

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

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WRIT PETITION NOS.20186, 20199 AND 20201 OF 2016

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W.P. No.20186 of 2016:

-
M/s. Prathul Automobiles Pvt. Ltd

.... Petitioner

Vs.

\$ The Asst. Commissioner (CT) – II, Enforcement Wing, O/o Commissioner
of Commercial Taxes, M.J. Road, Nampally, Hyderabad

.... Respondent

-
DATE OF JUDGMENT PRONOUNCED: 19.07.2016.

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

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

JUSTICE RAMESH RANGANA1

* THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

* THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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+ **WRIT PETITION NOS. 20186, 20199 AND 20201 OF 2016**

% Dated 19-07-2016

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M/s. Prathul Automobiles Pvt. Ltd

.... Petitioners

Vs.

\$ The Asst. Commissioner (CT) – II, Enforcement Wing, O/o Commissioner
of Commercial Taxes, M.J. Road, Nampally, Hyderabad

.... Respondent

! Counsel for the petitioner: Sri S. Ravi, Learned Senior Counsel
for Ms. N. Niyatha

^ Counsel for respondent: Sri T. Vinod Kumar, Learned Special
Standing Counsel for Commercial Taxes

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> HEAD NOTE:

? Citations:

- 1) 1991 (2) All ER 726
- 2) (2007) 13 SCC 673
- 3) AIR 1960 SC 554 = (1960) 2 SCR 671
- 4) 143 U.S. 649
- 5) (2011) 8 SCC 274
- 6) (2015) 9 SCC 209
- 7) (2006) 4 SCC 327
- 8) (1985) 1 SCC 641
- 9) (2005) 5 SCC 598
- 10) (2006) 3 SCC 434 = 2006 (3) SCALE 1
- 11) (2011) 9 SCC 573
- 12) (2000) 3 SCC 40
- 13) (2009) 15 SCC 570
- 14) (1972) 2 SCC 744
- 15) (1983) 2 SCC 402
- 16) (1975) 1 SCC 421
- 17) (2003) 3 SCC 321
- 18) (1993) Supp. 3 SCC 621
- 19) (2003) 7 SCC 1
- 20) (2004) 8 SCC 524

**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

WRIT PETITION NOS.20186, 20199 AND 20201 OF 2016

COMMON ORDER: (Per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioner and Sri T. Vinod Kumar, Learned Special Standing Counsel for Commercial Taxes and, with their consent, all the three Writ Petitions, wherein a common question of law arises for consideration, are being disposed of by a common order at the stage of admission itself. M/s. Tejaswi Motors Pvt. Ltd. have filed W.P. No.20201 and 20199 of 2016 questioning the assessment orders passed for the financial year 2013-2014 and 2014-2015 respectively. W.P. No.20186 of 2016 is filed by M/s. Pratul Automobiles Pvt. Ltd. questioning the assessment order passed for the period April, 2012 to June, 2015.

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioner, would submit that the petitioners seek an adjudication only on the question relating to the denial of notional input tax credit on the purchase price of used/second hand vehicles, and the petitioners would avail the statutory remedy of an appeal on all other questions of fact and law. Both Sri S. Ravi, Learned Senior Counsel, and Sri T. Vinod Kumar, Learned Special Standing Counsel, would agree that it would suffice, for the disposal of all the three Writ Petitions, if the facts in W.P. No.20199 of 2016 are noted.

The petitioner in W.P. No.20199 of 2016 is a registered VAT dealer carrying on business of trading in TATA brand passenger cars, and in providing spares and services. A pre-assessment show cause notice, in Form VAT 305-A dated 18.01.2016, was received by the petitioner on 18.01.2016 whereby they were called upon to file their written objections within fifteen days. Thereafter, a revised pre-assessment show cause notice was issued in Form VAT 305-A on 07.05.2016 (a copy of which was received by the petitioner on 10.05.2016) calling upon the petitioner to file their written objections thereto within seven days. The petitioner claims to have furnished the information available with them, and to have sought a personal hearing. They also claim to have submitted a detailed reply on 16.05.2016 contending, among others, that the value added tax, levied on

the sale of second hand vehicles for Rs.38,43,76,050/-, was not payable as they were eligible for notional input tax credit, under Rule 20(3)(a) of the Telangana VAT Rules ("Rules" for short), on the purchase value of second hand vehicles for Rs.37,68,40,777/- and the only documentary evidence, needed for calculation of notional input tax credit, was evidence regarding the purchase price at which the petitioner had bought these motor vehicles. After a personal hearing was afforded to the petitioner on 26.05.2016, the Assistant Commissioner (CT) LTU, Hyderabad passed an assessment order on 10.06.2016.

The impugned assessment order dated 10.06.2016 records the assessing authority having examined the reply filed by the petitioner, to the show-cause notices, wherein they had claimed that they were eligible for notional input tax credit as per Rule 20(3)(a) of the Rules; they had filed sample documents in this regard; there was neither a dealer who sold the vehicles to them nor was there any tax invoice against which the sale transactions, of pre-owned vehicles, had taken place; no input tax credit was available on the purchases from non-VAT dealers or un-registered dealers; any claim of notional input tax credit was available only on fulfilment of two imperative conditions as explained in the show cause notice i.e, (1) the ITC claim should not be greater than output tax payable, and (2) the ITC claim should be against valid documentary evidence called the tax invoice; Rule 20(3)(a) should be read along with Sections 13 and 16; the ITC restriction and disallowance was neither a levy of tax nor was it double taxation; the petitioner had explained that the old vehicles were bought and exchanged at a certain cost at the time the new vehicle was sold by them; the vehicles that were bought, and were subsequently sold as per the data furnished by the dealer, were different; neither the purchase invoices of pre-owned vehicles, nor the sale invoices of such pre-owned vehicles, were furnished by the petitioner; they had furnished certain sample details of the purchases and sales of second hand or pre-owned vehicles; the chasis number indicating the manufacturing details, and subsequent registration, related to new vehicles or first sales, and not to pre-owned or second hand sales; details of the purchases and sales of pre-owned vehicles were not the same though the value, as per the Income Tax Annual Returns, was the same; such value could either be erroneous or fictitious; the disallowance of input tax

credit did not amount to double taxation, but was a restriction of the claim of input tax credit only to the eligible limit; it was not a levy of tax; the claims were not supported by any documentary evidence or the original purchase invoices surrendered by the customers when the old vehicle was exchanged for a new vehicle; for the first or subsequent sales the assessee, as a registered dealer, did not issue any sales invoices for such transactions; the ruling of the advance ruling authority was not applicable to the present case; the claim of ITC was not related to supply and replacement of spares of pre-owned vehicles, but was a claim of ITC, upon purchases of pre-owned vehicles without any valid documentary evidence; the dealer was not eligible for notional input tax credit on the sale of second hand cars made in their trade; and, therefore, notional input tax credit was being disallowed for the period April, 2014 to March, 2015 i.e for Rs.4,77,22,194/-.

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioner, would submit that the petitioner purchases second hand vehicles from customers who are not VAT dealers; they, in turn, sell these second hand vehicles to other customers; these second hand vehicles have already suffered VAT in the State of Telangana at the time of the original sale; disallowance of input-tax credit, on the purchase value of second hand vehicles, results in unfair double taxation with cascading effect; the assessing authority failed to consider the documentary proof submitted by the petitioner, in their reply to the show cause notice, for claiming notional input tax credit on the sale of second hand cars; as per Rule 20(3)(a), documentary evidence is required only to find out the purchase price actually paid at the time of purchase by the VAT dealer; rejection of the petitioner's contention, that no VAT is payable on the purchase of used or second hand vehicles by the petitioner-VAT dealer, is illegal and arbitrary; the ruling given by the advance ruling authority, in **Jasper Industries Pvt Ltd**, on 23.04.2010 is squarely applicable to their case; registration of vehicles by the RTA is conclusive proof of payment of VAT and life tax at the time of the original purchase; at the time of purchase of the second hand vehicle, a copy of the registration certificate is collected; in the case of a second hand sale there is no value addition; in fact there is depreciation, and thus VAT is not attracted; since purchase of pre-owned vehicles is from

customers who are non-VAT dealers, it is not possible for them to issue a tax invoice; there can only be an acknowledgment of sale by them; a tax invoice can be issued only by VAT dealers; the assessing authority had erred in rejecting the petitioner's claim on the ground that they had not produced valid documentary evidence called the Tax Invoice; and the impugned assessment order, to the extent notional input tax was denied to the petitioner under Rule 20(3)(a) of the Rules, is arbitrary and illegal.

On the other hand Sri T. Vinod Kumar, Learned Special Standing Counsel for Commercial Taxes, would submit that the Rules must be read harmoniously with the provisions of the Telangana VAT Act (hereinafter called the "Act"); when so read Rule 20(3)(a) would require the assessee to produce documentary evidence of the purchase price of the motor vehicle on which VAT was paid; while production of a tax invoice as proof of the purchase price may not be mandatory, documentary evidence, to the satisfaction of the assessing authority, was required to be produced regarding the purchase price of the vehicle on which VAT was paid; and mere proof of payment of the purchase price, by the VAT dealer to his immediate vendor, would not suffice.

Section 13 of the Act relates to credit for input tax and under sub-section (1) thereof, subject to the conditions, if any, prescribed, an input-tax credit shall be allowed to the VAT dealer for the tax charged in respect of all purchase of taxable goods, made by that dealer during the tax period, if such goods are for use in the business of the VAT dealer; and no input tax credit shall be allowed in respect of the tax paid on the purchase of the goods specified in Schedule VI. Section 13(3)(a) stipulates that a VAT dealer shall be entitled to claim input tax credit under sub-section (1), on the date the goods are received by him, provided he is in possession of a tax invoice.

Section 13(4) stipulates that a VAT dealer shall not be entitled for input tax credit or sales tax credit in respect of the purchases of such taxable goods as may be prescribed. Section 14 relates to tax invoices and stipulates that a VAT dealer, making a sale liable to tax to another VAT dealer, shall issue, at the time of sale, a tax invoice in such form as may be prescribed. Section 16 relates to burden of proof and, under sub-section (1) thereof, the burden of proving that any sale or purchase effected by a dealer is eligible for input-tax credit shall lie on the dealer.

Rule 20 of the Rules relates to input-tax credit. Sub-rule (2) of Rule 20 stipulates that the items mentioned therein shall not be eligible for input tax credit as specified in Section 13(4) of the Act. Clause (a) thereunder relates to all automobiles including commercial vehicles/two wheelers/three wheelers required to be registered under the Motor Vehicles Act, 1988, and including tyres and tubes, spare parts and accessories for the repair and maintenance thereof, unless the dealer is in the business of dealing in these goods. In view of Rule 20(2)(a), it is only a dealer, who carries on business in the purchase and sale of vehicles, who is entitled to claim input tax credit, that too on vehicles required to be registered under the Motor Vehicles Act, 1988. While any person who purchases a new automobile, required to be registered under the Motor Vehicles Act, 1988 within the State of Telangana, is required to pay VAT to the dealer i.e., his vendor, the dealer in turn is required to remit the tax so collected to the Commercial Tax department. In view of Rule 20(2)(a) the individual, who had purchased the new vehicle from the dealer, would not be entitled to claim input tax credit when he sells the vehicle to another, as he is not a dealer registered under the Act.

Rule 20(2) of the Rules also stipulates that when any goods, mentioned in clauses (a) to (r) thereunder, are subsequently sold without availing any tax credit, no tax shall be levied and recovered from a VAT dealer on the purchase items mentioned in clauses (a) to (r). The VAT dealer is, however, required to maintain a separate account or record without including such purchases in the purchase of eligible inputs taxable at each rate. In effect, when a dealer purchases an used vehicle from an individual who has not claimed input tax credit, no tax can be levied or recovered from such a VAT dealer at the time of purchase of the goods by him.

Rule 20(3)(a) of the Rules relates specifically to used or second hand vehicles already registered in the State of Telangana under the Motor Vehicles Act, 1988. As the construction to be placed on Rule 20(3)(a) is in issue in these Writ Petitions, it is useful to extract the said rule in its entirety:-

“(3)(a) Where any VAT dealer pays tax at the rate of Fourteen and half percent (14.5%) on the sale consideration of a used or a second hand vehicle already registered in the State under the Motor Vehicles Act, 1988, he shall be eligible for notional input tax credit at the rate of Fourteen and half percent (14.5%) on the purchase price actually paid supported by documentary evidence. Such notional input tax credit shall not exceed the output tax payable on the sale of used or second hand vehicle by the VAT dealer.”

The ingredients of Rule 20(3)(a) are: (1) a VAT dealer should have paid tax at the rate of 14.5% on the sale consideration of a used/second hand vehicle; (2) the vehicle sold by the dealer should have already been registered in the State of Telangana under the Motor Vehicles Act, 1988; (3) such a VAT dealer is then eligible to claim notional input-tax credit at 14.5%; (4) the eligibility to claim notional input-tax credit is on the purchase price actually paid; (5) payment of purchase price must be supported by documentary evidence; and (6) the claim of notional input tax credit shall not exceed the output tax payable on the sale of used/second hand vehicles by the VAT dealer. The benefit of Rule 20(3)(a) is available only to dealers of such used/second hand vehicles which are registered in the State of Telangana under the Motor Vehicles Act, 1988. Notional input tax credit is available only on such used/second hand vehicles purchased by the VAT dealer when they, in turn, are sold by the dealer to others. The restriction placed by Rule 20(3)(a) is that such dealers cannot claim input-tax credit beyond the output-tax payable by them on the sale of second hand/used vehicles.

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioners, would submit, rightly so, that, since Rule 20(3)(a) only requires documentary evidence to be produced, the assessing authority erred in insisting on production of a tax invoice as a pre-condition for the petitioner-dealer to claim input tax credit. The rule making authority has consciously used the words “**supported by documentary evidence**”, and not “**supported by a tax invoice**”, in Rule 20(3)(a) of the Rules. Section 2(35) of the Act defines ‘**tax invoice**’ to mean a sale invoice containing such details as may be prescribed and issued by a VAT dealer to another VAT dealer. In using the words “**supported by documentary evidence**” in Rule 20(3-a), the rule making authority was conscious that the person from whom the VAT dealer, carrying on business in the purchase and sale of used/second hand vehicles, had purchased a used/second hand vehicle may not be a VAT dealer and has, therefore, not stipulated that a tax invoice should alone be produced to be eligible to claim the benefit of notional input tax credit. While Section 13(3)(a) stipulates that a VAT dealer shall be entitled to claim input tax credit only if he is in possession of a tax invoice,

Rule 20(3)(a) reduces the rigour of Section 13(3)(a) of the Act, in respect of a used/second hand car purchased by a dealer, as the person who sold such a vehicle to the dealer may not be a dealer himself and would, therefore, not be in a position to issue a tax invoice to the purchasing dealer. The assessing authority has, therefore, erred in insisting that the petitioner should have produced a tax invoice to claim input-tax credit, as it would suffice if the dealer produces documentary evidence in support of the purchase price paid by him. As Section 16(1) places the onus on the dealer, the documentary evidence which he produces must be such as to satisfy the assessing authority of the purchase price actually paid by him.

What the dealer of used/second hand cars is eligible to, under Rule 20(3)(a) of the Rules, is for notional input tax credit. The word 'notional' means hypothetical, imaginary or unreal. Though neither the immediate vendor of a dealer of used/second hand vehicles collects, nor does the dealer actually pay, VAT on the purchase price of the used/second hand vehicle, Rule 20(3)(a) makes the dealer eligible to notionally claim input tax credit at 14.5% on the purchase price actually paid by him to his vendor. While the notional input tax credit, which can be claimed by him under Rule 20(3)(a) of the Rules, is only on the purchase price actually paid by him to his vendor, the dealer must also submit documentary evidence to show that the said vehicle has been subjected to levy of VAT under the Act. New vehicles, registered outside the State of Telangana under the Motor Vehicles Act, 1988 at the time of its first sale by an automobile dealer, do not fall within the ambit of Rule 20(3)(a) of the Rules. It is only because new vehicles, registered under the Motor Vehicles Act, 1988 within the State of Telangana, are subject to VAT when they are sold within the State, have the dealers of used/second hand cars been extended the benefit of notional input tax credit. The dealers of used/second hand cars cannot avoid the obligation of producing documentary evidence to show that the subject vehicle has suffered VAT under the Act nor is it sufficient compliance of the Rule if they were to merely submit documentary evidence of the purchase price paid to their immediate vendor from whom they had purchased the used/second hand cars.

The scope and ambit of Rule 20(3-a) can be better explained by way of an illustration. When an individual purchases a new car from a VAT

dealer within the State of Telangana, he pays VAT on the purchase price of the vehicle and the VAT dealer, in turn, remits the tax, collected from the purchaser of the vehicle, to the Commercial Tax Department. If the individual, who purchased a new vehicle, sells it to another he neither collects tax nor is he entitled to claim the benefit of input-tax credit. For example a new vehicle is purchased by "B" from a VAT dealer "A" for Rs.6.00 lakhs and VAT at 14.5% is paid on the said sale i.e., VAT of Rs.87,000/-. "B" then sells the vehicle to "C" who is not a VAT dealer for Rs.5.00 lakhs, "C" in turn sells it to "D" who is also not a VAT dealer for Rs.4.00 lakhs, and "D" in turn sells it to "E" who is a dealer in second hand/used cars for Rs.3.00 lakhs. "D" would not be able to produce a tax invoice as he had purchased the vehicle from "C", another individual who is not entitled to issue a tax invoice to him. As VAT of Rs.87,000/- was paid by "A" (a registered VAT dealer) when he sold the new vehicle to "B", it would be sufficient compliance of Rule 20(3)(a) if documentary evidence of payment of VAT of Rs.87,000/- is produced for notional input tax credit to be claimed at 14.5% on the purchase price paid by "E" to "D". While notional input tax credit at 14.5% i.e., for Rs.43,500/- can alone be claimed on the purchase price of Rs.3.00 lakhs paid by the dealer "E" to his immediate vendor i.e "D", it is only if VAT has been paid on the sale of the vehicle earlier (in this illustration VAT of Rs.87,000/- paid on the sale of a new vehicle by A to B), would dealer "E" be entitled to claim input-tax credit. If "E" the dealer in used/second hand cars sells it to "F" an individual for Rs.4.00 lakhs, the VAT payable by him would be Rs.58,000/- (i.e., 14.5% output-tax on Rs.4.00 lakhs), and after adjustment of notional input tax credit of Rs.43,500/- ("notional" as VAT was not levied on the sale of the vehicle by "D" to "E"), the net VAT payable by "E" would only be Rs.14,500/-. "E", the dealer in used/second cars, cannot claim the benefit of input-tax credit, on the VAT paid on the initial sale of the new vehicle i.e., for Rs.87,000/-, and thereby seek set off of the entire output-tax of Rs.58,000/- as the notional input-tax credit which he is entitled to is only at 14.5% of the purchase price paid by him to "D" i.e., on Rs.3.00 lakhs i.e for Rs.43,500/-.

The submission of Sri S. Ravi, Learned Senior Counsel, that only documentary proof of the purchase price actually paid by the dealer of the

used/second hand car is required to be produced, and not of the vehicle having earlier been subject to VAT under the Act, does not merit acceptance as that would require Rule 20(3)(a) to be so construed as to extend to an used car dealer the benefit of notional input-tax credit even in cases where VAT has not been paid on the vehicle under the Act. Section 3 of the A.P. Motor Vehicles Taxation Act, 1963 relates to levy of tax on motor vehicles and, under sub-section (1) thereof, the Government may, by notification from time to time, direct that tax shall be levied on every motor vehicle used, or kept for use, in a public place in the State. Under the fourth proviso thereto, in the case of two to four wheeler motor vehicles coming under non-transport category, not exceeding a particular weight and the prescribed seating capacity, tax shall be levied at the rates specified in the Sixth Schedule to the Act. The Sixth Schedule contains a table which prescribes the period/class of the vehicle, the vehicles owned by companies/institutions/organisations, and the tax in respect of second or more personalised vehicles upto a seating capacity of 10 persons in all owned by an individual. Serial No.1 of the table in the Sixth Schedule prescribes, under the head class of vehicles, the tax payable at the time of registration of new vehicles, which is, at present, 12% of the cost of the vehicle.

For the purposes of determining the motor vehicles tax, payable at the time of registration of new vehicles, the person, in whose favour the vehicle is to be registered, is required to submit, among others, a copy of the invoice. The invoice value, on which tax under Section 3 of the A.P. Motor Vehicles Taxation Act is levied, is the price of the new vehicle plus VAT levied thereupon. Along with the application for registration of the new motor vehicle, the applicant is required to enclose the customer copy of the invoice which would reflect the price of the new vehicle sold by a registered VAT dealer, and the VAT levied thereon. The words “***already registered in the State under the Motor Vehicles Act, 1988***”, as used in Rule 20(3)(a) of the VAT Rules, can only mean a new vehicle registered within the State under the Motor Vehicles Act, 1988, on the sale of which VAT has been paid under the Act, and not vehicles initially registered in another State and which has thereafter been registered again within the State of Telangana, for vehicles in the latter category would not have been subjected to VAT under

the Telangana Value Added Tax Act, and only tax under the Motor Vehicles Taxation Act would have been paid thereon.

The very object of enacting the Value Added Tax Act is to levy tax on the value addition to the goods at each stage, and avoid the cascading effect of multi-stage taxation on the value of the goods. It is for this reason that, while levying tax on the value of the output, the dealer is given input-tax credit only for goods which have been subject to tax under the Act, and not for goods which have not. If that be the object for which the Act was made, can Rule 20(3-a) be construed in a manner as to extend the benefit of input-tax credit even on the sale of second hand/used vehicles which have never been subjected to VAT in the State of Telangana? Would such a construction not result in Rule 20(3-a) travelling even beyond what the Act provides?

The Legislature, be it State or Central, has wide powers of delegation. This, however, is subject to one limitation, namely, it cannot delegate uncontrolled power. Delegation is valid only when it is confined to legislative policy and guidelines. What is permitted by the concept of “delegation” is delegation of ancillary or subordinate legislative functions or what is fictionally called as “power to fill up the details”. The Legislature may, after laying down the legislative policy, confer discretion on the administrative or executive agency like the Central/State Government to work out details within the framework of the legislative policy laid down in the plenary enactment. As the power to make subordinate legislation is derived from the enabling Act, the delegate, on whom such power is conferred, has to act within the limitations of the authority conferred by the Act. Rules are made, on matters permitted by the Act, in order to supplement and not to supplant the Act. A delegate cannot override the Act either by exceeding the authority or by making provisions inconsistent with the Act.

(**Britnell v. Secretary of State**^[1]; **J.K. Industries Ltd. v. Union of India**^[2]).

Delegated legislation involves delegation of rule-making power. This means that the legislature, having laid down the broad principles of its policy in the legislation, can then leave the details to be supplied by the

administrative authority. In other words by delegated legislation, the delegate completes the legislation by supplying details within the limits prescribed by the Statute. When the delegate is given the power of making rules, in order to fill in the details to carry out and subserve the purposes of the legislation, the manner in which the requirements of the Statute are to be met, and the rights therein created are to be enjoyed, is an exercise of delegated legislation. (**Hamdard Dawakhana v. Union of India**^[3]). The legislature can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. There are many things, upon which wise and useful legislation must depend, which may not be known to the law maker, and must therefore be the subject of enquiry and determination outside the halls of the legislatures. (**In Lockes Appeal 72 Pa. 491; Field v. Clark**^[4]; **Hamdard Dawakhana**³).

Statutes delegating the power to make rules follow a standard pattern. The relevant Section would first contain a provision granting the power to make rules to the delegate in general terms, by using the words "**to carry out the provisions of this Act**" or "**to carry out the purposes of this Act**". This is usually followed by another sub-section enumerating the matters/areas in regard to which specific power is delegated by using the words "**in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters**". Such provisions whereby power is conferred to make subordinate legislation in general terms, and the subsequent particularisation of the matters/topics, has to be construed as merely illustrative and not limiting the scope of the general power. Consequently, even if the specific enumerated topics do not empower the Government to make a specific rule, the making of the rule can be justified with reference to the general power conferred on the Government provided the rule does not travel beyond the scope of the Act. But even a general power to make rules for carrying out or giving effect to the Act, is strictly ancillary in nature and cannot enable the authority on whom the power is conferred to extend the scope of the general operation of the Act. Therefore such a power 'will not support attempts to widen the purposes of the Act, to add new and different means to carrying them out, or

to depart from or vary its terms'. (**Academy of Nutrition Improvement v. Union of India**^[5]; **Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd**^[6]).

The discretion conferred by the delegation of rule making power should not be so wide that it is impossible to discern its limits. There must, instead, be definite boundaries within which the powers of the administrative authority are exercisable. Delegation should not be so indefinite as to amount to an abdication of the legislative function — (**Schwartz — American Administrative Law**, p. 21; **Hamdard Dawakhana**³). A subordinate law-making body is bound by the terms of its delegated or derived authority and Courts of law, as a general rule, will not give effect to the rules thus made, unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled. The Courts therefore (1) will require due proof that the rules have been made and promulgated in accordance with the statutory authority, unless the statute directs them to be judicially noticed; (2) in the absence of express statutory provision to the contrary, may inquire whether the rule-making power has been exercised in accordance with the provisions of the statute by which it is created, either with respect to the procedure adopted, the form or substance of the regulation, or the sanction, if any, attached to the regulation. (**Craies on Statute Law**, 7th edition; **Kerala Samsthana Chethu Thozhilali Union v. State of Kerala**^[7]).

The Telangana VAT Rules were made by the State Government in the exercise of the powers conferred on it by Section 78 read with Section 2(21) of the Telangana Value Added Tax Act, 2005, and is in the nature of subordinate legislation. Subordinate legislation does not carry the same degree of immunity which is enjoyed by a Statute passed by a competent Legislature. It must yield to plenary legislation. (**J.K. Industries Ltd.**²; **Indian Express Newspaper v. Union of India**^[8]), and should be framed strictly in consonance with the legislative intent as reflected in the rule-making power contained in the Act. (**Ashok Lanka v. Rishi Dixit**^[9]; **Kerala Samsthana Chethu Thozhilali Union**⁷). A subordinate legislation, apart from being intra

vires the Constitution, should also not be ultra vires the parent Act under which it has been made. It must not only be reasonable and in consonance with the legislative policy, but should also give effect to the purport and object of the Act. (**Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group**^[10]; **Kerala Samsthana Chethu Thozhilali Union**⁷). A statutory rule should not only be in conformity with the provisions of the Act whereunder it is made but must also be in conformity with the provisions of any other Act, as subordinate legislation cannot be violative of any plenary legislation made by Parliament or the State Legislature. As the power of the Government is to make rules for carrying out the purposes of the Act, rules cannot be framed in matters that are not contemplated under the Act. The power to frame rules, and the power to impose terms and conditions, are subject to the provisions of the Act. They must not be framed in contravention of the constitutional or statutory scheme. (**Kerala Samsthana Chethu Thozhilali Union**⁷).

A delegated power to legislate, by making rules 'for carrying out the purposes of the Act', is a general delegation without laying down any guidelines. It cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself. (**Pratap Chandra Mehta v. State Bar Council of M.P.**^[11]; **Kunj Behari Lal Butail v. State of H.P.**^[12]; **Global Energy Ltd. v. Central Electricity Regulatory Commission**^[13]). A right/protection given, or an obligation created, by a statute cannot be nullified by rules authorised by the statute itself. (**D.T.U. v. B.B.L. Hajelay**^[14]). Likewise the conferment of a rule making power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. (**Indraprastha Gas Ltd**⁶; **State of Karnataka v. H. Ganesh Kamath**^[15]). The power to make rules cannot be used to enlarge the powers beyond the scope intended by the legislature. Rules made, by reason of the specific power conferred by the statute to make rules, establish the pattern of conduct to be followed. (**Sukhdev Singh**

v. Bhagatram Sardar Singh Raghuvanshi^[16]; **Indraprastha Gas Ltd**⁶).

The power to make subordinate legislation is derived from the enabling Act and the delegate, on whom such a power is conferred, has to act within the limits of the authority conferred by the Act. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. (**Indraprastha Gas Ltd**⁶; **St. Johns Teachers Training Institute v. National Council for Teacher Education**^[17]).

Where the legislature has provided a general rule making power to carry out the purposes of the Act, it may be permissible to find out the object of the enactment, and then see if the rules framed thereunder satisfy this test of functionality. This test will determine if the rule falls foul of such a general power conferred on the delegatee. If the rule making power is expressed in the usual general form, then it has to be seen if the rules made are protected by the limits prescribed by the parent Act. (**Kunj Behari Lal Butail**¹²; **Pratap Chandra Mehta**¹¹). A delegate cannot act contrary to the basic feature of the Act. (**B.K. Industries v. Union of India**^[18]; **Kerala Samsthana Chethu Thozhilali Union**⁷). The power of the rule making authority must be interpreted keeping in view the provisions of the Act. (**Pratap Chandra Mehta**¹¹; **Kunj Behari Lal Butail**¹²; **Global Energy Ltd**¹³). The language of the statute has to be examined before giving a provision an extensive meaning. The Court would be justified in giving the provision a purposive construction to perpetuate the object of the Act, while ensuring that such rules framed are within the field circumscribed by the parent Act. The language of the rule framed, as well as the purpose sought to be achieved, would be the relevant factors to be considered by the Court. (**Pratap Chandra Mehta**¹¹).

When any criterion is fixed by a statute or by a policy, an attempt should be made by the authority making the delegated legislation to follow the policy formulation broadly and substantially and in conformity therewith.

[Secy., Ministry of Chemicals & Fertilizers, Govt. of India v. Cipla Ltd]^[19];

Clariant International Ltd. v. Securities & Exchange Board of India^[20];

Kerala Samsthana Chethu Thozhilali Union⁷). The power of delegated legislation cannot be exercised for the purpose of framing a new policy. The power can be exercised only to give effect to the provisions of the Act. While considering the “carrying out of the provisions of the Act” requirement, the court must see to it that the rule framed therefor is in conformity with the provisions thereof. (**Kerala Samsthana Chethu Thozhilali Union⁷**).

The power to frame rules under the Act has to be construed along with the other provisions of the Act, keeping in mind the object sought to be achieved by the Act. The legislative intent, derived from the objects of the Act, should be achieved. The interpretation, furthering the object and purposes of the Act, has to be preferred in comparison to an interpretation which would frustrate the same. (**Pratap Chandra Mehta¹¹**). The regulatory provisions are to be read and applied keeping in view the nature and textual context of the enactment as that is the source of power. (**Indraprastha Gas Ltd⁶**). The Telangana VAT rules must, therefore, be harmoniously construed with the provisions of the Telangana VAT Act and the objects for which the Act was made. A statutory rule cannot be so construed as to extend its scope even beyond the provisions of the Act. The court has to examine the nature, object and the scheme of the legislation as a whole and, in that context, should consider what is the area over which powers are given by the Section under which the rule making authority is to act. As the Court starts with the presumption that the impugned Rule is intra vires, the Rule has to be read down to save it from being declared ultra vires if the Court finds, in a given case, that the above presumption stands rebutted. (**J.K. Industries Ltd²**).

If the words “***already registered in the State under the Motor Vehicles Act, 1988***” in Rule 20(3)(a) is construed to include vehicles initially registered in another State and thereafter, on its being brought within the State of Telangana, were again registered within the State, then that would render Rule 20(3)(a) ultravires the provisions of the Act, and a dealer being extended the benefit of input tax credit on vehicles which have not even suffered tax under the VAT Act, as VAT is imposed only on the sale of new vehicles by registered dealers within the State. Rule 20(3)(a) of the Rules must be construed harmoniously with the provision of the VAT Act and the

object for which the Act was made, and the words “***already registered in the State under the Motor Vehicles Act, 1988***” must be read down to mean only new vehicles registered within the State, and to exclude vehicles which were earlier registered as a motor vehicle in some other State and subsequently registered again, under the provisions of the Motor Vehicles Act, 1988, within the State of Telangana.

While the eligibility to claim input tax credit is no doubt notional, the said benefit is available only on the VAT dealer producing documentary evidence not only regarding the purchase price actually paid by him, but also to establish that the used/second hand vehicle, purchased by him, was subjected to VAT at the time of its initial registration, under the Motor Vehicles Act, 1988, within the State of Telangana. As the rule making authority has not stipulated the documents required to be furnished by the dealer in this regard, it is evident that the documentary evidence required to be produced by the dealer must be such as to satisfy the assessing authority of (1) price actually paid by the VAT dealer, carrying on business in used/second hand vehicles, on the purchase of vehicles by them, and (2) the vehicle purchased by them having been subjected to VAT at the time of its initial registration, under the Motor Vehicles Act, 1988, within the State of Telangana.

The assessment order, to the limited extent the petitioner was denied notional input tax credit on their purchase of used/second hand vehicles on the ground that they had failed to produce a tax invoice, is set aside. The assessing authority shall afford the petitioner an opportunity of a personal hearing, and to produce documentary evidence to show (1) the price actually paid by them on the purchase of used/second hand vehicle, and (2) that the vehicles purchased by them had suffered VAT at the time of their initial registration, under the Motor Vehicles Act, 1988, within the State of Telangana. The assessing authority shall, thereafter, pass orders afresh in accordance with law at the earliest, and in any event not later than 4 (four) months from the date of receipt of a copy of this order. It is made clear that the assessment order shall remain valid in all other aspects, and the petitioner is at liberty to avail the alternative remedy of an appeal to challenge the assessment order on all other questions of fact and law. All

these three Writ Petitions stand disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

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(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

Date: 19-07-2016.

Note: L.R. copy to be marked.
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- [\[1\]](#) 1991 (2) All ER 726
 - [\[2\]](#) (2007) 13 SCC 673
 - [\[3\]](#) AIR 1960 SC 554 = (1960) 2 SCR 671
 - [\[4\]](#) 143 U.S. 649
 - [\[5\]](#) (2011) 8 SCC 274
 - [\[6\]](#) (2015) 9 SCC 209
 - [\[7\]](#) (2006) 4 SCC 327
 - [\[8\]](#) (1985) 1 SCC 641
 - [\[9\]](#) (2005) 5 SCC 598
 - [\[10\]](#) (2006) 3 SCC 434 = 2006 (3) SCALE 1
 - [\[11\]](#) (2011) 9 SCC 573
 - [\[12\]](#) (2000) 3 SCC 40
 - [\[13\]](#) (2009) 15 SCC 570
 - [\[14\]](#) (1972) 2 SCC 744
 - [\[15\]](#) (1983) 2 SCC 402
 - [\[16\]](#) (1975) 1 SCC 421
 - [\[17\]](#) (2003) 3 SCC 321
 - [\[18\]](#) (1993) Supp. 3 SCC 621
 - [\[19\]](#) (2003) 7 SCC 1
 - [\[20\]](#) (2004) 8 SCC 524