only land which is actually in use for an industrial purpose as defined in the said Act that can be assessed to non-agricultural assessment at the rate specified for land used for industrial purposes. The wider meaning given to the word 'used' in the judgment under challenge is untenable. Having regard to the fact that the said Act is a taxing statute, no court is justified in imputing to the legislature an intention that it has not clearly expressed in the language it has employed.**"**

(x) In **Commissioner of Income Tax v. Kasturi & Sons Ltd.**[13], the Apex Court was engaged in interpreting the words "**money payable**" used in Section 41(2) of the Income Tax Act. The facts were that the respondent before Apex Court was the public limited company engaged in publishing the newspaper 'The Hindu'. It purchased a dacota aircraft for speedier transport and delivery of its

[13] MANU/SC/1605/1999 = AIR 1999 SC 1275

newspapers. The publishing company insured its aircraft with British Aviation Insurance Limited, Calcutta for sum of Rs.4,00,000/-. As per terms of the insurance contract, in the event of loss or damage in an accident to the aircraft, the insurance company was given an option to pay or replace or make good the accidental loss or damage to the aircraft. The respondents aircraft met with an accident on 25.12.1967 and became a total wreck. The insurer exercised its option in terms of the policy and purchased a similar aircraft for Rs.Rs.3,50,000/- and handed over to the respondents in the place of damaged one. Thereafter, the Income Tax Officer applying Section 41(2) of the Act worked out the profit of the respondent by deducting the written down value of the damaged aircraft from the value of the new aircraft and imposed tax on the differential value. As per section 41(2), any building, machinery, plant or furniture owned and used for the business of the assessee is sold, discarded, demolished or destroyed and the moneys payable in respect of the said asset together with the scrap value if exceeds the written down value the differential amount shall be chargeable to income tax as the income of the business or

profession. The respondent contended that the phrase "money payable" in 41(2) would apply only when money is received but not for the replacement of the asset. The revenue sought to interpret the phrase "money payable" as "money's worth". The Apex Court did not appreciate the interpretation of revenue. It held thus:

> **"18.** Thus, there is no doubt that on the exercise of the option by the insurer over which the insured has no sway, the contract should be considered only as a contract for reinstatement and not as a contract for money. There is no question of any `money payable' under the contract. There is a fallacy in the contention that the money became payable on the occurrence of the accident and the exercise of the option thereafter by the insurer would not alter the nature of the contract. The contract itself gives the right to the insurer to exercise the option and the legal effect of such exercise is to make the contract one for reinstatement only from the inception. It is analogous to the `doctrine of relation back'. Such exercise of option could only be after the occurrence of the accident and not at any time earlier. Consequently, the expression `moneys payable' in Section 41(2) will not apply in this case.
>
> **19. We are unable to accept the contention that the word `money' should be interpreted as `money's worth' (emphasis supplied)**. The reasons given by us earlier are sufficient and we need not add to them.**"**

(xi) Recently, in **Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company**[14], the Six Judge Bench of the Apex

[14] MANU/SC/0789/2018 = AIR 2018 SC 3606

Court made a classic exposition of how to interpret the tax statutes and tax exemption provisions and notifications. It held thus:

> "41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause 9at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provision, the benefit must necessarily go in favour of subject / assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue / State."

16. The principles laid down in the above thicket of decisions can be summed up thus:

(i) Imposition of tax since involve exaction of money by the State from the subjects, it cannot be done without the sanction of law.

(ii) Tax statutes shall require strict interpretation having regard to the strict letter of the law but not its spirit or substance.

(iii) When the language of the provisions of the statute is plain and unambiguous, such clear, natural and plain grammatical meaning should be assigned and the interpretation shall not be based on intendment, inference, implication, analogy or hypothesis.

(iv) A taxing statute including charging, computation and exemption clauses at the threshold should be interpreted strictly and in case of ambiguity in a charging provision, the benefit must be given in favour of assessee. An exemption provision or notification is concerned, the burden is on assessee to prove that his case comes

within the parameters of exemption clause or notification. In case of ambiguity, the benefit of such ambiguity must be given in favour of revenue.

17. With the above jurimetrical jurisprudence, when Section 17(5)(b) is scrutinized, therein, the phrase "purchases or sales" is used but not the phrase "purchase or sale". In our considered view, the aforesaid plural terminology used by the framers gives a plain and a natural meaning without leaving scope to any ambiguity. If their intendment was to make the dealer apply for VAT registration on even a single purchase or sale, the framers would have employed suitable terminology in Section 17 5(b) viz., "any dealer making even a single purchase or sale in the course of inter-state trade or commerce". That is not the case here.

(a) We have also examined the meaning of the phrase, "in the course of inter-state trade or commerce" to know whether the interpretation of plural words as singular words as sought for by learned Advocate General is possible. For this purpose we examined Section 3 of CST Act, 1956 which explain the concept of inter-state trade or commerce. Section 3 of the CST Act, 1956 says

that a sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase (a) occasions the movement of goods from one State to another or (b) is effected by a transfer of documents of title to the goods during their movement from one State to another. It is true that in Section 3 the singular words "sale" or "purchase" has been used. It implies that a single sale or purchase causing movement of goods from one State to another will be sufficient to denote the transaction as during the course of inter-state trade or commerce. However, the purpose in using the singular words in the said Act is well discernible. For the purpose of imposing inter-state sales tax on all sales under Section 6 of the CST Act, every sale or purchase is regarded as inter-state trade or commerce. So, the employment of singular words in Section 3 is only with reference to Section 6 of the CST Act, 1956 and confine to said Act only. However, it must be noted, in spite of having this knowledge, still, the framers of AP VAT Act, 2005, have deliberately used the plural nouns viz., "purchases or sales" in Section 17(5)(b). Therefore, in our honest

view, the aforesaid plural nouns cannot be said to have imbibed the singular nouns also.

18. We are also not oblivious of provisions of AP General Clauses Act, 1897 in this context. Section 3 (35) of the said Act defines the term "number" as words in singular shall include the plural and the words in the plural shall include the singular. It is true that if this definition is employed in Section 17(5)(b), then the plural words "purchases or sales" can also be taken to mean as "purchase or sale". However, as per Section 3 of A.P. General Clauses Act, the definitions enumerated in that section can be employed in the Acts enacted in the State of Andhra Pradesh after commencement of this Act, unless there is something repugnancy in the subject or context of those Acts. Thus it is needless to emphasize, in the event of any repugnancy in the subject or context of a given enactment, the definitions mentioned in A.P. General Clauses Act cannot be employed in that enactment. Therefore, it has to be seen whether any repugnancy will occur in the subject or context of Section 17(5)(b), if Section 3(35) of A.P. General Clauses Act is applied.

19. We have already discussed and held that the legislature has purposefully and deliberately employed the words "purchases or sales" in Section 17(5)(b), meaning thereby, it is only when a dealer involved in more than one purchase or sale during the course of inter-state trade or commerce, he shall be liable to be registered as a VAT dealer. When applied Section 3(35) of A.P. General Clauses Act, the plural nouns "purchases or sales" have also to be treated as "purchase or sale", which meaning will be repugnant to the context of Section 17(5)(b). Therefore, the said definition cannot be imported to Section 17(5)(b).

(a) In **Dulichand Lakshminarayan v. The Commissioner of Income Tax, Nagpur**[15] the Supreme Court engaged with the question whether two or more individual partnership firms can constitute into a separate partnership firm and seek for registration U/s 26(A) of Income Tax Act. In this context, the Apex Court considered Section 4 of the Indian Partnership Act, 1932 which reads thus:

> "**4.** Definition of "partnership", "partner", "firm" and "firm name":- "Partnership" is the relation between persons who have

[15] AIR 1956 SC 354 = MANU/SC/0037/1956

> agreed to share the profits of a business carried on by all or any of them acting for all.
> Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name".

Having found that no definition is provided for "person" in the Partnership Act, the Apex Court considered the possibility of employing the definition of "person" given in Section 3(42) of General Clauses Act which reads thus:

> "(42) "person" shall include any company or association or body of individuals, whether incorporated or not;"

(b) Having found that if the definition of "person" as is mentioned in Section 3(42) is employed in Section 4 of Partnership Act, it would amount to giving scope to the unincorporated association or body of persons like a firm can enter into partnership which is against the Partnership Law, the Apex Court held that Partnership Firms cannot form into another partnership firm.

20. Thus Point No.2 is concerned, the petitioner shall be treated as a TOT dealer only irrespective of his involvement in a single

transaction of purchase from outside the State. The said single transaction of purchase is concerned, the same is liable to be taxed under Section 6 of the CST Act, 1956 but not under the provisions of AP VAT Act, 2005 for the reason that as per Section 5 of AP VAT Act, the said Act has no application to impose tax on sale or purchase of any goods which took place outside the State. The petitioner cannot be treated as casual trader also for the reason that U/s 2(7) of AP VAT Act a casual trader is a person who carries on occasional transactions of a business nature involving buying, selling or distribution of goods in the State, whether as petitioner made a single purchase from outside the State. This point is answered accordingly.

21. <u>POINT No.3</u>: According to the petitioner the impugned Assessment for the period April, 2013 to July, 2014 is barred by limitation under Section 21(4) of AP VAT Act since the assessment for the aforesaid period exceeded four years. We are unable to accept the said plea for the reason that for the aforesaid period, the petitioner has wilfully underdeclared his sales turnover and evaded

payment of the tax to a tune of Rs.3,030/-. Therefore, following Section 21(5) of the AP VAT Act the 3rd respondent has rightly levied the tax. It is relevant at this juncture to mention that for the subsequent period also, for any undervaluation of sales and consequent evasion of tax, the petitioner will be liable to pay tax at 1% as a TOT dealer but not 14.5% as a VAT dealer in view of findings in points supra.

22. <u>POINT No.4</u>: The contention of the petitioner is that even assuming that he is liable to be registered as VAT dealer and pay tax accordingly, however, he shall not be liable to pay penalty of 100% on the tax due but in terms of Section 49 of AP VAT Act, he shall be liable to pay penalty of 25% only. We find this argument has no force. We have already held that the petitioner shall be treated as TOT dealer only but not as VAT dealer. As such, he need not pay tax as a VAT dealer. Consequently, Section 49 of the Act which deals with penalty for failure to registration does not apply to the instant case. On the other hand, the petitioner for his act of undervaluing the tax as a TOT dealer, shall be liable to pay

penalty as per Section 53 of AP VAT Act. This point is answered accordingly.

23. **POINT No.5:** This point is concerned, the argument of learned Advocate General is that in view of availability of alternative and efficacious remedy of appeal, writ is not maintainable. We are unable to accept this argument. In **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai** [16] the Apex Court held that the alternative remedy will not operate as a bar in the contingencies namely where the writ petition has been filed for the enforcement of fundamental rights or where there has been a violation of principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In the instant case the petitioner challenged the validity of Section 17(5)(b) of AP VAT Act. As such the writ is maintainable.

24. Thus on a conspectus of facts and law, the writ petition is allowed and the impugned Assessment Order dated 04.08.2018

[16] AIR 1999 SC 22 = MANU/SC/0664/1998

penalty proceedings dated 23.11.2018 and Appellate Order dated 22.10.2020 are hereby set aside with the following findings and directions:

(i) Section 17(5)(b) of AP VAT Act is a valid provision and not inconsistent with other provisions.

(ii) The petitioner who is a TOT dealer, for his single transaction of purchase of goods from outside the State, shall not be required to be registered as a VAT dealer.

(iii) The assessment made by the 3rd respondent for the relevant period mentioned in the impugned Assessment Order dated 04.08.2018 is not barred by limitation. However, the Assessment Order is liable to be set aside as the 3rd respondent, for the underdeclaration of sales from July, 2015 to August, 2016 imposed tax @ 14.5% wrongly treating the petitioner as a VAT dealer. Due to the underdeclaration of sales for the relevant period, the petitioner is liable to pay penalty as per Section 53 of the AP VAT Act.

(iv) The 3rd respondent shall pass a fresh Assessment Order for the relevant period treating the petitioner as a TOT dealer in the light of above findings. No costs.

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

U. DURGA PRASAD RAO, J

T. MALLIKARJUNA RAO, J

15 .02.2023
mva/krk/nnn

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
AND
THE HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

Writ Petition No.629 of 2021

15th February, 2023

mva/krk/nnn