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APHC010326362010

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3543]**
(Special Original Jurisdiction)

WEDNESDAY, THE 8th DAY OF JULY 2026

PRESENT

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 10093/2010

Between:

1. M/S. NANDINI GARDEN RESTAURANT, CHITTOOR DIST., HIGHWAY TOURIST SERVICES, GANDLAKOTHUR VILLAGE, YADAMARI (M), CHITTOOR DISTRICT, NOW AT M/S. NANDINI GARDEN RESTAURANT, HIGHWAY TOURIST SERVICES, MAIN ROAD, VEPANAPALLE VILLAGE, PUTHALPATTU (M), CHITTOOR DISTRICT,

...PETITIONER

AND

1. C T O CHITTOOR DIST ANOTHER, CHITTOOR-II CIRCLE, CHITTOOR DISTRICT.
2. THE REGIONAL VIGILANCE ENFORCEMENT OFFICER, TIRUPATHI.

...RESPONDENT(S):

Counsel for the Petitioner:

1. M V J K KUMAR

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

Writ Petition No:10093 of 2010

The Court made the following Order: (per NJS,J)

Heard learned counsel for the petitioner. Also heard Mr. S A V Sai Kumar, learned Assistant Government Pleader for Commercial Tax.

2. Petitioner a registered VAT dealer under the A.P.V.A.T. Act, 2005, engaged in business of selling eatables to the consumers and customers. Petitioner's premises was inspected by the Regional Vigilance and Enforcement Officer i.e., respondent No.2 along with staff on 13.04.2006 and subsequently, a show cause notice proposing to levy tax @ 7.5% on an estimated turnover of Rs.1,39,67,360/- and interest @ 1% per month was issued. Petitioner was called upon to submit its reply/explanation.

3. Petitioner submitted reply dated 27.02.2010 and additional reply dated 09.03.2010 and contended *inter alia* that expenditure cannot be made basis for estimating the sale turn over and the sale turnover of a hotel will not be in a fixed manner, etc. After considering the reply/explanation, respondent No.1 passed Assessment Order dated 30.03.2010, impugned in the present writ petition.

4. It is *inter alia* contended on behalf of the petitioner that respondent No.1 failed to notice that purchase of raw material cannot be made basis for estimation of sale, as the food prepared if not sold in a hotel is of no use for next day and that, before passing the impugned Assessment Order, the relevant documents were not furnished to the petitioner. Contention with regard to increase or decrease in turnover depends upon floating of customers was also raised. Further that the order under challenge without furnishing the relevant documents is violative of principles of natural justice and therefore, the present writ petition is maintainable.

5. On the other hand, learned Assistant Government Pleader, made submissions with reference to the averments made in the counter-affidavit filed by respondent No.1. Drawing the attention of this Court to the material filed along with the writ petition, he submits that as is discernible from the Endorsement dated 05.03.2009, relevant documents were furnished to the petitioner and the specific averment made in counter-affidavit in this regard at paragraph No.5, was not denied by filing a reply-affidavit. He submits that the writ petition without availing the remedy of appeal is not maintainable and liable to be dismissed.

6. We have considered the submissions made and perused material on record.

7. Insofar as contention with regard to non-supply of relevant documents in violation of principles of natural justice is concerned, we see no merit in the same. In the absence of any specific reply, denying the supply of material, the averment made in the counter-affidavit remains un-rebutted. In fact, such a contention advanced on behalf of the petitioner cannot be accepted more particularly in the light of the reply submitted by the petitioner wherein, it was only vaguely stated that the documents annexed to the Endorsement dated 05.03.2010 are not at all helpful to file reply to the show cause notice, Writ Petition, as rightly contended by learned Assistant Government Pleader as there is no non-supply of documents at all as sought to be projected. Be that as it may.

8. A Division Bench of erstwhile High Court of Andhra Pradesh at Hyderabad dealt with the issue as to “Whether authorities including Sales Tax Appellate Tribunal are justified in holding that petitioner was guilty of suppression of turnover of sales and purchases of articles while dealing in cooked food?”. Referring to a decision of Hon’ble the Supreme Court in **Commissioner of Sales Tax, Madhya Pradesh vs. M/s. H.M.Esufali, H.M.Abdulali, Siyaganj, Indore** reported in [1973] 90 ITR 271 (SC), wherein

it was held that on the basis of one day's inspection where the suppressed sales could be detected, estimate could be made for the whole year. The Division Bench was not inclined to interfere with the Assessment Proceedings as confirmed in the appeal. Be that as it may.

9. In the present case, it is evident from the record that the relevant documents were supplied to the petitioner. Despite the same, it did not choose to file appropriate reply and thereby, the Assessing Officer passed the order under challenge. In the normal circumstances, in the light of availability of alternative remedy, the petitioner may be relegated to avail statutory remedy of appeal. However, the Assessment Order is of the year, 2010, at this stage, this Court of the opinion that no useful purpose would be served by disposing of the writ petition, leaving it open to the petitioner to avail the remedy of appeal. Even otherwise, on merits also, in the light of the decision of **Commissioner of Sales Tax, Madhya Pradesh** (referred supra); we feel that the petitioner is not entitled to any relief.

10. In the aforesaid view of the matter, Writ Petition is dismissed. No costs. Miscellaneous petitions pending, if any, shall stand closed.

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JUSTICE NINALA JAYASURYA

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JUSTICE T.C.D.SEKHAR

Date:08.07.2026
Ksj

Whether the order is :
Speaking Yes/No / Reasoned Yes/No
Reportable Yes/No / Non-Reportable Yes/No