

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Writ Petition No.9629 of 2015

Between:

Smt. Kothamasu Nasaramma.

.... Petitioner

Vs.

Deputy Commercial Tax Officer-I, O/o; The Commercial Tax Officer,
Narasaraopet Circle, D. No.9-40, Near Vysya bank, Arundelpet,
Narasaraopet – 522601 and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 23.08.2016.

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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| 1. Whether Reporters of Local newspapers may
be allowed to see the Judgments? | - |
| 2. Whether the copies of judgment may be marked
to Law Reports/Journals | Yes |
| 3. Whether Their Ladyship/Lordship wish to see the
fair copy of the Judgment? | Yes |

RAMESH RANGANATHAN

* **HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
* THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ **WRIT PETITION No.9629 OF 2015**

% Dated 23-08-2016

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Smt. Kothamasu Nasaramma.

.... Petitioner

Vs.

\$ Deputy Commercial Tax Officer-I and others.

.... Respondents

! Counsel for petitioner: Dr. S.R.R. Viswanath.

^ Counsel for respondents: Sri Shaik Jeelani Basha, Learned
Special Standing Counsel for Commercial Taxes (AP).

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> HEAD NOTE:

? Citations:

- 1) (2006) 42 APSTJ 77
- 2) (2014) 59 APSTJ 130
- 3) AIR 1959 Mysore 165
- 4) AIR 1965 Calcutta 242
- 5) (2006) 5 SCC 340
- 6) (2007) 11 SCC 447
- 7) (2015) 61 APSTJ 246
- 8) (judgment in WP No.17017 of 2002 dated 12.04.2005)
- 9) AIR 1963 SC 746 = (1963) Supp 1 SCR 63
- 10) (1862) 4 De G.F. & J. 365 = 45 E.R. 1225
- 11) AIR 1967 SC 1634
- 12) 62 Ind App 23 = AIR 1933 PC 21
- 13) AIR 1943 Bom 243 = 45 Bom L R 510
- 14) AIR 1934 Calcutta 569
- 15) 7 Mys LJ 159
- 16) AIR 1948 Mad 302
- 17) (1964) 15 STC 299 (A.P)

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

Writ Petition No.9629 of 2015

ORDER: (per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The proceedings under challenge in this Writ Petition is the

attachment notice in Form-5 dated 31.03.2015 issued by the first respondent. The validity of this notice is questioned as being contrary to Section 12 read with Rule 28(8) of the Andhra Pradesh General Sales Tax Act and Rules, 1957 and contrary to the law laid down by this Court in **New Kamal Bar and Café v. State of Andhra Pradesh**^[1].

In the affidavit filed in support of the Writ Petition, the petitioner states that she is living in house bearing No.3-8-23 along with her son, daughter-in-law and grandson; she does not have any other property, and is eking out her livelihood with great difficulty; her son was a partner in Sri Devi Dhall Mill; the said firm had applied for registration, under Section 12 of the A.P.G.S.T Act, 1957, in Form-D on 13.10.1997; along with the Form-D application, the partnership firm had filed Form-A return of estimated turnover under Rule 28(8) of the APGST Rules; at the instance of her son she had agreed to be a surety, and had executed a surety bond on 13.10.1997 only to the extent of her son's liability; through her son, she came to know that the firm had carried on business only in the years 1997-98 and 1998-99, and had subsequently stopped it; she did not know what happened thereafter till she received the notice in Form-4 issued under the Andhra Pradesh Revenue Recovery Act demanding that she, as the surety, should pay the tax dues of the partnership firm; the tax dues from the firm, for the years 1997-98 and 1998-99, were Rs.2,78,533/- and Rs.6,95,566/- respectively; she addressed a letter to the first respondent requesting him to furnish a copy of the Form-D application filed by the firm, a copy of the surety bond executed by her, a copy of the Form-A return of estimated turnover filed by the firm, a copy of the assessment order passed against the firm for the year 1997-98, and a copy of the partnership deed; the first respondent had, by his letter dated 05.02.2015, furnished her the copies sought for, except the copy of the Form-A return filed under Rule 28(8) of the APGST Rules; the said Form-A would disclose the estimated tax due for a year to which extent alone could the surety be enforced statutorily; the first respondent had deliberately withheld a copy of the Form-A return which determines the surety's liability; in view of the law declared by this Court, in **New Kamal Bar and Café**¹, a surety can be enforced to the extent of the tax liability estimated in the Form-A return; the tax estimated, in the Form-A return, was

only Rs.8,000/- on the estimated taxable turnover of Rs.2,00,000/- from out of the gross turnover of Rs.20,00,000/-; hence the demand for payment of tax of Rs.2,78,533/- was contrary to Section 12 read with Rule 28(8); service of the assessment order by affixture on 14.03.2001 is illegal; the partnership firm had admitted liability only on a turnover of Rs.16,19,767/-; the tax thereon was only Rs.64,791/- which was paid by the partnership firm; the tax dues were however determined by the 2nd respondent on a best judgment assessment; as the firm had paid the tax, her liability as a surety was nil; an assessment order was passed on 14.03.2001 though the firm had stopped business earlier; and she came to know of the demand only in the year 2014.

According to the petitioner, in view of the law laid down by this Court in **New Kamal Bar and Cafe**¹, her liability as a surety was only to discharge the tax liability for a year as estimated in the Form-A return; attachment of her dwelling house, without furnishing a copy of the Form-A return, was illegal; her liability as a surety was only to the extent of the admitted tax liability of Rs.64,791/-, and not on the turnover determined under best judgment assessment; the respondents had not raised a demand for 14 years after the assessment order; and they were guilty of action and omissions inconsistent with the rights of a surety.

In the counter-affidavit filed by the 2nd respondent, it is stated that the petitioner was a surety whose residential house was furnished as surety for the partnership firm vide surety bond dated 13.10.1997 submitted to the registering authority; in the said surety bond, the petitioner had stated that her son was a partner in the firm; the value of the house at that time was approximately Rs.1.00 Lakh, and her son had applied for registration as a partner of the firm; the petitioner had also enclosed photostat copies of the documents of title along with the surety bond; she had stated in the bond that, in case her son defaulted in making payment of the tax due to the Government, she would pay the same, and the surety bond was executed by her voluntarily; she had further stated that, along with the Form-D application, the firm had also filed Form-A return of estimated turnover; however no Form-A was filed by the partnership firm while filing the Form-D application for registration; the surety given by the petitioner was for

registration of the firm, and not for the share of her son's liability in the partnership firm; by her letter dated 21.12.2014, the petitioner had promised to pay the tax amount due to the department on the details sought for being furnished to her; again, by her letter dated 31.12.2014, she had asked for certain documents; most of the documents sought for were furnished to her; the partnership firm did not file the Form-A return while filing the Form-D application for registration; the firm had, however, filed Form-A application which related to issuance of registration certificate under the Central Sales Tax Act; in Column 19 of the Form-D application, the firm had estimated the turnover for the year as Rs.20.00 Lakhs; the petitioner's tax liability as surety is for the tax dues of the firm for the first year 1997-98; the petitioner's claim that her liability was only Rs.8,000/-, as per the tax estimated in Form-A, is not tenable; the provisions of the Andhra Pradesh Revenue Recovery Act were rightly invoked; and, while the partnership firm is liable to pay the tax dues for the years 1997-98 and 1998-99, the respondents had restricted the demand from the surety, only for the assessment year 1997-98, in view of the law declared by this Court.

In the reply affidavit filed thereto, the petitioner asserted that, along with the Form-D application, she had filed the Form A return of estimated turnover under Rule 28(8); she had offered surety only to the extent of her son's share in the firm not exceeding Rs.8,000/-; the tax estimated in Form A was only Rs.8,000/-, and her liability as a surety was only to that extent; the Form A application, for registration under Section 7(1)/7(2) of the CST Act, is different; the Form A, as prescribed under Rule 9 of the APGST Rules, was filed estimating the tax due as Rs.8,000/-; the practice of the department is to insist on security or surety only to the extent of Rs.6,000/-; the circular issued by the Commissioner of Commercial Taxes dated 21.07.1997 makes it clear that the departmental authorities could not demand security/surety for an amount exceeding Rs.6,000/-; column 19 of the Form-D application speaks of the estimated total turnover; while security/surety can be demanded under Section 12(11), read with Rules 9 and 28(8), the surety shall not exceed the amount equal to the tax payable under the Act for the year as estimated; failure of the registering authority, to estimate the tax payable under the Act for a year, absolved the petitioner of her liability as held by this Court in **R.**

Dandayudhapani v. Commercial Tax Officer^[2]; while the term “total turnover” includes turnover which is exempt from tax, the term “turnover” represents the taxable turnover; Section 5 of the Act also distinguishes “total turnover” from “turnover”, and provides for levy of tax only on the latter; Form A, i.e the return of estimated turnover, makes it clear that the expression “estimated turnover”, in Column 19, refers to the aggregate of both taxable and non-taxable turnover; the tax estimated in Form A was only Rs.8,000/-, on the estimated taxable turnover of Rs.2,00,000/-, from out of the estimated total turnover of Rs.20,00,000/-; and the attempt by the respondent authorities to demand an amount in excess of Rs.8,000/- is contrary to law.

Dr. S.R.R. Viswanath, Learned Counsel for the petitioner, would submit that the amount which can be collected from the surety is the tax due on the estimated turnover for the first assessment year; the meaning of the expression “total turnover” is different from “estimated turnover”; the circular of the Commissioner dated 21.07.1997, issue long prior to the assessment order and even prior to registration of the firm as a dealer, stipulated security of only Rs.8,000/-; in the absence of estimation of the turnover by the registering authority, he cannot take advantage of his own failure and subject the petitioner to tax; a security/surety bond must be strictly construed; a security/surety bond, without the required particulars, has no meaning; the respondents were not justified in recovering any amount from the surety towards the tax dues of the firm, in the absence of the firm filing Form A estimating their taxable turnover; as per clause 19 of Form D, the firm had only estimated the total turnover as Rs.20,00,000/-; the tax rate, prescribed during the relevant period, was only 4%; in any event the respondents were not justified in recovering from a surety the tax dues beyond Rs.80,000/-; and the liability of a surety is limited only to the tax due on the turnover estimated by the assessee, and not on the net turnover determined by the assessing authority. Learned Counsel would rely on **Nagappa Naik v. Manianath Das Desai**^[3]; **Jiban Krishna Mukherjee v. New Beerbhum Coal Co. Ltd.**^[4]; **R. Dandayudhapani**²; **Panchanan Dhara v. Monmatha Nath Maity**^[5]; and **Kusheshwar Prasad Singh v. State of Bihar**^[6].

On the other hand, Sri Shaik Jilani Basha, Learned Special Standing

Counsel for Commercial Taxes, would refer to Rule 28(8) of the APGST Rules and Column 19 of Form D in support of his submission that the liability of the surety is for payment of the tax dues of the firm for one year; and, as the firm had estimated its turnover as Rs.20,00,000/-, the surety was liable to discharge this liability of the firm for the first assessment year. Learned Standing Counsel would rely on **Sunkara Narayanamma v. The Deputy Commercial Tax Officer**^[7]; and **Gullapudi Someswara Rao v. The Commissioner of Commercial Taxes**^[8].

As the assessment order passed on 14.03.2001, for the assessment years 1997-98 and 1998-99, has attained finality since the assessee-dealer has not chosen to prefer an appeal thereagainst, we see no reason to now examine its validity, more than fourteen years after it was passed, that too at the behest of the surety. The submissions made on the merits of the assessment order, therefore, necessitate rejection.

Reliance placed by Dr. S.R.R. Vishwanath, on the Circular of the Commissioner, Commercial Taxes dated 21.07.1997, to contend that it is only the security deposit of Rs.6,000/- which can be recovered from a surety, is misplaced. After examining certain problems, which arose on the department insisting on security deposits/sureties for registration of dealers under Section 12 of the A.P.G.S.T. Act, and on the representations made by dealers on the arbitrary fixation of the security deposit, third party surety on stamp paper etc, the Commissioner of Commercial Taxes, Andhra Pradesh issued Circular dated 21.07.1997 wherein he observed that, in practice, security deposit was never demanded for an amount equivalent to the tax due for a year; the security deposit demanded varied from Rs.1,000/- to Rs.10,000/-; only in sensitive cases did it exceed that amount; even if a dealer defaulted in payment of tax, the security deposit may not be sufficient for clearing the arrears; and it was therefore necessary to lay down certain guidelines for fixing the amount of deposit to be demanded by the registering authority from a dealer. The dealers, who had applied for registration and were required to furnish security deposit, were grouped into two categories i.e., (a) dealers applying for A.P.G.S.T. registration only, and (b) dealers applying for A.P.G.S.T. and C.S.T. registrations; for dealers, who applied for A.P.G.S.T. registration, a security deposit of Rs.2,000/- was directed to be

demand, and for those who had applied for registration both under the A.P.G.S.T. and the C.S.T. Acts, a security deposit of Rs.6,000/- was directed to be demanded uniformly. It is evident from the said circular dated 21.07.1997 that the security deposit of Rs.2,000/-/Rs.6,000/- was not stipulated as the security for the tax dues for the entire year and the Commissioner was conscious that, even if a dealer defaulted in payment of tax, the security deposit amount may not be sufficient to clear the tax arrears of one year. It is evident, therefore, that the requirement of furnishing security deposit is independent of the liability of a surety to bear the tax arrears, due from the defaulting dealer, for a period of one year.

Section 12(5) of the APGST Act stipulated that no dealer, who is liable to get himself registered under sub-section (1) or sub-section (2) or sub-section (4), shall carry on business as a dealer unless he has been registered and is in possession of a certificate of registration. Section 12(6) stipulated that an application for registration shall be made to the prescribed authority in such manner and within such time as may be prescribed. Under Section 12(7), where it appears necessary to the authority to whom an application is made under sub-section (6) so to do for the proper realisation of the tax and other dues payable under the APGST Act, or for the proper custody and use of the forms referred to in the APGST Act, the rules made and the notifications issued thereunder, he may, by order in writing and for reasons to be recorded therein, impose, as a condition for the issue of a certificate of registration, a requirement that the dealer shall furnish in the prescribed manner, and within such time as may be specified in the order, such security as may be specified for all or any of the aforesaid purposes.

Rule 28(1) of the APGST Rules stipulated that every dealer, liable to get himself registered under sub-section (1) of Section 12 of the Act, shall submit an application for registration to the registering authority. Rule 28(6) provided that every application for registration, under sub-rules (1) to (5), shall be made in Form D. Rule 28(8) enabled the registering authority to require an applicant for registration to furnish, within such time as may be specified by such authority, security not exceeding an amount equal to the tax payable under the APGST Act for a year as estimated by him, for the proper realisation of the tax and other dues payable under the Act and/or for the proper custody and use of the forms referred to in the Act, the rules made

and the notification issued thereunder. Rule 28(9) stipulated that the security, referred to in sub-rule (8), may be in any of the following forms, namely: (a) deposit in Government Treasury by cash, (b) government promissory notes, loan bonds, post office savings bank deposits, National Saving Certificates, deposits made in the scheduled banks or Andhra Pradesh State Cooperative Bank or Central Cooperative Bank duly pledged to the registering authority, (c) surety bond, (d) guarantee from a Scheduled Bank agreeing to pay to the State Government on demand the amount of security fixed by the registering authority, and (e) immovable property. Rule 28(10) provided that (a) the registering authority receiving the application shall, if he is satisfied after making such enquiry as he considers necessary that the application is bonafide and the particulars contained therein are correct and complete, register the dealer and grant him a certificate of registration in Form D1.

Form D, the application form prescribed for registration as a dealer under Section 12 of the APGST Act, required, among others, the applicant-dealer to furnish information regarding the goods ordinarily purchased by him, the sale in the course of inter-state trade or commerce, export outside the State, and details of goods, if any, imported into the State by the dealer from foreign countries or from other States in India. In addition thereto the applicant dealer was also required, in column 17 thereof, to provide information regarding the total turnover of the year preceding which the application was submitted, in column 18 the actual turnover of the year upto the date of submission of the application, and in column 19 the estimated total turnover for the year in which the application was submitted.

In Column No.19 of the Form D application, submitted on behalf of the dealer, the estimated total turnover, for the year in which the application was submitted, is stated to be Rs.20,00,000/- (Rupees twenty lakhs only). While Dr. S.R.R. Viswanath, Learned Counsel for the petitioner, would submit that the surety is required to be furnished only on the estimated turnover, and not on the estimated total turnover of a dealer for the year, it is necessary to note that the prescribed Form D did not require the applicant to furnish information regarding the estimated turnover, but stipulated that they provide details of the estimated total turnover for the year.

Rule 9 of the APGST Rules, 1957 required every dealer, liable to get himself registered under Section 12 of the APGST Act, to submit to the assessing authority, within 30 days of the commencement of business, a return in Form-A showing his estimated total and net turnover for the first twelve months of his business. Form A required the dealer to furnish, among others, information, in the form of a statement, regarding the estimated total and net turnover of the business, the commodity-wise tax, and the turnover details. The said statement contains, in column 3 thereof, the estimated total turnover, in column 4 the estimated turnover on which exemption is claimed, and in column 5 the estimated net turnover.

In the Circular dated 21.07.1997, the Commissioner of Commercial Taxes had also held that most of the information required for registration was covered by the application in Form D; if all the information, required in the Form D application was furnished, the application for registration should be considered; for want of additional information, the issue of the registration need not be kept pending; and the supplementary information could be obtained during the course of the year. It is clear, from the Circular of the Commissioner dated 21.07.1997, that grant of registration under the APGST Act is on the basis of the information furnished by the dealer in Form-D which, as noted hereinabove, only required the dealer to provide, in column 19 thereof, information regarding their estimated total turnover. Rule 28(8) of the APGST Rules, which required the applicant seeking registration to furnish security for an amount not exceeding an amount equal to the tax payable under the A.P.G.S.T. Act for the year as estimated by him, relates only to the estimated total turnover for the year as referred to in column 19 of Form D. Form A on the other hand, as stipulated under Rule 9 of A.P.G.S.T. Rules, required the dealer to furnish information regarding the estimated total and net turnover. It would be wholly inappropriate to read the condition stipulated in Form A read with Rule 9 of the A.P.G.S.T. Rules into Form D read with Rule 28(8) of the A.P.G.S.T. Rules, ignoring clause 19 of Form-D. In any event, in the present case, there is no material on record to show that the dealer had submitted Form A and enforcement of security could, therefore, have been based only on the estimated turnover as specified in column 19 of the application for registration in Form D.

While the submission of Dr.S.R.R.Viswanath, Learned Counsel for the petitioner, that the authority cannot neglect to do that which the law mandates and requires doing, failure of the authority to discharge its statutory duty cannot prejudice the other party (**Kusheswar Prasad Singh**⁶), if a certain statutory formality is required to be complied with, or permission is required to be obtained, the said requirement must be complied and a party may not be permitted to take advantage of his own wrong in not taking steps to comply with the statutory provision (**Panchanan Dhara**⁵), cannot be said to be without merit, the surety cannot also take advantage of the failure of the dealer to submit Form A, and be heard to contend that the contents of the Form-D application submitted by them should be ignored, and no action should be taken to recover the arrears of tax due as Form A was not submitted by them. Accepting such a submission would require this Court to ignore the contents of Form-D submitted by the applicant-dealer, and restrain the respondents from collecting the tax arrears, admittedly due and payable by the assessee-dealer, on the specious plea that the respondents had failed to obtain Form-A from them. Such a contention has only to be noted to be rejected.

A surety is considered a "favoured debtor" and his liability is strictissimi juris. (**M.S. Anirudhan v. The Thomco's Bank Ltd.**^[9]). A surety is bound to the letter of his engagement. Beyond the proper interpretation of that engagement, there can be no hold upon him. He receives no benefit and no consideration. He is bound, therefore, merely according to the proper meaning and effect of the written engagement that he has entered into. (**Blest v. Brown**^[10]; **M.S. Anirudhan**⁹; **State of Maharashtra v. Dr. M.N. Kaul**^[11]; **Pratapsing Moholalbhai v. Keshavlal Harilal Setalvad**^[12]).

The terms of a surety bond should be strictly construed, and any ambiguity therein should go to the benefit of the surety. (**Nagappa Naik**³; **Pannaji Devchand v. Basappa Virappa**^[13]). The rule that a security bond must be strictly construed according to its own terms is certainly true where there is no ambiguity in the terms but, where there is a contradiction in terms, Section 95 of the Evidence Act allows a reference to antecedent

circumstances. (**Jiban Krishna Mukherjee**⁴; **Mohendranath v. Satish Chandra**^[14]). The terms of the surety bond, whenever there is any doubt, should be construed reasonably with reference to the surrounding circumstances. (**Nagappa Naik**³; **Abdul Majid Sab v. Abdul Majeed**^[15]). If it is reasonably clear that the contingency in which the bond is sought to be enforced would not fall within the language of the condition, it is not permissible to override that language in the light of what the parties intended if they did not succeed in expressing that intention in suitable language. If on the other hand, on a fair reading of the Bond in the light of the surrounding circumstance, the Court considers that the contingency in which the security is sought to be availed of falls reasonably within the language of the condition which is sufficiently wide to comprehend it, there is no rule compelling the Court to adopt the stricter of the two constructions to both of which the language may be susceptible. (**Jiban Krishna Mukherjee**⁴; **Elaya Pillai v. Muhammad Ibrahim Sahib**^[16]).

The surety furnished by the petitioner records that Sri K.V.V. Anjaneyulu was the surety's son; they were part of a Hindu undivided family; she possessed, in her own name, a house situated in the old town of Narasaraopet; she was filing the photostat copies of the documents of title under which the said house was purchased; the value of the house was approximately Rs.1,00,000/-; her son was a partner of the partnership firm, and had applied for registration; in case her son defaulted in payment of the tax due to the Government, she would pay the same; and the surety bond was executed and filed by her voluntarily.

While a surety can only be bound by the letter of his/her engagement (i.e the letter of surety furnished by him/her), the surety bond, in the present case, makes no reference to the estimated tax, and refers only to the petitioner having voluntarily agreed to pay the tax dues to the Government in case her son defaulted in payment. It is also evident from the counter affidavit filed by the respondents that Form A, allegedly filed by the dealer, is not available on record and, while furnishing all the other documents sought for by the petitioner, a copy of Form-A could not be furnished as no such Form-A appears to have been submitted by the dealer earlier. In any event,

except for a self-serving assertion that Form A was filed, no material has been placed on record by the petitioner to show that Form A was filed, and the turnover estimated therein is different from the estimated total turnover referred to in the Form D application filed on behalf of the dealer.

Dr. S.R.R. Viswanath, Learned Counsel for the petitioner, would submit that the security required to be furnished under Rule 28(8), not exceeding an amount equal to the tax payable under the Act for the year as estimated by the authority, is with reference to the estimated net turnover in Form A, and not the estimated total turnover in Form D. He would seek to distinguish between the estimated total turnover, and the estimated net turnover, to submit that, in the absence of the dealer furnishing details of the estimated net turnover in Form A, the surety cannot be held liable to discharge the tax dues of the dealer. It is no doubt true that the expression "total turnover" is of wide import, it consists of all the transactions whether they be subjected to tax under the Act or whether they be exempt from tax, and net turnover is arrived at only after deducting certain amounts from out of the gross turnover. (**Guduthur Thimmappa and Son v. The State of Andhra Pradesh**^[17]).

As noted hereinabove what is referred to in column 19 of Form D (application for registration) is the estimated total turnover, and the said Form neither makes any reference nor does it separately provide for details being furnished of the estimated turnover as distinct from the estimated total turnover. It is evident, therefore, that the estimated turnover, as referred to in Rule 28(8), is the estimated total turnover referred to in column 19 of Form D. The assessment order dated 14.03.2001 records the assessee-dealer as having admitted a net turnover of Rs.16,19,767/-. The assessing authority, however, assessed the net turnover of the dealer as Rs.85,83,101/- for the year 1997-98, and levied tax thereon of Rs.3,43,324/-. After adjusting the tax paid of Rs.64,791/-, a notice in Form B-3 was issued for the balance tax due of Rs.2,78,533/-. The contention, that the net turnover as stated by the assessee should form the basis of recovery of the tax due from the surety, is only to be noted to be rejected. If the said net turnover was to form the basis then the assessee, having paid the tax thereon of Rs.64,791/-, would not be liable to pay any other amount, and consequently no tax would remain due

to be recovered from the surety. We are satisfied that the tax payable on the net turnover, as determined by the assessing authority, would form the basis of its recovery from the surety. As the applicant had declared the estimated total turnover, in the Form-D submitted by them, as Rs.20,00,000/-, the liability of the surety is to repay the tax dues on the said estimated total turnover of Rs.20,00,000/-.

Reliance placed by Dr.S.R.R. Viswanath on **R. Dandayudhapani**² is misplaced. In **R. Dandayudhapani**², a Division Bench of this Court observed:-

“.....It is wholly unnecessary for this Court to examine the scope of Rule 28 (8) of the Rules for, even if the submission of Sri P.Balaji Verma, learned Special Standing Counsel for Commercial Taxes, were to merit acceptance, the registering authority was required to have estimated the amount of tax payable under the Act for a year; and to have called upon the petitioner to produce a surety for the said sum. Neither has any such exercise been undertaken by the registering authority nor has any material been produced before this Court to show that the petitioner was required to furnish a surety for the estimated sum. The surety bond dated 24.10.1994, placed before this Court, merely records the statement of the petitioner that he stood as surety for the tax due under the Act from the third respondent; and that their immovable property was worth Rs.2,00,000/-. This surety bond cannot be construed as if the petitioner had undertaken to furnish surety for Rs.2,00,000/-. While failure of the registering authority, to estimate the tax payable under the Act for a year, may well absolve the petitioner of his liability as a surety to pay the said amount, we see no reason to delve on this aspect any further as Sri S.Krishna Murthy, learned counsel for the petitioner, has fairly stated that the liability of the surety is for the tax due and payable by the defaulting dealer for the assessment year 1994-95. Leaving it open to the respondent to recover the tax due, if any, of the defaulting dealer, for the assessment year 1994-95, from the petitioner herein the distraint orders are set aside as they relate to the subsequent assessment years.....”

It is clear, from the afore-extracted portion of the order, that the Division Bench considered it wholly unnecessary to examine the scope of Rule 28(8) of the APGST Rules. It is also saw no reason to delve on the aspect whether failure of the registering authority to estimate the tax payable for a year absolved the surety of his liability to pay the amount. Passing observations in the said judgment cannot be read out of context or be understood as the declaration of law binding on a co-ordinate bench.

While the impugned order required the petitioner, as a surety, to pay the tax dues of the partnership firm for the years 1997-98 and 1998-99 i.e for Rs.2,78,533/- and Rs.6,95,566/- respectively, it is settled law that the surety given by a person, on behalf of the assessee, would remain in force against the tax payable under the APGST Act for a year as estimated by the assessee. (**Sunkara Narayanamma**⁷; **Gullapudi Someswara Rao**⁸; **New Kamal Bar & Cafe**¹). As the estimated turnover declared in Form D is

Rs.20,00,000/-, and the rate of tax during the said period was 4%, the liability of the surety, to pay the tax arrears of the partnership firm, is only upto Rs.80,000/- and not beyond. The impugned demand notice, to the limited extent the surety was called upon to pay an amount in excess of Rs.80,000/-, is set aside. The respondents may proceed and recover the arrears of tax, due from the partnership firm, upto a limit of Rs.80,000/- from the petitioner-surety under the Revenue Recovery Act. It is made clear that this order shall not preclude the respondents from proceeding against the partnership firm, or its partners, for recovery of the balance arrears of tax due, in accordance with law.

The Writ Petition is disposed of accordingly. The miscellaneous petitions, if any pending, shall also stand disposed of. However, in the circumstances, without costs.

(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

23 -08-2016.

Note:

L.R. copy to be marked.

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- [\[1\]](#) (2006) 42 APSTJ 77
 - [\[2\]](#) (2014) 59 APSTJ 130
 - [\[3\]](#) AIR 1959 Mysore 165
 - [\[4\]](#) AIR 1965 Calcutta 242
 - [\[5\]](#) (2006) 5 SCC 340
 - [\[6\]](#) (2007) 11 SCC 447
 - [\[7\]](#) (2015) 61 APSTJ 246
 - [\[8\]](#) (judgment in WP No.17017 of 2002 dated 12.04.2005)
 - [\[9\]](#) AIR 1963 SC 746 = (1963) Supp 1 SCR 63
 - [\[10\]](#) (1862) 4 De G.F. & J. 365 = 45 E.R. 1225
 - [\[11\]](#) AIR 1967 SC 1634
 - [\[12\]](#) 62 Ind App 23 = AIR 1933 PC 21
 - [\[13\]](#) AIR 1943 Bom 243 = 45 Bom L R 510

[\[14\]](#) AIR 1934 Calcutta 569

[\[15\]](#) 7 Mys LJ 159

[\[16\]](#) AIR 1948 Mad 302

[\[17\]](#) (1964) 15 STC 299 (A.P)