

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

Writ Petition Nos. 17911 AND 17932 of 2015

Writ Petition No. 17911 OF 2015:

M/s. GVPR Engineers Limited, # 8-2-293/82/A, Plot No.739-A, Road
No.37, Jubilee Hills, Hyderabad – 500 033, Telangana.

.... Petitioner

Vs.

\$ The State of Telangana and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 21.04.2016.

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**
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY
+ WRIT PETITION Nos.17911 AND 17932 OF 2015

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% Dated 21-04-2016

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! Counsel for the petitioner: Sri S. Ravi, Learned Senior Counsel for Sri Ch.
Pushyam Kiran, Learned Counsel.

^ Counsel for respondents: Sri K. Vivek Reddy, Learned Special Counsel
appearing on behalf of the learned Advocate-General;
GP for Commercial Tax (TG); Sri R. Vinod Reddy (SC for TSTRANSCO).

<GIST:

> HEAD NOTE:

? Citations:

- 1) [1] (2012) 54 APSTJ 61
- 2) 8 APSTJ 102 = (1990) 76 STC 208
- 3) (Order in W.P. No.35628 of 2012 dated 11.10.2013
- 4) (1983) 2 SCC 433
- 5) (1859) 6 CBNS 336
- 6) 1919 All ER REP 61 = 1919 AC 368
- 7) 1935 AC 532
- 8) AIR 1940 PC 105
- 9) (2003) 2 SCC 107
- 10) (2005) 6 SCC 499
- 11) (2004) 7 SCC 166
- 12) (2014) 1 SCC 603
- 13) (1970) 2 SCC 355
- 14) (1998) 8 SCC 1
- 15) 1995 Supp(3) SCC 199
- 16) (1977) 4 SCC 145
- 17) (2002) 4 SCC 638
- 18) (2008) 2 SCC 280

- 19) (2007) 9 SCC 461
- 20) AIR 1966 SC 334
- 21) AIR 1962 SC 1210
- 22) AIR 1973 SC 964
- 23) AIR 1962 SC 1183
- 24) 2004(5) ALD 180 (DB)
- 25) (2013) 5 SCC 470
- 26) AIR 1952 SC 16
- 27) AIR 1969 SC 1306
- 28) (2010) 15 SCC 546
- 29) AIR 2011 SC 2731
- 30) (2012) 7 SCC 261
- 31) (1991) 3 SCC 239
- 32) AIR 1987 SC 2235
- 33) (1989) 4 SCC 635
- 34) (1975) 3 SCC 765
- 35) AIR 1981 SC 711
- 36) AIR 1961 SC 751
- 37) (1988) 2 SCC 351
- 38) Judgment in W.P NOs.31138 AND 31974 OF 2012, dated 31-12-2014
- 39) 2011 (6) ALD 628 (DB)
- 40) (1989) 2 SCC 645
- 41) (1993) 1 SCC 364
- 42) (1978) 42 VST 72
- 43) AIR 1958 SC 560
- 44) AIR 2001 SC 1980
- 45) (2001) 5 SCC 407
- 46) (2001)8 SCC 676
- 47) (2001) 8 SCC 540
- 48) (1964) 7 SCR 539
- 49) (1899)2 QB 158
- 50) (Order in Rev. P (C) Nos.2715-2721 of 2015 in SLP (C) Nos.1619-1625 of 2015 dated 03.11.2015)
- 51) [2015] 83 VST 129
- 52) (1986) 4 SCC 447
- 53) (1964) 4 SCR 280
- 54) (1996) 6 SCC 665
- 55) AIR 1959 SC 713
- 56) (1985) 1 SCC 591
- 57) AIR 1957 SC 281
- 58) (1955) 2 SCR 483
- 59) (1989) 1 SCC 321
- 60) (2004) 1 SCC 574
- 61) (1962) 2 SCR 159
- 62) AIR 1965 SC 1728
- 63) 1992 SUPPL.(2) SCC 651
- 64) AIR 1991 SC 1538
- 65) (1994)5 SCC 672
- 66) (2007) 15 SCC 435
- 67) (1944) 71 IA 113, 122 : AIR 1944 PC 71
- 68) (2008) 12 SCC 364
- 69) (1976) 1 SCC 128
- 70) AIR 1959 SC 1012
- 71) (2003)2 SCC 455
- 72) (2004)11 SCC 625
- 73) (1986 (4) SCC 746
- 74) AIR 1992 SC 96
- 75) (2001)4SCC 139
- 76) (2001)3 SCC 735
- 77) (2005)10 SCC 437
- 78) AIR 1962 SC 83
- 79) (1989)1 SCC 101
- 80) AIR 1967 SC 1480
- 81) (1991) 4 SCC 139
- 82) (1996) 6 SCC 44
- 83) (2006) 1 SCC 275
- 84) (2005) 6 SCC 404
- 85) AIR 1968 SC 647
- 86) (1901) AC 495

- 87) (1991) 3 SCC 655
- 88) (2009) 6 SCC 379
- 89) (2004) 13 SCC 217
- 90) AIR 1964 SC 477
- 91) AIR 1962 SC 53
- 92) [1950] 18 ITR 812
- 93) 1960 AC 551 = 1960 (2) WLR 404
- 94) 1926 AC 94
- 95) (1932) 2 K. B. 362: (101) L. J. K. B. 330
- 96) (1897) A. C. 556: (66 L. J. Q. B. 787

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY
-
WRIT PETITION Nos.17911 AND 17932 OF 2015

-

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

The relief sought in W.P. No.17911 of 2015 is to declare the assessment order dated 22.05.2015, issued by the 2nd respondent for the tax period 2011-12, and the notice for penalty in Form VAT 203A dated 22.05.2015, as illegal, unlawful and contrary to the provisions of the Andhra Pradesh VAT Act, 2005 (now called the Telangana Value Added Tax Act - for short "the Act"). The relief sought in W.P. No.17932 of 2015 is to declare the assessment order dated 16.05.2015, issued by the 2nd respondent for the tax period 2012-13, and the notice for penalty in Form VAT 203-A dated 26.05.2015, as illegal, unlawful, contrary to the provisions of the Act, and without jurisdiction.

The petitioner, a registered dealer under the Act with its registered office at Hyderabad, is engaged in the business of undertaking works contracts. In their monthly returns from the year 2009-10 onwards, including during the tax periods 01.04.2011 to 31.03.2012 and 01.04.2012 to 31.03.2013, the petitioner claims to have reported their turnover on receipt basis, and to have paid VAT thereon. It is their case that, while filing their VAT returns, they have consistently followed the practice of taking into account the amounts actually received from the contractees; the amounts receivable were deducted and were offered to tax in the succeeding tax periods; for instance a sum of Rs.26,57,72,028/- received, pertaining to the tax period 2010-11, was included in the tax return for the period 2011-12; this was the regular and consistent method adopted for offering the turnover

to tax; the Contractee deducted tax at source and issued TDS certificates as and when payments were made pursuant to the Running Account Bills (RA Bills) raised by the petitioner; the department had endorsed their practice of reporting their turnover on a receipt basis; and assessment orders were accordingly passed for the assessment years 2009-10 and 2010-11 accepting the turnover so reported by them.

The 2nd respondent proposed to assess the petitioner to VAT, pursuant to an audit conducted by him, determining the turnover in the year in which the R.A. bills were raised, and not in the year in which they received payment. The petitioner submitted their reply objecting to the proposal, and requested the assessing authority to drop the proposed action. They contended that most of the works executed by them was for erection of electrical transmission lines, laying of water supply lines, and related material, only to the 4th respondent.

The petitioner also claims to have filed detailed objections in response to the proposal to levy tax at 14.5% in respect of certain works where RA Bills were raised only/partly for the labour component. They claim to have submitted a break up of all the purchases and sales made during the course of execution of the works contracts which had to be taxed at 5%, and not 14.5% as calculated by the 2nd respondent, as these sales were made to the 4th respondent which fall under item No.116 of Schedule IV to the Act. The petitioner is also aggrieved by the action of the 2nd respondent in forfeiting a substantial amount as excess collection of tax without there being any such proposal in the show cause notice. The 2nd respondent, however, confirmed the levy, and passed the impugned orders of assessment dated 22-5-2015 in relation to the assessment year 2011-12, and on 26-5-2015 with reference to the assessment year 2012-13. The petitioner seeks a direction from this Court to set aside the assessment orders passed by the 2nd respondent in respect of the tax periods 01.04.2011 to 31.03.2012, and 01.04.2012 to 31.03.2013, under the Act; and to remit the matter to the respective assessing authority with a direction to pass a consolidated order for the assessment years 2011-12, 2012-13, 2013-14 and 2014-15 duly examining their claim in the light of the

documentary evidence produced by them, and in the light of the provisions of the Act, and the Rules made thereunder.

In the writ affidavit it is stated that the 2nd respondent issued a revised show cause notice in Form 305A dated 28.04.2015 giving details of the project wise tax liability; they submitted their objections thereto vide letter dated 06.05.2015 explaining the project-wise receipts, the tax on these receipts, and the deductions etc; the only variation, for which the petitioner was made liable to pay differential tax, was on the receivables, and the contract receipts, for the work executed during the tax period; they had submitted that these were ongoing contracts, and certain bills for the tax period 2011-12 were not received as on 31.03.2012; they were taxable as and when the amounts were received; hence they had carried forward the same to the next tax period, and had paid tax thereon as and when they received the amounts during that year; they had submitted the RA bills for verification of the work done by them; they had classified various contracts, executed by them during the year 2011-12, as material supply contracts and works contracts; in respect of the two categories, the various works that were executed, the receipts from the contractees during the period 2011-12, and the amounts that were yet to be received, were specified; the petitioner had furnished information of the aggregate of outstanding receivables in the category of supply contracts, and the receivables in respect of construction and civil works; with regards supply of material, the petitioner had submitted that the materials were supplied during the tax period 2011-12, and consideration for the same was receivable as on 31.03.2012; the petitioner did not bring it to tax in the present year when the bills had been raised, and had carried forward the same to the next tax period when they would receive the amount and offer them for tax; the previous assessments of the petitioner had been finalised by the assessing authorities by deducting the amounts which were not received by the end of March of the relevant year; the 2nd respondent did not accept the petitioner's contention that the receivables should be allowed as deduction; they were taxed in the present year which has resulted in the present demand; likewise the receivables as on 31.03.2012 pertained to the civil work executed during the tax period 2011-12; the petitioner had submitted RA bills raised for the work done, and had

claimed deduction; they had also submitted that their assessment, for the previous assessment years, was completed allowing such receivables as deduction for those years, and were taxed in the next tax period when the said amounts had been received; the 2nd respondent was requested to follow the same principle for the present tax period also; however the 2nd respondent did not allow deduction of such receivables, and taxed the petitioner following the principle of accretion; the disallowance made is contrary to the regular method followed by the petitioner; the 2nd respondent also adopted an inconsistent stand, and the turnover relating to the amount received as on 31.03.2011 was included in the return for the tax period 2011-12; the 2nd respondent failed to exclude the tax component of Rs.3,90,97,555/- which resulted in tax being charged on tax; the 2nd respondent, while passing the assessment order, had also forfeited Rs.2,10,31,309/- as undue enrichment; the petitioner has disclosed the very turnovers in the subsequent years as and when the amounts were received; this is evident from a chart annexed to the Writ Petition; the method adopted by the assessing officer completely disturbs the method followed by him earlier for assessing the turnover; the Commissioner of Commercial Taxes had addressed letters dated 19.02.2015 and 25.02.2015 to the Chairman & Managing Director of respondent Nos.3 and 4 to deduct TDS not only on the erection, but also on the entire amounts paid to the petitioner; thereafter the 2nd respondent addressed letter dated 29.04.2015 to the Chairman & Managing Director of the 3rd respondent to stop TDS payment to the petitioner as the tax demand, due to the Government, had increased; this action of the 2nd respondent was not only without jurisdiction, but also caused grave prejudice to the petitioner; soon after an assessment order was passed, the 2nd respondent issued notice to respondents 3 and 4 to withhold Rs.3,94,67,240/- and Rs.14,21,41,166/-; as a result thereof payments to the petitioner has been stopped which had caused them undue hardship; they addressed letters to the Joint Commissioner, and to the 2nd respondent, to revoke the provisional attachment order dated 28.05.2015; and the 2nd respondent also issued a penalty notice in Form 203-A dated 22.05.2015 initiating penalty proceedings proposing to impose penalty of

Rs.98,66,810/- on the total under declared tax of Rs.3,94,67,240/-.

The assessment order is questioned on the ground that disallowing receivables as deduction is illegal and arbitrary as the same was allowed as deduction during the previous tax periods; while Section 4(7)(a) of the Act provides for payment of tax on the incorporation value of the goods, it does not specify the time of payment; this provision does not speak of payment of tax on 'receivable'; levy of tax is different from the time of payment; Rule 17(2)(b) of the AP VAT Rules, 2005 (now called the Telangana Vat Rules – for short “the Rules”), relating to composition contracts falling under Section 4(7)(b), requires payment of tax to be made on the receivables also; there is no such requirement under Rule 17(1) relating to regular contracts falling under Section 4(7)(a); the Government did not contemplate payment of tax on receivables in clause (a) contracts; though Rule 17(1)(e) mentions the word “receivable”, it is in the context of allowing deduction on account of the labour component; clause (e) would be applicable only at the time of finalization of accounts relating to the particular work, as per the second proviso thereunder; clause (e) does not apply to ongoing contracts; all the contracts in question were on going during the assessment year; the entire receivable amount was received by the petitioner in the subsequent years; levy of tax, during the year 2011-12, would amount to double levy; consequently the declared turnover, during the subsequent years, should be deleted from that year's gross turnover; the petitioner has maintained all the required books of accounts; out of the 12 contracts executed by them, the 2nd respondent observed that accounts were not maintained to ascertain the correct value in respect of 4 contracts; he invoked Rule 17(1)(g) of the Rules disallowing the entire input tax credit, and levied tax at 14.5%, though Entry 116 in the IV Schedule provided for levy of tax only at 5% in respect of Government contracts; the 2nd respondent erred in drawing a different conclusion in respect of four contracts from the same books of accounts, having accepted that books were maintained in respect of eight contracts; the action of the 2nd respondent in taxing the petitioner following the principle of accretion, without taking into consideration the facts and circumstances of the case, is arbitrary and illegal; respondents 3 and 4, who are the contractees for whom the petitioner undertakes works, failed to make

the payment due to the petitioner and remitted the same to the 1st respondent; tax at source is deducted when the payment is made, and not when the bills are raised; there is complete matching between the payments received, and the tax deducted at source, which is available to the credit of the petitioner; this also supports the petitioner's contention that, in cases where the contracts are spread over several years, it is more appropriate to tax the receipts, as this would also facilitate claiming deduction of tax; and the 2nd respondent had adopted a wrong method of bringing to tax the receivables, which had resulted in forfeiture of tax.

In his counter-affidavit, the 2nd respondent states that the petitioner has an alternative remedy of appeal under the Act; a reasoned order was passed by him after giving an elaborate hearing to the assessee; he had considered the material on record, which included the various contracts entered into by the assessee; in view of the appellate mechanism, prescribed under the Act, this Court would not entertain the Writ Petition; in the assessment order, tax was levied on the sale made by the petitioner, and the works contract executed by them; with respect to works contracts, the petitioner did not opt for composition; they were, therefore, assessed to tax under Section 4(7)(a) of the Act r/w. Rule 17 of the Rules; tax was determined based on the value of the goods at the time of incorporation; during the assessment proceedings, the assessee themselves submitted details of the work done, the purchases made by them, and the value of the material incorporated while performing the work; he had also reviewed the purchases made by the petitioner for incorporating the material in the work done; the assessee was also given input tax credit on the purchases made by them; the assessment order gives details of the work done by the petitioner; and tax was imposed on the value of the goods in accordance with Section 4(7)(a) of the Act, and the applicable Rules.

The 2nd respondent further states that, where the contractor has used the goods incorporating them in the works, but has not received payment for such goods, they would still be required to discharge their obligation to pay tax under law; the title to the goods stand transferred, from the contractor to the contractee, at the stage of accretion; the liability to pay tax, on the goods used in the execution of works contract, gets triggered the moment the

goods are incorporated in the works contract as per Section 4(7) of the Act r/w. Rule 17 of the Rules; once material is used by the contractor, and the same is incorporated in the work being undertaken, the liability to pay tax under the Act would arise; it is not necessary that the entire works contract should be completed for liability to pay tax to occur; the language used in the charging section is when does transfer of title takes place in the case of goods used in a works contract; this shows that it is by way of accretion; Rule 17(3) makes it clear that, in respect of transfer of goods used in the execution of a works contract, the consideration received or receivable, whichever is earlier, would be required to be offered to tax by the contractor; use of the word 'receivable' in the Rule makes it clear that, even if the contractor has not received payment for the goods incorporated in the works, he would still be liable to pay tax under law; title to the goods is transferred, from the contractor to the contractee, on incorporation of the goods in the works; the statement submitted by the dealer shows that the sale consideration, receivable as on 31.03.2012, was brought into the books of accounts; the taxable turnover, which has been subjected to tax, is inclusive of both (a) sale proceeds receivable as on 31.03.2011 (i.e. tax period 2010-11), but was received during the tax period 2011-12, and (b) sale proceeds which were receivable as on 31.03.2012 (i.e., tax period 2011-12); each assessment is independent of the other; the stand taken, in the previous assessment order, does not bind the authorities for subsequent years; res-judicata does not apply to tax proceedings; accepting the petitioner's contention would lead to postponement of revenue to the department, and loss of interest to that extent; double taxation, as contended by the petitioner, would not arise since the sale proceeds, which were receivable as on 31.03.2012, have been considered for the assessment year 2012-13; the sale proceeds, which were receivable as on 31.03.2013, shall not be assessed to tax in the assessment for the tax period 2013-14; there is, therefore, no double taxation; the procedure being followed by the petitioner is not in compliance with the provisions of the Act; the petitioner's claim for deduction of Rs.3,90,77,556/- towards the tax component is not found in any work done bills raised before the contractee during the tax period 2011-12; the action of the respondent in forfeiting the excess tax deducted, over the actual VAT liability, is supported by the decision of the High Court in

Associated Cement Company Limited v. Commercial Tax Officer^[1]; the petitioner is disentitled from retaining such an amount in view Section 22(3A) of the Act r/w. Rule 18(3)(b) of the Rules; notices dated 19.02.2015 and 25.02.2015 were issued by the Commissioner (Commercial Taxes) to the Chairman and Managing Director of Transmission Corporation of Telangana and the Transmission Corporation of Andhra Pradesh informing them that TDS, not only on the erection but also on the entire amounts payable to the petitioner, must be deducted; the assessing authority addressed letter dated 29.04.2015 to the Chairman and Managing Director of Transmission Corporation of Telangana Limited to stop TDS payment, and to withhold Rs.3,94,67,240/- and Rs.14,21,41,166; as an assessment order was passed, and a demand notice was issued to the dealer providing reasonable time to make payment, steps were taken for recovery of the huge tax liability of the petitioner from the amounts payable to them by the Transmission Corporation of Telangana Limited, and the Transmission Corporation of Andhra Pradesh Limited; granting the relief sought for by the petitioner would enable them to unjustly enrich themselves at the cost of the State, and retain the excess tax collected by them even though the burden of tax has been passed on by them to persons who purchased material from them; grant of such a relief would not be in larger public interest; on the other hand, neither would substantial injustice be caused to the petitioner nor would they suffer any loss or prejudice as they have already passed on the tax burden to their customers; tax, under Section 4(7)(a) of the Act, is payable by a dealer if he chooses not to exercise the option of composition under Section 4(7)(b) and (d) of the Act; and the liability to pay tax under Section 4(7)(a) is on the value of the goods at the time of incorporation of such goods in the works executed by him.

In the reply affidavit filed by the petitioner, it is stated that the counter-affidavit makes no reference to the clarification issued under Section 76(2) of the Act; the assessing authority is bound by the clarification issued by the Government, and should have excluded the receivable component from the turnover of the assessee; the assessment order results in levy of tax twice on the very same turnover; the objections raised by the petitioner were not properly considered by the assessing authority; during the course of

personal hearing, the petitioner has repeatedly explained that the turnover, on which tax was proposed to be levied, has been subsequently reported by them in their VAT-200 returns; this vital fact was over-looked; the jurisdiction of this Court can be invoked, if the action of the respondent is without jurisdiction or without authority of law or is in violation of principles of natural justice; the respondent failed to consider the explanation submitted by the petitioner pursuant to the revised show-cause notice; the respondents lacks jurisdiction to levy tax twice on the same turnover; Section 4(7)(a) of the Act does not specify the time of payment, and is also silent about payment of tax on receivables; there is a distinction between 'levy of tax', and the 'time of payment of tax'; while Rule 17(2)(b) relates to composition contracts falling under Section 4(7)(b), which requires payment of tax on receivables too, there is no such requirement under Rule 17(1) relating to regular works contracts falling under Section 4(7)(a); payment of tax is not contemplated on receivables in respect of clause (a) contracts; though Rule 17(1)(e) mentions the word 'receivable', it is in the context of allowing deduction on account of labour component, charges for planning, charges for obtaining on hire machinery and tools, cost of consumables, cost of establishment of the contractor, other similar expenses and profit earned by the contractor; the second proviso to Rule 17(1)(e) makes it clear that it would be applicable only at the time of finalisation of accounts relating to the particular work; Rule 17(1)(e) is not applicable to ongoing contracts; charge to tax is different from payment of tax; the Act also provides for payment of tax at different stages; for example, in the case of builders, tax is payable only at the time of registration of the sale deed under Section 4(7)(d) of the Act, and not as and when the goods are incorporated; in such cases, the builder has been paying tax even after four or five years of incorporation of the goods, due to delay in the registration process; similarly Rule 17(1) does not provide for payment of tax on receivables; the works contracts, executed by the petitioner, are not governed by Rule 17(3) of the Rules; Rule 17(3) relates to works contracts, executed for contractees other than State Government or a local authority, under the composition scheme; all the works executed by the petitioner are for the State Government or local authority; the petitioner can maintain books of accounts as per accounting standards or as per the provisions of the Companies Act, 1956; maintenance of accounts is different

from reporting of turnover; the vital fact that the petitioner had subsequently paid tax on the same turnover, and to that extent relief ought to have been granted by the respondents as it was granted for the earlier assessment years, has been ignored; the petitioner has been consistently following a particular procedure for making payment of tax, and such procedure was accepted earlier; the respondents have not denied payment of tax by the petitioner in the subsequent years; the petitioner is not denying contractual receipts, and has been paying tax on receipt of the consideration; this procedure has been followed from 2005 till 2011-12; for the years preceding 2011-12, even according to the respondents, tax has been levied only on a receipt basis; the assessment procedure, being consistently followed, should not be disturbed; the petitioner has maintained accounts for all the projects; they have been paying tax, and complying with the Rules, as and when consideration has been received by them; the petitioners have not postponed payment of tax as there is no provision requiring payment of tax on receivables; the question of loss of interest does not arise because tax has to be paid only as per the provisions of the Act; the petitioner has been receiving consideration, from the contractees including government corporations, with inordinate delay; they have been paying tax on receipt of the consideration; in view of those belated receipts, the petitioner is also facing loss of interest; on a conjoint reading of Section 11(2) of the Act read with Rules 19(2) and 19(3)(i) of the Rules, even when a consolidated invoice, which is inclusive of tax is issued, the authority is still bound to allow deduction for the VAT component; separate proceedings have been issued by the respondents for forfeiture though there is no such proposal in the pre-assessment notice; such action is also barred by limitation in terms of Section 57(5) of the Act; on the one hand the respondents have refused to allow deduction on account of the VAT component, and on the other they have forfeited the so called excess tax collection; their action is self-contradictory; the question, whether the contractee has added the tax component or not, is a question of fact; the onus lies on the respondents to prove, with documentary evidence, that such tax has been added by the contractee in the estimate, and that such added tax has been paid to the contractor; this burden has not been discharged by the respondents; as

TRANSCO is neither the State Government nor a local body, Section 22(3A) is not applicable; G.O.Ms. No.11 makes it clear that payment has to be made only when tax is collected at source; the communication issued by the respondents to the petitioner's customers, asking them to stop payment to the petitioner, is highhanded and arbitrary; there is no statutory sanction for exercise of such power; the impugned order is neither a speaking nor a reasoned order; an astronomical demand has been raised ignoring the fact that the petitioner has paid tax on the very same turnover during the subsequent years; the respondents ought to have given credit to such amounts paid subsequently; the respondents also ought to have considered the TDS certificates, and available input tax credit, before arriving at the demand payable; and the impugned order, passed by the respondents, must be set aside.

In the additional affidavit filed on 08.12.2015 it is stated that, by inadvertence, certain important factual aspects, which have a bearing on the issues involved in the matter, could not be placed on record through the writ affidavit filed earlier; the petitioner has been executing various civil contracts, some of which pertain to government departments such as irrigation, panchayat raj, rural development etc; the petitioner is also executing certain works for respondents 3 and 4; these works contracts are indivisible works contracts and, since the petitioner has not opted to pay tax under composition, they are liable to pay tax under Section 4(7)(a) of the VAT Act on the turnover of works contracts, and are entitled to claim input-tax credit in terms of Section 13 of the Act read with Rule 20 of the Rules, apart from the claim of eligible deductions in terms of Rule 17 of the Rules; since tenders were invited for the works in question on engineering, procurement and construction on a turnkey basis, every thing is required to be done by the contractor himself; the petitioner has been filing their monthly returns on the turnover scored by them on receipt basis, since the government departments are issuing TDS certificates, only when the amounts are paid to the petitioner, without reference to the invoices raised by them; the petitioner's assessments, for the periods 2008-09, 2009-10 and 2010-11 were completed on receipt basis; the petitioner has been disclosing the receivable turnover in the subsequent years, and is discharging its liability on such turnover; since the assessments were completed on receipt

basis, and as the said assessment orders were not revised by any higher authority, the petitioner has been following the same practice; they have filed their returns, even for the years 2011-12 and 2012-13, on receipt basis; though their assessments were completed on receipt basis upto the years 2010-11, the 2nd respondent, who conducted audit, however proposed to assess the petitioner on invoice basis, without referring to the actual receipts; inspite of filing detailed objections, the 2nd respondent confirmed the levy on invoice basis without reference to the amount received by the petitioner for the works executed by it; though the contracts involved in the works are on engineering, procurement, construction and turnkey basis, and are composite works contracts, the 2nd respondent artificially bifurcated the same into supply portion and erection portion; though there is no proposal for forfeiture in the show-cause notice, the 2nd respondent has passed an order, forfeiting Rs.1,08,77,864/-, relying on G.O.Ms. No.11 dated 29.07.2005; since there was no proposal of forfeiture in the show-cause notice, there was no occasion for the petitioner to dispute the issue of forfeiture in the objections filed in response to the show cause notice; none of the works executed by the petitioner were in favour of State Government departments; the question of unjust enrichment, warranting forfeiture, does not arise as the petitioner was not paid tax, over and above the bid amount, by respondents 3 and 4; since the goods purchased by the petitioner includes goods taxable at 5% and 14.5%, the petitioner was reimbursed with VAT at 4%/5% over and above the bid amount; as such the question of unjust enrichment, warranting forfeiture, would not arise; the works executed in favour of respondents 3 and 4 are not covered by G.O.Ms. No.11 dated 29.07.2005; it is only Entry 116 of Schedule-IV of the Act which is attracted, and the petitioner's turnover is liable to tax only at 5%; some of the works, executed in favour of government departments, involve less material component, and more labour component; this resulted in excess payment of tax; it cannot be said that excess payment is due to reimbursement of the tax component, over and above the liability of the petitioner, warranting forfeiture; under Rule 23(6)(a) of the Rules revised returns, if any, can be filed only within six months; at this juncture the petitioner cannot seek adjustment of the tax paid on the receivable portion in the subsequent years;

the assessment orders may need revision to set right the levy for the assessment years 2009-10 to 2012-13; the department would then be required to *suo moto* transfer credit of the tax paid on the receivable portion in the year 2013-14 and 2014-15, to the respective years, without reference to the limitation prescribed under Rule 23(6)(a) of the Rules; since the petitioner has offered tax, on the receivable portion, in the year in which it was actually received, they did not claim deduction towards labour on such turnover; they have claimed input tax credit, on such turnover, in the year to which it relates; since TDS certificates were issued by the contractee departments, in the years in which it was actually paid to the petitioner, the said TDS amount also need to be given credit in the respective year to which the turnover pertains; the contention of the revenue that the petitioner themselves declared tax on the turnover of supply portion, and erection portion, separately in the returns filed by them is contrary to the record, and the 2nd respondent is put to strict proof thereof; since the contracts are individual in nature, though there is a certain supply portion, the said turnover also needs to be considered as a works contract, and not as supply of goods, since what has been manufactured and supplied were not standard goods; the supply portion is basically the electrical towers and cable which are manufactured as per the designs approved by the Transmission Corporation, and is a works contract of movable goods; since the goods, used in the works, are identified with a price, it cannot be said that the transaction is a simple sale; works contracts include movable goods, and goods used in immovable property; what has been mentioned in the return filed by the petitioner is the quantum of turnover in respect of 5% and 14.5% goods and its tax liability, and the input tax entitlement on such turnover; reference to the turnover, on the basis of the tax rate, does not mean that it is in respect of the supply portion only; by inadvertence, the petitioner could not place all these facts before this Court through the affidavit filed in support of the Writ Petition initially; it has been advised to file the present additional affidavit placing all facts relevant to the case; as these facts are crucial, the petitioner may be permitted to file an additional affidavit and it may be considered as part and parcel of the main writ affidavit; after passing the assessment order, the 2nd respondent appears to have

transferred the file to the 5th respondent (the regular assessing authority) for its enforcement; despite the undertaking given by then earlier, the 5th respondent has issued notice dated 08.09.2015 demanding payment of Rs.5,98,02,055/- as the tax payable on the received portion; even without allowing breathing time, the 5th respondent issued garnishee proceedings dated 09.09.2015 invoking its powers under Section 29 of the Act, and has recovered Rs.5,27,77,108/-, highhandedly on 31.10.2015, from the 3rd respondent; the petitioner has therefore filed a contempt case; the 5th respondent issued another notice dated 02.12.2015, which was served on the petitioner on 07.12.2015 at 4.40 P.M, demanding payment of the balance disputed tax of Rs.12,88,31,298/-; the petitioner was directed to remit the same within three days. and was threatened with coercive action in case of non-payment within the stipulated period of three days; the 5th respondent has placed reliance on G.O.Rt. No.3225 dated 19.10.2015 for demanding the balance disputed tax contrary to the undertaking; respondents 2 and 5 appear to have made up their mind to somehow recover the entire disputed demand, through coercive measures, even during the pendency of the Writ Petition without answering how they would adjust the taxes paid in the subsequent years, on the same turnover, in view of the accepted practice of assessing the petitioner on receipt basis; these works are mostly common and are running contracts; ever since 2009, the department never treated them as divisible contracts and, for the first time, the 2nd respondent treated them as divisible contracts, and has artificially bifurcated the turnover into received and receivable portion without any basis; there would not be any revenue loss by assessing the petitioner on receipt basis, as the petitioner has paid tax on the said turnover as and when consideration was received; even otherwise, by a sudden change of the assessment procedure, irreparable loss has been caused to the petitioner; the action of the respondents is also contrary to the law declared in **State of Andhra Pradesh v. M/s. Glimmer Exports, Gudur**^[2]; in **Jayaprakash Associates, Hyderabad v. S.E.I. & CAD, Nalgonda**^[3], this Court held that addition of VAT at 4%, in terms of G.O.Ms. No.11 dated 29.07.2005, cannot be presumed in respect of engineering, procurement and construction turnkey

projects without there being any concrete evidence of reimbursement of tax over and above the bid prices; the 2nd respondent erred in considering the contract in question as divisible contracts, ignoring the fact that none of the contracts are divisible in nature, and all are indivisible works contracts; the liability of the petitioner has to be considered in terms of Section 4(7)(a), and not Section 4(1) of the Act; the excess amount arrived at was not due to payment of tax by the contractee department over and above the eligibility of the petitioner, but due to the fact that the purchases of the petitioner involved 5% and 14.5% goods, and their liability is only at 5% under Entry 116 of Schedule-IV of the Act; this is also the reason that some of the contracts, executed in favour of government departments, consist of less material component and more labour component; though there is no requirement of deducting TDS in respect of the labour portion, recovery of tax at 4% on the entire value, by the engineering departments concerned, has resulted in excess TDS; the 2nd respondent erred in treating that part of the turnover, which pertains to the agreements with Transmission Corporation, as taxable under Section 4(1) as supply contracts, ignoring the fact that supply of towers, manufactured as per the designs approved by the Transmission Corporation, is also a works contract; the towers which were supplied are not standard goods which can be purchased across the counter; the petitioner is entitled to receive consideration only after supply, erection, and subsequent completion of the project to the satisfaction of the contractee Corporation; and the turnover cannot be bifurcated into supply portion and erection portion.

In the affidavit filed on 22.12.2015, it is stated that the petitioner has been advised to file this additional affidavit bringing to the notice of the Court certain important facts which missed the attention of the petitioner earlier, and also to raise additional questions of law involved in the matter; the petitioner has been executing various civil contracts, some of which pertain to the government departments such as irrigation, panchayat raj, rural development etc; the petitioner is executing certain works contracts for respondents 3 and 4 also during the period in question; the works contracts, executed by the petitioner with the government departments as well as the respective Transmission Corporations, are indivisible works contracts; since

the petitioner has not opted to pay tax under composition, it is liable to pay tax under Section 4(7)(a) on the turnover of works contracts, and is entitled to claim input tax credit in terms of Section 13 of the Act read with Rule 20 of the Rules, apart from the claim of eligible deductions in terms of Rule 17 of the Rules; when the 2nd respondent issued a notice, proposing levy of tax even on the turnover of receivables, the petitioner filed detailed objections, and requested that the proposed action be dropped; in respect of certain turnover, when the 2nd respondent proposed levy of tax at 14.5%, the petitioner, in their reply to the revised show cause notice, objected thereto contending that no tax can be levied on the turnover pertaining to certain works since they are pure earth works, and do not involve any material component; they had requested that the proposed action be dropped; and in support of their claim, the petitioner filed relevant statements and copies of bills.

After giving details of 8 different works, it is stated that, inspite of filing detailed objections, the 2nd respondent had confirmed the proposal and had levied tax at 14.5% in terms of Section 4(7)(a) r/w Rule 17(1)(e) by allowing deduction of 30% towards labour; the 2nd respondent did not consider the objections filed by the petitioner in the correct perspective, and had confirmed the levy on untenable grounds; even if the petitioner's claim is not considered for lack of sufficient evidence, at best the tax liability would be 5% in terms of Entry 116 of Schedule-IV and cannot be at 14.5%; this makes a substantial difference in the volume of the tax demanded, and the actual tax liability, even if the turnover is considered to be the value of the work involving transfer of property; wherever he was satisfied that the entire work was earth work, and no material component was involved, the 2nd respondent highhandedly forfeited the amount deducted at source by the contractee departments observing that giving credit, of the TDS amounts in respect of such works, would amount to unjust enrichment; the petitioner, by inadvertence, could not place all these facts before this Court through the affidavit filed in support of the Writ Petition initially, and through the additional affidavit already filed; they have been advised to file the present affidavit also; since the facts mentioned in the additional affidavit are crucial, and have a bearing on the decision that would be taken by the Court, they

may be permitted to file the additional affidavit; and this Court may be pleased to consider the same as part and parcel of the main affidavit filed in support of the Writ Petition.

Elaborate submissions were put forth by Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioners. Sri Pushyam Kiran, Learned Counsel for the petitioner, has filed written arguments. Detailed oral and written submissions were submitted by Sri K. Vivek Reddy, Learned Special Counsel appearing on behalf of the Learned Advocate-General. It is convenient to examine the rival submissions, urged by Learned Counsel on either side, under different heads.

I. SHOULD THE PETITIONER BE RELEGATED TO THE ALTERNATIVE REMEDY OF APPEAL UNDER THE ACT?

Sri K. Vivek Reddy, Learned Special Counsel appearing on behalf of the learned Advocate-General, would submit that the Writ Petition is not maintainable in view of the alternate remedy; the present Writ Petition was filed challenging the assessment order; in both the Writ Petitions there is no allegation of lack of jurisdiction or violation of principles of natural justice; when the Writ Petitions came up for hearing at the time of admission, the respondents had urged, both in their arguments and in their counter, that the petitioners may be directed to avail the appellate remedy under Section 31 of the Act; however, the Petitioners deliberately and consciously chose not to avail the alternate remedy; they must, therefore, suffer the consequences of the risk of having invoked the Writ jurisdiction of this Court; and the Petitioner cannot be permitted to invoke the extra-ordinary jurisdiction of this Court under Article 226 when all these grievances can be urged before the appellate authority as prescribed under the Act. Learned Special Counsel would rely on **Titaghur Paper Mills v. State of Orissa**^[4] in this regard.

Where a liability, not existing at common law, is created by a statute which, at the same time, gives a special and particular remedy for enforcing it, the remedy provided by the statute must be followed, and the forum given by the statute must be adopted and adhered to. (**Wolverhampton New Water Works Co. v. Hawkesford**^[5]; **Titaghur Paper Mills Co. Ltd.**⁴; **Neville v. London Express Newspaper Ltd.**^[6]; **Attorney-General of**

Trinidad and Tobago v. Gordon Grant & Co.^[7] and **Secretary of State v.**

Mask & Co.^[8]). Under the Scheme of the Act, there is a hierarchy of authorities before which the petitioner can get adequate redress against the wrongful acts complained of. As the Act provides for a complete machinery, an order of assessment should, ordinarily, be challenged by the prescribed mode, and not by a petition under Article 226 of the Constitution. Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute should be availed. (**Titaghur Paper Mills Co. Ltd.**⁴).

In its order dated 24.08.2015, passed in both these Writ Petition, a division bench of this Court noted the submission of the Learned Advocate-General that the government was actively considering the issue relating to collection of VAT in cases where bills were raised but payment had not been made by the State; a policy decision was being taken with respect to such cases as, in the ultimate analysis, the amounts were payable by the State to the State; and as certain policy decisions need to be taken, the matter may be adjourned by four weeks. The division bench also recorded the submission of the Learned Advocate-General that, pending decision being taken by the government in the matter, there would be no coercive steps, in the meanwhile, for collection of VAT to the extent of bills receivable ie for bills received but for which payment had not been made. Recording the submission of the Learned Advocate-General, both the Writ Petitions were adjourned by four weeks. Thereafter, on 22.09.2015, the division bench adjourned the matter, at the request of the Learned Advocate-General, by two more weeks and deleted the matter from the caption of 'part heard'. Both these Writ Petitions suffered several adjournments thereafter till orders were eventually reserved on 05.01.2016. While reserving orders, in both these Writ Petitions, we directed the respondents not to take any coercive steps, for recovery of the tax dues, pending disposal of the Writ Petitions.

While it is true that both these Writ Petitions have not been admitted as yet, they were adjourned only on the submission of the Learned Advocate-General that no coercive steps would be taken for recovery of tax on the bills receivables portion of the tax arrears. While the petitioners could

have been relegated to the alternative remedy of a statutory appeal when the Writ Petition was initially filed, the alternative remedy of an appeal, in view of passage of time, is no longer available to them. Section 31 of the Act provides for an appeal against the order passed by the assessing authority to the Appellate Deputy Commissioner. The limitation prescribed, under Section 31(1) of the Act for preferring an appeal, is 30 days from the date on which the order was served on the assessee. The first proviso thereto confers discretion on the appellate authority to admit the appeal, even after expiry of the prescribed period of limitation of 30 days under Section 31(1), if he is satisfied that the dealer had sufficient cause for not preferring the appeal within the period of limitation of 30 days. The first proviso to Section 31(1), however, fetters exercise of discretion, and limits the power of the appellate authority to condone the delay, only for a period of 30 days. In effect, while the remedy of an appeal is available as a matter of right within a period of 30 days from the date of receipt of a copy of the assessment order, an additional period of 30 days is available on sufficient cause being shown. After 60 days, from the date of receipt of a copy of the assessment order, neither can the dealer prefer an appeal nor can the appellate authority condone the delay in preferring the appeal. The assessment orders, under challenge in these Writ Petitions, were passed on 22.05.2015 and 26.05.2015 respectively. The 60 day period, prescribed for preferring an appeal, has elapsed long ago, and the petitioner can no longer invoke the appellate remedy under Section 31 of the Act.

The rule of exclusion of the writ jurisdiction, in view of the existence of an alternative remedy, is not a rule of compulsion. (**Harbanslal Sahnia v. Indian Oil Corpn. Ltd.**^[9]; **State of H.P. v. Gujarat Ambuja Cement Ltd.**^[10]). The existence of an alternative remedy is merely a factor to be considered, and would not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed. (**S.J.S. Business Enterprises (P) Ltd. v. State of Bihar**^[11]).

When, on undisputed facts, the taxing authorities are shown to have assumed jurisdiction which they do not possess, a writ petition can be entertained. (**Gujarat Ambuja Cement Ltd.**¹⁰). Some exceptions to the rule

of alternative remedy have been recognized i.e. where the statutory authority has not acted in accordance with the provisions of the enactment or in defiance of the fundamental principles of judicial procedure etc. (**CIT v. Chhabil Dass Agarwal**^[12]). If the High Court has entertained a petition, despite availability of an alternative remedy, and has heard the parties on merits it would, ordinarily, not be justified in dismissing the Writ Petition on the ground of non-exhaustion of the statutory remedies unless it finds that factual disputes are involved, and it would not be desirable to deal with them in a Writ Petition. (**L. Hirday Narain v. Income Tax Officer, Bareilly**^[13]; **Gujarat Ambuja Cement Ltd**¹⁰).

The power to issue prerogative writs, under Article 226 of the Constitution, is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose". The High Court, having regard to the facts of the case, has the discretion to entertain or not to entertain a Writ Petition under Article 226 of the Constitution. It has, however, imposed upon itself certain restrictions one of which is that, if an effective and efficacious remedy is available, it would, normally, refrain from exercising its jurisdiction. But the alternative remedy does not operate as a bar in certain contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged. A Writ Petition may be entertained under Article 226 of the Constitution where the authority, against whom the Writ is filed, is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation. (**Whirlpool Corporation v. Registrar of Trade Marks, Mumbai**^[14]).

In the present case, the petitioner alleges that the assessing authority lacks jurisdiction to collect tax on bills receivables as that would amount to double taxation. They also allege violation of principles of natural justice on the ground that the tax collected at source was sought to be forfeited without

putting them on notice, and without giving them an opportunity of being heard. As both these factors would justify a Writ Petition being entertained under Article 226 of the Constitution of India, and as the alternative remedy of appeal is no longer available to the petitioner, we see no reason to non-suit them on this ground.

II. SCOPE OF ENQUIRY, IN PROCEEDINGS UNDER ARTICLE 226, IS LIMITED:

Sri K. Vivek Reddy, Learned Special Counsel appearing on behalf of the learned Advocate-General, would submit that, even if the Writ Petition is maintainable, its scope is limited; in a Writ of Mandamus, the petitioners can only seek enforcement of a legal duty which the respondent has failed to discharge; if the assessment order is in accordance with law, the petitioners are not entitled for a writ of mandamus seeking deferment of collection of tax; the Petitioners have sought deferment of tax collection under the impugned assessment order, pending completion of assessment for the subsequent assessment years (FY 2013-2014 and 2014-2015); under the VAT Act, the Petitioners are obligated to report the turnovers with respect to bills received and receivable in the relevant year in which the material is incorporated; having failed to comply with this mandatory requirement of the law, the petitioners cannot seek a writ of mandamus to direct the assessing officer to ignore the requirement of the law, and defer collection of tax; if the assessment order is valid, a writ of mandamus would not be issued not to collect tax; a writ of mandamus cannot be issued contrary to the provisions of the Act, or to defeat the provisions of the Act; *it cannot be issued to compel the assessing authority to pass an order in violation of a statutory provision; and* the petitioner is not entitled to a mandamus for a block assessment for the assessment years under the Assessment Order (FY AY 2011-12 and 2012-2013) and the future assessment years. Learned Counsel would rely on **Hope Textiles v. UOI**^[15] and **Bihar Eastern Gangetic Fishermen Co-operative Society v. Sipahi Singh**^[16] in this regard.

While a Writ Petition can be entertained despite the availability of the

alternative remedy of appeal, that does not mean that this Court would examine questions of fact as these are matters in the province of an appeal, and would not be subjected to scrutiny in proceedings under Article 226 of the Constitution of India. In both the Writ Petitions, the petitioner has sought a writ, direction or order, especially in the nature of a Writ of Mandamus.

"Mandamus" means a command issued to direct any person, corporation, inferior court or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act.

(Director of Settlements, A.P. v. M.R. Apparao^[17]). A Writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned, and there is failure on his part to discharge the statutory obligation. The chief function of the Writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. In order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the Statute to enforce its performance. **(The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd.¹⁶; Oriental Bank of Commerce v. Sunder Lal Jain^[18]; Tirumala Tirupati Devasthanams v. K. Jotheeswara Pillai^[19]; Lekhraj Satramdas Lalvani v. Deputy Custodian-cum-Managing Officer^[20]; Dr. Rai Shivendra Bahadur v. The governing Body of the Nalanda College^[21] and Dr. Umakant Saran v. State of Bihar^[22])**. The duty that may be enjoined by a mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law. **(M.R. Apparao¹⁷; Kalyan Singh v. State of U.P.^[23])**. A writ of mandamus can be issued to a statutory authority only to compel him to perform his statutory obligation. It cannot be issued to compel him to pass an order in violation of a statutory provision. **(Hope Textiles Ltd.¹⁵)**.

A writ of mandamus is not a writ of course or a writ of right but is, as a

rule, discretionary. (**C.R. Reddy Law College Employees' Association, Eluru, W.G. District v. Bar Council of India, New Delhi**^[24]). While a writ of mandamus is equitable in nature, its issuance is governed by equitable principles and the prime consideration, for issuance of the writ, is whether or not substantial justice will be promoted (**Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.**,^[25]; **Commissioner of Police, Bombay v. Govardhandas Bhanji**^[26]; **Praga Tools Corporation v. Shri C.V Imanuel**^[27]; **Punjab Financial Corporation v. Garg Steel**^[28]; **Union of India v. Arulmozhi Iniarasu**^[29]; and **Khela Banerjee v. City Montessori School**^[30]), it is however not for the Court to dictate what decision should be taken by the statutory authority, in the exercise of its discretion, in a given case. The Court cannot direct the statutory authority to exercise its discretion in a particular manner or in favour of a particular person. That would be beyond the jurisdiction of the Court. (**U.P.S.R.T.C. v. Mohd. Ismail**^[31]). Even if a legal flaw might be electronically detected, this Court would not interfere save manifest injustice or unless a substantial question of public importance is involved. (**Rashpal Malhotra v. Mrs. Saya Rajput**^[32]; **Council of Scientific and Industrial Research v. K.G.S. Bhatt**^[33]).

The statutory obligation cast on the assessing authority is to pass an order in accordance with the provisions of the Act and the Rules. As long as the assessment order accords with the provisions of the Act and the rules made thereunder, this Court would neither sit on appeal over the findings recorded by the assessing authority nor re-appreciate the evidence on record to substitute its views for that of the assessing authority. It is only within these self-imposed restrictions would the validity of the assessment orders be examined in proceedings under Article 226 of the Constitution of India.

III. INSTRUCTIONS ISSUED BY THE GOVERNMENT UNDER SECTION 76(2) OF THE ACT: ITS EFFECT:

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the

petitioner, would submit that, in terms of G.O.Ms. No.11 dated 29.07.2005, the liability of the petitioner to pay VAT is only when payment is made by the contractee on the running account bills submitted to them by the contractor. On the other hand Sri K. Vivek Reddy, Learned Special Counsel appearing for the Learned Advocate-General, would submit that the said G.O. has no application to the facts of the present case; the petitioner did not raise this contention before the assessing officer; consequently, the assessing officer did not have the opportunity to deal with such a contention; the petitioner did not even raise this contention in the Writ Petition; they are therefore precluded from relying on the said G.O; G.O.Ms. No. 11 was not addressed to the assessee; it was an instruction given to Government Departments with respect to works contracts; the said G.O. was issued in August, 2005 when the APGST Act was repealed, and the AP VAT Act was enacted in its place; the said G.O. only deals with effecting tax collection at source and does not, in any way, effect the tax liability of the works contract dealer to pay tax on the value of the material incorporated in the works; the said G.O. has now been clarified by G.O.Rt. No.3225 dated 19.10.2015 wherein it was held that the tax liability of the assessee will always be determined under the Act and the Rules; and any Government Order, issued under Section 76 of the Act, cannot be contrary or inconsistent with the provisions of the Act.

Section 76 of the Act is the power to remove difficulties and, under sub-section (2) thereof, if any difficulty arises in giving effect to the provisions of the Act, the Government may, by order, make such provisions as are not inconsistent with the purposes of the Act, as appears to it to be necessary or expedient for removing the difficulty. In order to obviate the necessity of approaching the legislature for removal of every difficulty, howsoever trivial, encountered in the enforcement of a statute by going through the time-consuming amendatory process, the legislature sometimes thinks it expedient to invest the Executive with a very limited power to make minor adaptations and peripheral adjustment in the statute, for making its implementation effective, without touching its substance. That is why the "removal of difficulty clause", once frowned upon and nick-named as the "Henry VIII Clause" in scornful commemoration of the absolutist ways in which that English King got the "difficulties" in enforcing his autocratic will removed through the instrumentality of a servile Parliament, now finds

acceptance, as a practical necessity, in several Indian Statutes of the post independence era. (**Madeva Upendra Sinai v. Union of India**^[34]).

The power, conferred by Section 76(2) of the Act, is not uncontrolled or unfettered. It is circumscribed, and its use is conditioned and restricted. The existence or arising of a "difficulty" is the sine qua non for the exercise of the power. If this condition precedent is not satisfied as an objective fact, the power under Section 76(2) cannot be invoked at all. Again, the "difficulty" contemplated by the said provision must be a difficulty arising in giving effect to the provisions of the Act and not a difficulty arising aliunde or an extraneous difficulty. Further, the Government can exercise the power thereunder only to the extent it is necessary for applying or giving effect to the Act and no further. It may slightly tinker with the Act to round off angularities, and smoothen the joints or remove minor obscurities to make it workable, but it cannot change, disfigure or do violence to the basic structure and primary features of the Act. In no case, can it, under the guise of removing a difficulty, change the scheme and essential provisions of the Act. (**Madeva Upendra Sinai**³⁴).

G.O.Ms. No.11 dated 29.07.2005, issued by the Government in the exercise of the powers conferred by Section 76(2) of the Act, are the instructions issued regarding executing works contracts under the Act. Clause (1) thereof stipulates that the tax collection at source, at 4% towards VAT, shall be made in all the payment made in all engineering departments of all works irrespective of the value of work, and irrespective of the category of registration of the contractor/firm. Clause (5) thereof stipulates that, for implementation of VAT and effecting TCS, the date of payment of the respective bill only is the criterion, and, as and when bills are paid, 4% should be collected wherever applicable. All that the instructions issued in G.O.Ms.No.11 provide is for tax to be collected at source at 4% as and when the bills are paid. The words "for implementation of VAT", in clause (5) of G.O.Ms.No.11, cannot be read out of context to mean that a dealer is required to pay VAT only when payment, for the running account bills, are received by him.

As noted hereinabove, the power conferred on the Government, by Section 76(2) of the Act, is only to remove difficulties, and cannot be

exercised to make a provision which is inconsistent with the purposes of the Act. As shall be referred to in greater detail later, Section 22 of the Act, read with Rule 24 of the Rules, requires tax to be paid before the 20th of the month succeeding the tax period of one month. The complex demands on modern legislation necessitates the plenary legislating body to discharge its legislative function by laying down broad guidelines and standards, to lead and guide as it were, leaving it to the subordinate legislating body to fill up the details by making necessary rules and to amend the rules from time to time to meet unforeseen and unpredictable situations, and within the framework of the power entrusted to it by the plenary legislating body. (**State of T.N. v. M/s. Hind Stone etc.**^[35]). A statutory rule, while ever subordinate to the parent statute, is otherwise to be treated as part of the statute and as effective. "Rules made under the Statute must be treated for all purposes of construction or obligation exactly as if they were in the Act. They are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation": (**State of U.P. v. Babu Ram Upadhyaya**^[36]; **Maxwell: Interpretation of Statutes**, 11th Edition page 49-50; **Hind Stone**³⁵).

Rules made, under the provisions of a statute, form part of the statute. But before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the authority framing the rule. (**General Officer Commanding-in-Chief v. Subhash Chandra Yadav**^[37]; **The Prudential Cooperative Bank Ltd. v. The A.P. Cooperative Tribunal, Hyderabad**^[38]). As Rules, made under the Act, must be read as part and parcel of the Act under which it is made, accepting the submission of Sri S. Ravi, Learned Senior Counsel, would mean that the Government has exercised its powers, under Section 76 of the Act, to remove difficulties inconsistent with the purposes of the Act and the Rules. (ie inconsistent with Section 22 read with Rule 24). It would also mean that, under the guise of exercising power to remove difficulties, the Government intended, by issuing

G.O.Ms.No.11, to nullify the statutory prescription of Section 22 of the Act read with Rule 24 of the Rules. Such a construction of G.O.Ms. No.11 is impermissible.

Section 22(3) of the Act requires, among others, the State Government, or the company registered under the Companies Act, to deduct, from out of the amounts payable by them to a dealer in respect of works contract executed for them, an amount calculated at such rate as may be prescribed; and such contractee, deducting tax at source, shall remit such amount in the manner prescribed. Deduction under Section 22(3), towards tax under the Act, is to be made from the amount payable by the Government to a dealer. This provision, which was clarified in G.O.Ms.No.11, merely requires tax to be collected at source when payment is made to a dealer. It is evident therefore that, for effective implementation of the Act, the contractee was directed to effect tax collection at source when payment of the respective bills are made.

In any event the State Government subsequently amended clause (5) of G.O.Ms.No.11 dated 29.07.2005 by G.O.Rt.No.3225 dated 19.10.2015.

After its amendment clause (5) reads thus:

“for implementation of tax collections at source as well as effecting TCS, date of payment of the respective bill only is the criterion. As and when bills are paid, 5% should be collected, wherever applicable”.

The said G.O. specifies that the liability of a dealer should always to be determined as per the provisions of the Telangana VAT Act, and the Rules made thereunder. In view of the subsequent clarification in G.O.Rt.No.3225 dated 19.10.2015 ambiguity, if any, in the earlier circular, i.e. G.O.Ms.No.11 dated 29.07.2005, has now been put to rest.

IV. WAS THE ASSESSING AUTHORITY JUSTIFIED IN REFUSING THE PETITIONER’S CLAIM TO BE SUBJECTED TO TAX UNDER THE ACT ONLY WHEN THEY RECEIVED PAYMENT FROM THE CONTRACTEE?

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioner, would submit that the revenue did not choose to revise the orders of the assessing authority, for the assessment years 2009-10 and 2010-11 till date, though they had claimed the benefit of TDS only in the year in which they received payment, and not when it had accrued; the petitioner had reported the same turnover on a receipt basis in the subsequent

assessment years, and had discharged their liability; they are in no position to revise their returns at this belated stage as the time prescribed therefor had expired long ago; and the petitioner would be put to severe financial loss and hardship unless the 2nd respondent is directed to make a consolidated assessment for the assessment years 2011-12, 2012-13, 2013-14 and 2014-15, as they had discharged their entire liability to the Government as detailed in the annexed statement.

On the other hand Sri K. Vivek Reddy, Learned Special Counsel appearing on behalf of the learned Advocate-General, would submit that a dealer has to pay VAT even on the bills receivable for the sale of goods, and in the execution of the works contract; in the present case, the petitioner has executed supply and works contracts which can be divided into three categories i.e. (a) incorporation of material; (b) appropriation by the employer, and (c) payment by employer to the dealer; the liability of a dealer to pay tax on sales or works contracts is at the stage of incorporation; the taxable event, in a works contract, is incorporation; even if the work has not been appropriated by the employer or bills have not been paid, works contract tax has to be paid; a review of the various provisions of the Act show that, while computing the total taxable turnover, consideration on account of bills receivable has to be included; in the present case, the dealer has availed deductions under Rule 17(1)(e) and input-tax credit on the bills receivable; once they have availed the said deductions on bills receivable, they cannot be heard to contend that tax on sales and works contracts is not payable on bills receivable; even if the goods are not appropriated by the employer, or even if the contractor abandons the work, he is liable to pay tax on the works contract; in a works contract, tax is liable to be paid at the time of incorporation, and not when the bills are actually paid; and similarly, in a sale, tax is liable to be paid the moment sale is made, and not when the consideration is received. Learned Counsel would rely on **A.P. Aksh Broad Band v. CTO**^[39]; **Builders Association of India v. Union of India**^[40]; **Gannon Dunkerly v. State of Rajasthan**^[41] and **The Aluminium Industries Ltd. v. State of Kerala**^[42]).

Section 4 of the Act is the charging provision, and sub-section (1)

thereof stipulates that, save as otherwise provided in the Act, every dealer registered as a VAT dealer shall be liable to pay tax on every sale of goods in the State at the rates specified in the Schedules. Section 4(3) requires every VAT dealer to pay tax on every sale of goods taxable under the Act on the sale price at the rates specified in the Schedules III, IV and V, subject to the provisions of Section 13. The charge to tax, under Section 4(1) of the Act, is on the sale of goods in the State. The word 'sale' is defined, in Section 2(28) of the Act, to mean every transfer of property in goods, (whether as goods or in any other form in pursuance of a contract or otherwise), by one person to another, in the course of trade or business, for cash or for deferred payment or for any other valuable consideration. Explanation VI to Section 2(28) stipulates that, whenever goods are supplied or used in the execution of a works contract, there shall be deemed to be a transfer of property in such goods, whether or not the value of the goods, so supplied or used in the course of execution of such works contract, is shown separately, and whether or not the value of such goods or material can be separated from the contract for the service and the work done. On a conjoint reading of Section 2(28) along with Explanation VI thereto, it is clear that a sale of goods must be deemed to have taken place whenever any goods are supplied or used in the execution of a works contract. A deemed sale takes place, and the title to the goods is deemed to have been transferred, when the goods are incorporated in the works, and not when the consideration for such a deemed sale is received.

This is also evident from definition of "sale price" in Section 2(29) of the Act which, among others, brings within its ambit the value of goods, as determined by the assessing authority, to have been used or supplied by the dealer in the course of execution of the works contract. The definition of "sale price", in the Act, brings out the idea that the amount "payable" to the dealer as consideration for the sale of goods also constitutes "sale price", as much as the amount actually paid. The definition of "sale", in the Act, shows that payment, for the transaction, may be in cash or as deferred payment. What is material is not the actual collection of the sale price but the receivability of the amount. (**The Aluminium Industries Ltd.**⁴²).

In **The Aluminium Industries Ltd.**⁴², the Division Bench of the

Kerala High Court held that, under the Act, "sale price" is not only what is actually received, but even what is "receivable" by the dealer; the contention that, on this interpretation, the amount can be assessed as the sale price receivable for the earlier year, and again as the amount actually received in the subsequent year, was not tenable as no such double taxation of the same turnover has been shown to have actually resulted; and even if a customer has not issued an invoice but if the amount is reflected in the balance sheet, it is liable to tax. To quote:-

".....The Tribunal in our opinion, rightly pointed out that although the bills might not have been issued, the assessee had included the amount in the balance sheet and, therefore, that will form part of the sale price, and the fact that bills had not been issued to the customers is immaterial for the purpose of assessment. The Tribunal observed that what was material was not actual collection of the sale price but the receivability of the amount. We are in agreement with the reasoning and conclusion of the Tribunal. We dismiss these revision cases but in the circumstances without costs."; and in the present case, dealer has reflected bills receivable for works contract and sales in their Balance Sheet; and, therefore they are liable to pay tax thereon....."

The consideration for the sale of goods, i.e., the sale price, includes the value of the goods used or supplied by the dealer in the course of execution of a works contract. Section 4(7)(a) of the Act stipulates that, notwithstanding anything contained in the Act, every dealer executing works contract shall pay tax on the value of goods, at the time of incorporation of such goods in the works executed, at the rates applicable to the goods under the Act. Clauses (b) & (d) of Section 4(7) relate to different kinds of composition which a dealer executing works contract, or a dealer engaged in the construction and sale of residential apartments, is entitled to avail. The liability of a person, executing works contract, to pay VAT, in cases where he does not exercise the option for composition, is the value of the goods at the time of incorporation of the goods in the works.

The words "works contract", in Section 2(45) of the Act, has been defined to include "any agreement for carrying out for cash or for deferred payment". The words "deferred payment" used therein can only mean that, even if the bills are receivable, it would still constitute a works contract. It is in order to overcome the effect of the decision in **State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.**^[43], wherein it was held that a works contract is an indivisible contract and the turnover of the goods used in the execution of the works contract would not be exigible to sales tax, that

Parliament amended Article 366 by introducing sub-clause (b) of clause (29-A). The said clause does not say that a tax on the sale or purchase of goods includes a tax on the amount paid for the execution of a works contract. It refers to a tax on the transfer of property *in goods (whether as goods or in some other form) involved* in the execution of a works contract. The emphasis is on the transfer of property *in goods* (whether as goods or in some other form). The latter part of clause (29-A) of Article 366 of the Constitution makes the position very clear. While referring to the transfer, delivery or supply of any goods that takes place as per sub-clauses (a) to (f) of clause (29-A), the latter part of clause (29-A) says that “such transfer, delivery or supply of any goods” shall be deemed to be a *sale of those goods* by the person making the transfer, delivery or supply and a *purchase of those goods* by the person to whom such transfer, delivery or supply is made. Hence a transfer of property in goods, under sub-clause (b) of clause (29-A) of Article 366, is deemed to be a sale of the goods involved in the execution of a works contract by the person making the transfer and a purchase of those goods by the person to whom such transfer is made. **(Builders Association of India⁴⁰).**

The measure for the levy of the tax, contemplated by Article 366(29-A)(b), is the value of the goods involved in the execution of a works contract. Article 366(29-A)(b) emphasises on the transfer of property in goods (whether as goods or in some other form). This indicates that, though the tax is imposed on the transfer of property in goods involved in the execution of a works contract, the measure for levy of such imposition is the value of the goods involved in the execution of a works contract. It cannot be said that the value of such goods, for levying tax, can be assessed only on the basis of the cost of acquisition of the goods by the contractor. Since the taxable event is the transfer of property in the goods involved in the execution of a works contract, and the said transfer of property in such goods takes place when the goods are incorporated in the works, the value of the goods which can constitute the measure for the levy of the tax has to be the value of the goods at the time of incorporation of the goods in the works, and not the cost of acquisition of the goods by the contractor. It cannot also be said that, in addition to the value of the goods involved in the execution of a works

contract, the cost of incorporation of the goods in the works can be included in the measure for levy of tax. Incorporation of the goods in the works forms part of the contract relating to work and labour which is distinct from the contract for transfer of property in goods and, therefore, the cost of incorporation of the goods in the works cannot be made a part of the measure for levy of tax contemplated by Article 366(29-A)(b). (**Gannon Dunkerley & Co.**⁴¹).

A works contract is a contract for valuable consideration. When goods are supplied, or used in the execution of a works contract by a dealer, there is deemed to be a transfer of property in such goods, and is a “sale” as defined under the Act. The sale price includes the value of any goods which have been used or supplied by the dealer in the course of execution of the contract. The law does not require the goods used or supplied by the dealer, in the execution of a works contract, to be appropriated by the contractee or the employer to bring the transaction within the ambit of taxable sale of goods. Once the goods are supplied or used in the execution of a works contract for consideration, the taxable event exists for the purpose of the Act. If the Legislature had intended that a sale or deemed sale, in relation to a works contract, would be exigible to tax only when the goods supplied or used are appropriated by the employer, it would have indicated it to be so. No such indication is even suggested remotely. (**A.P. Aksh Broad Band Ltd., Hyderabad**³⁹). The words “Total turnover”, as defined in Section 2(39) of the Act, also include gross consideration received or receivable towards the execution of works contract”. The consideration which is receivable would form part of the total turnover. Section 2(10) of the Act defines “Dealer” to mean any person who carries on the business, among others, of selling or supplying goods or executes any works contracts involving supply or use of material directly or otherwise, whether for cash or for deferred payment. The aforesaid provisions take into account bills receivable while calculating the taxable turnover, and in providing deductions thereto.

Section 11 of the Act relates to calculation of tax payable and under sub-section (1) thereof, subject to sub-section (2), the VAT payable on a sale liable to VAT shall be calculated by applying the rate of tax, specified in the Schedules, on the sale price of goods. Section 20(1) of the Act requires

every dealer, registered under Section 17 of the Act, to submit such return or returns, along with proof of payment of tax in such manner, within such time, and to such authority as may be prescribed. Rule 23(1) of the Rules requires the return to be filed by the VAT dealer, under Section 20 of the Act, in Form VAT 200 within twenty days after the end of the tax period. Section 2(36) defines 'tax period' to mean a calendar month or any other period as may be prescribed. As no other period has been prescribed under the Rules, the tax period continues to be a calendar month. Consequently Rule 23(1) requires a return to be filed for each month, before the 20th of the succeeding month. Rule 24 relates to tax payment and under sub-rule (1) thereof, in the case of a VAT dealer, the tax declared to be due in Form VAT 200 shall be paid not later than 20 days after the end of the tax period by way of remittance into the Treasury or by way of online payment. The tax declared to be due, in the return filed in Form VAT-200, is thus required to be paid, for each month, by the 20th of the succeeding month.

The statutory obligation to file a return, and to pay tax in terms thereof, is on the value of the goods at the stage of its incorporation in the works. The liability to pay VAT has no relation to receipt of consideration for the goods sold. The VAT dealer is liable to pay VAT under the Act irrespective of whether or not he has received the sale consideration. Accepting the submission that the time for payment can be postponed till receipt of consideration would render Rule 24 of the VAT Rules redundant, as the liability to pay tax would then not arise, in terms of Rule 24, by the 20th of the succeeding month, but on the date on which consideration is received on the sale of goods. Courts have adhered to the principle that effort should be made to give meaning to each and every word used by the legislature or the Rule making authority, and it is not a sound principle of construction to brush aside words in a statute or a statutory rule as being inapposite surplusage, if they can have a proper application in circumstances conceivable within the contemplation of the statute/statutory rule. (**Gurudev datta VKSSS Maryadit v. State of Maharashtra**^[44], **Manohar Lal v. Vinesh Anand**^[45]). When the legislative intent is found specific mention and expression in the provisions of the Act or the Rules, the same cannot be whittled down or curtailed and rendered nugatory. (**Bharathidasan University v. All India**

Council for Technical Education^[46]). Effect should be given to all the provisions and a construction that reduces one of the provisions to a “dead letter” must be avoided. (**Anwar Hasan Khan v. Mohd. Shafi**^[47]). Any interpretation which results either in addition or deletion of words or as rendering any statutory provision or rule redundant must be avoided. (**Banarsi Debi v. ITO**^[48]; **Attorney-General v. Carlton Bank**^[49]).

We must, therefore, express our inability to agree with Sri S. Ravi, Learned Senior Counsel, that the time for payment of tax can be postponed, beyond what is prescribed under Rule 24, to the uncertain and varying date of receipt of sale consideration. Unlike cash sales, wherein receipt of consideration and the sale of goods are more or less simultaneous, sale of goods, wherein payment of consideration is deferred to a later date mutually agreed to by the parties, are called credit sales. As Section 2(28) defines ‘sale’ to include transfer of property in goods, by one person to another in the course of trade or business, for deferred payment also, credit sales also fall within the definition of ‘sale’ under Section 2(28) of the Act. On a conjoint reading of Section 22 of the Act and Rule 24 of the Rules, the tax declared in the return for a particular month is required to be paid, and proof of payment filed along with the return before the 20th of the succeeding month, and the obligation to pay VAT cannot be postponed to the indefinite date of receipt of sale consideration.

Section 4(7)(d) of the Act gives an option to a dealer, engaged in construction and sale of residential apartments, houses, buildings etc to pay tax by way of composition at 1.25% of the amount received or receivable towards the composite value of both land and building, or the market value fixed therefor for the purpose of stamp duty. Rule 17(4)(e) of the Rules requires the VAT dealer, executing a contract for construction and sale of residential apartment etc, to calculate the tax due at 1.25% of the total consideration or the market value fixed for the purpose of the stamp duty, whichever is higher, and to enter such details in Form VAT-200 filed for the month in which the sale of such property is concluded and registered. The tax due is required to be paid along with the return in Form VAT-200, and the particulars of payment of tax, made directly or through the Sub-

Registrar, is required to be mentioned in the relevant columns in Form VAT-200.

Dealers, engaged in the business of construction and sale of residential buildings or apartments, houses etc, are entitled to exercise the option to avail composition, and to pay tax at 1.25% of the amount received or receivable, not only on the value of the building but also on the land on which the building is constructed. For a valid transfer of title over land, and the building/semi-finished structure constructed thereupon, registration is compulsory and, as tax under the Act is liable to be paid only when there is a transfer of title to the goods, Rule 17(4)(e) enables VAT also to be paid to the Sub-Registrar at the time of registration i.e when there is a deemed sale of goods by way of transfer of property in land and the semi-finished structure/building constructed thereupon. Unlike income-tax where tax is levied either when income accrues or on its receipt, a sale under the Act takes place when title to the goods passes, or is deemed to have passed; and is not conditional on the actual receipt of consideration by the transferor from the transferee. The assessing authority was, therefore, justified in subjecting the petitioner to tax under the Act on the value of the goods when they were incorporated in the works, and in rejecting their claim that VAT was payable only when sale consideration was received.

V. THE SCOPE OF RULE 17(1)(E) AND ITS TWO PROVISOS:

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioner, would contend that even if it were to be assumed, without conceding, that the 2nd respondent is justified in changing the procedure of assessment from receipt basis to incorporation value basis, levy of tax on the entire turnover of RA bills is nonetheless without authority of law, and is contrary to the second proviso to Rule 17(e) of Rules; although the petitioner had sought a larger relief, for exclusion of the receivable sum, it is open to them to contend that the assessment order was not passed in accordance with the Rules, and was required to be set aside; the petitioner had also availed the benefit of deductions, in terms of Rule 17(e), in the year in which payment was received by them, and not in the year in which RA Bills were raised; the earlier practice of assessing the petitioner to VAT on receipt basis was arbitrarily given a go-bye; having regard to Rule 17(1)(d) read

with the second proviso to rule 17(1) (e) of the Rules, the sum taxable in the first instance is the 'cost' of the goods incorporated in the works; and the element of 'profit' has to await the finalization of accounts.

On the other hand, Sri K. Vivek Reddy, Learned Special Counsel appearing on behalf of the Learned Advocate-General, would submit that the assessment order is in accordance with Rule 17 (1)(d) and 17(1)(e); in the Writ Petition, the petitioners have not contended that the assessment was not made in accordance with Rule 17(1)(d) and Rule 17(1)(e); the only contention that was raised and pleaded in the Writ Petition was that bills receivable cannot be taxed in the year of incorporation; however, during the course of arguments, the Petitioners have raised this contention and, in support, have cited the judgment of the Supreme Court in **Navayuga Engineering Company v. Assistant Commissioner**^[50] whereby the Order of this Court in **Navayuga Engineering Company v. Assistant Commissioner of Visakhapatnam**^[51] was set aside; the law declared by this Court, in **Navayuga**⁵¹, was not set aside; the Supreme Court did not fault either the reasoning or the law declared by this Court; since this issue has neither been specifically pleaded, nor raised on the facts of the case, the question whether assessment has been made in accordance with Rule 17 or not is not in issue; and this issue may be more appropriately dealt with in an appropriate case. Learned Counsel would rely on **Madeva Upendra**³⁴ in this regard.

Rule 17(1)(e) of the Rules is subject to Rule 17(1)(d). The phrase "**subject to**" conveys the idea of a provision yielding place to another provision to which it is made subject to. (**Chandavarkar Sita Ratna Rao v. Ashalata S. Guram**^[52]; **South India Corpn. (P) Ltd. v. Secy., Board of Revenue, Trivandrum**^[53]). As Rule 17(1)(e) must yield to Rule 17(1)(d) to which it is made subject to, the value of the goods used in the execution of the works contract, determined in terms of Rule 17(1)(d), is the minimum value of the goods. Subject to this minimum, Rule 17(1)(e) stipulates that, for arriving at the value of the goods at the time of incorporation, the "**total consideration received or receivable**" shall be taken as the basis from out of which the amounts referred to in items (i) to (viii) thereunder shall be

allowed as deductions, and the net amount (i.e., the difference between the total consideration received or receivable and the permissible deductions under items (i) to (viii)) shall be the value of the goods, at the time of incorporation, liable to tax under the Act. If this net amount, arrived at under Rule 17(1)(e), is lower than the value determined in terms of Rule 17(1)(d), then the value of the goods, as determined under Rule 17(1)(d), shall be the value of the goods liable to tax under Section 4(7)(a) of the Act.

The second proviso qualifies Rule 17(1)(e) of the Rules. A proviso qualifies the generality of the main enactment by providing an exception and taking out from the main provision a portion which, but for the proviso, would be a part of the main provision. (**J.K. Industries Ltd. v. Chief Inspector of Factories & Boilers**^[54]; **CIT v. Indo Mercantile Bank Ltd.**^[55]). A proviso cannot be used to nullify or set at naught the real object of the main provision, (**S. Sundaram Pillai v. V.R. Pattabiraman**^[56]; **Craies: Statute Law 7th Edn.**), and must be construed harmoniously with the latter. (**Abdul Jabar Butt v. State of Jammu & Kashmir**^[57]; **Indo Mercantile Bank Ltd.**⁵⁵; **Ram Narain Sons Ltd. v. Assistant Commissioner of Sales Tax**^[58]; and **State of Punjab v. Kailash Nath**^[59]). A proviso is a qualification of the preceding provision and is, ordinarily, not to be interpreted as stating a general rule. (**Haryana State Coop. Land Development Bank Ltd. v. Banks Employees Union**^[60]; **Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha**^[61]; **Calcutta Tramways Co. Ltd. v. Corpn. of Calcutt**^[62]; **A.N. Sehgal v. Raje Ram Sheoran**^[63]; **Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal**^[64] and **Kerala State Housing Board v. Ramapriya Hotels (P) Ltd**^[65]). A proviso, to a particular provision, only embraces the field which is covered by the said provision. It carves out an exception to the provision to which it has been enacted as a proviso, and to no other. (**Indo-Mercantile Bank Ltd.**⁵⁵; **A.N. Sehgal**⁶³; **Tribhovandas Haribhai Tamboli**⁶⁴; **Ramapriya Hotels (P) Ltd**⁶⁵; **Binani Industries Ltd.**

v. CCT^[66]; **Mahratta Railway Company Ltd.** v. **Bezwada Municipality**^[67]; **Nagar Palika Nigam v. Krishi Upaj Mandi Samiti**^[68]; **Ram Narain Sons Ltd.**⁵⁸). A proviso is, ordinarily, not a separate or independent enactment. (**Dwarka Prasad v. Dwarka Das Saraf**^[69]). As a general rule, in construing an enactment containing a proviso, it is proper to construe the provisions together without making either of them redundant or otiose. The enacting clause and the proviso should be reconciled to avoid repugnancy between the two. (**Tahsildar Singh v. State of U.P.**^[70]).

The second proviso to Rule 17(1)(e) merely carves out an exception thereto. The words “**subject to**”, which is also used in the second proviso, makes it subject to (i) filing of returns and (ii) payment of tax as per Rule 17(1)(d). On compliance with the aforesaid twin requirements, a VAT dealer can pay the balance tax arrived at by following Rule 17(1)(e), (i.e., the difference between the tax as computed under Rule 17(1)(e), and the tax determined under Rule 17(1)(d)), at the time of “**finalization of accounts relating to the particular work**”, and not after completion of the entire work. The second limb, of the second proviso, emphasises that such additional taxable turnover and the taxes payable, (i.e., the difference between the tax computed under Rule 17(1)(d) and Rule 17(1)(e)), shall be declared in the return for the month in which the “**accounts are finalized**”. The requirement of the second proviso is for payment of the balance tax at the time of finalization of the accounts, and not after the entire work is completed.

Rule 31(1) of the Rules requires every dealer, executing works contracts, to keep separate accounts for each contract. Rule 31(3), which requires every dealer executing works contract and not opting to pay tax by way of composition to keep the records specified thereunder, makes it clear that the dealer is required to maintain records project wise. The records required to be maintained, in terms of items (i) to (viii) of Rule 31(3)(d), are the very same items (i) to (viii) which, under Rule 17(1)(e), are required to be allowed as deductions, from the total consideration received or receivable, for arriving at the value of goods at the time of incorporation. The statutory requirement under Rule 31(3), more particularly under clause (d) thereof, to maintain these records is only to enable the balance tax, payable in terms of

clause (e) of Rule 17(1), to be arrived at the time of finalisation of accounts which is, ordinarily, at the end of a financial year. The term “**finalisation of accounts relating to a particular work**”, used in the second proviso to Rule 17(1)(e), must be understood as applicable to a particular financial year, and not on completion of the works several years thereafter, as the works contractors are required to finalise their accounts every year for each work, and report revenue profit as per the accounting standards prescribed under Section 211(1) & (2) read with Section 211(3A) and (3C) of the Companies Act, 1956.

The object, for which the second proviso to Rule 17(1)(e) was inserted, is evident if the distinction in the provisions, relating to assessment, under the APGST Act and the A.P. VAT Act is taken note of. Section 2(u) of the APGST Act defined 'Year' to mean the twelve month period ending on the 31st day of March. Section 5(1) of the APGST Act required a dealer to pay tax under the Act on the sale or purchase of goods each year. Unlike the APGST Act which provided for assessment of tax every year, a tax period, under Section 2(36) of the AP VAT Act, is a calendar month. As the requirement of Rule 17(1)(e), including computation of the deductions thereunder, can be complied with, and the value of the goods at the time of incorporation determined, only on the accounts of the subject work being finalised at the end of a financial year, the second proviso to Rule 17(1)(e) was made to provide for such an eventuality, unlike under the APGST Act where no such proviso was required. While a dealer is required to compute the value of the goods, at the time of incorporation, in terms of Rule 17(1)(d) and pay tax along with their monthly returns, they are required to pay the balance tax, computed in terms of Rule 17(1)(e), in the month in which the accounts are finalised at the end of a financial year. The deductions to be made, under Rule 17(1)(e), is from the total consideration “**received or receivable**” for arriving at the value of the goods at the time of incorporation. The value of the goods is its value at the time of incorporation, and Rule 17(1)(e) does not postpone its determination till receipt of the total consideration (on completion of the entire work), for it also provides for arriving at the value of the goods after deducting certain items from the total “**consideration receivable**”.

Accepting the construction, that the balance tax is required to be paid only when the entire work is completed, would require the words “**finalization of accounts relating to the particular work**” to be read as “**finalization of accounts relating to the particular work on its completion**”. The intention of the Legislation must be found in the words used in the legislation. (**Unique Butyle Tube Industries Pvt. Ltd. v. Uttar Pradesh Financial Corporation**^[71]). Courts should not, ordinarily, add words to a statute or read words into it which are not there, especially when a literal reading thereof produces an intelligible result. (**Delhi Financial Corpn v. Rajiv Anand**^[72]). The line, which separates adjudication from legislation, should not be crossed or erased as courts expound the law and do not legislate. (**State of Kerala v. Mathai Verghese**^[73], **Union of India v. Deoki Nandan Aggarwal**^[74]). A Judge is not entitled to add something more than what is there in the Statute by way of a supposed intention of the legislature. (**Union of India v. Elphinstone Spinning and Weaving Co. Ltd**^[75]). The legislative *casus omissus* cannot be supplied by the judicial interpretative process. (**Maruti Wire Industries Pvt. Ltd. v. S.T.O., I.S.T. Circle, Mattancherry**^[76], **State of Jharkhand v. Govind Singh**^[77]).

It is evident, from a conjoint reading of both the limbs of the second proviso, that the balance tax payable, and the requirement of the additional taxable turnover and the taxes payable to be declared in the return, is in the month in which the “**accounts are finalized**”, and not when the entire work is completed. The second proviso is merely a proviso to Rule 17(1)(e), and carves out an exception thereto. It cannot be elevated to a charging Section to postpone the point of levy, (which is at the stage of incorporation of the goods in the works), to a period years thereafter on completion of the works.

Accepting the construction placed by Sri S. Ravi, Learned Senior Counsel, on the second proviso to Rule 17(1)(e) would also result in a part of the tax being levied only on completion of the project, in which event the value of the goods would not be its value at the time of its incorporation in the work, but would be the profit shown as a separate element later. It would also require the second proviso to Rule 17(1)(e) to be understood as

prescribing the point of levy of tax, on the deemed sale of goods, at the stage of completion of the entire work, and not at the stage of its incorporation in the works. Giving it such a meaning would result in the tax so levied ceasing to be a tax on the sale of goods, and instead a tax on income which taxing power is beyond the legislative competence of the State Legislature.

In **M/s. Navayuga Engineering Co.**⁵¹, a Division Bench of this Court examined the scope of Rule 17(1)(e) and both its provisos and upheld the assessment orders. Aggrieved thereby the matter was carried in appeal to the Supreme Court in SLP (Civil) No.1619-1625 of 2015. By its order dated 16.02.2015, the Supreme Court directed this Court to dispose of the pending W.P.No.31525 of 2013 without setting aside the judgment and order passed by this Court, and the order passed by the assessing authority. In Review Petition (Civil) No.2715-2721 of 2015 in SLP [C] No.1619-1625 of 2015, the Supreme Court set aside the judgment and order passed by this Court in W.P.No.7561 of 2014 and batch dated 03.02.2014, and the impugned assessment orders reserving liberty to the assessing authority to complete assessment, for the said periods, after disposal of W.P.No.31525 of 2013.

The law declared by the Division Bench of this Court in **Navayuga Engineering Co.**⁵¹ was not examined by the Supreme Court, and it is only because W.P.No.31525 of 2013 was pending on the file of this Court was the judgment and order of the Division Bench, and the assessment orders, set aside reserving liberty to the assessing authority to complete the assessment after disposal of W.P. No.31525 of 2013. A decision, which does not proceed on a consideration of an issue, cannot be deemed to be a law declared to have a binding effect. That which escapes in the judgment without any occasion is not the *ratio decidendi*. A decision is binding not because of its conclusions but in regard to its ratio, and the principles laid down therein'. Any conclusion preceded without reason cannot be deemed to be a declaration of law or authority of a general nature binding as a precedent. (**Jaisri Sahu v. Rajdewan Dubey**^[78]; **Municipal Corporation of Delhi v. Gurnam Kaur**^[79]; **B. Shama Rao v. Union Territory of Pondicherry**^[80]; **State of U.P. v. Synthetics and Chemicals Ltd.**^[81]). The only thing in a Judge's decision which is binding is the principle upon

which the case is decided. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio, and not every observation found therein nor what logically follows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case, or is put in issue, would constitute a precedent. It is the rule deductible from the application of the law to the facts and circumstances of the case which constitutes its *ratio decidendi*. (**Union of India v. Dhanwanti Devi**^[82]; **State of Orissa v. Mohd. Illiyas**^[83]; **ICICI Bank v. Municipal Corpn. of Greater Bombay**^[84]; **State of Orissa v. Sudhansu Sekhar Misra**^[85]; **Quinn v. Leathem**^[86]).

What is binding is the ratio of the decision, and not any finding of fact. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court, that forms the ratio and not any particular word or sentence. (**M.R. Apparao**¹⁷). Observations, on matters not in issue in the case, are not meant to be and ought not to be regarded as laying down the law. (**K. Veeraswami v. Union of India**^[87]). That which escapes in the judgment without any occasion is not the *ratio decidendi*. (**Synthetics and Chemicals Ltd.**,⁸¹; **Gurnam Kaur**⁷⁹). A mere direction of the Court without considering the legal position is not a precedent. (**Vishnu Dutt Sharma v. Manju Sharma**^[88]). The view, if any, expressed without analysing the statutory provision cannot be treated as a binding precedent. (**N. Bhargavan Pillai v. State of Kerala**^[89]).

While we find considerable force in the submission of Sri K. Vivek Reddy, Learned Special Counsel, that the Supreme Court has not overruled the law declared by the Division Bench of this Court, in **Navayuga Engineering Co**⁵¹, it is wholly unnecessary for us to dwell on this aspect any further, as we have independently examined Rule 17(1)(e), and both its two provisos, and are satisfied that the construction placed thereon by Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioner, necessitates rejection.

VI. IS BIFURCATION OF THE TURNOVER, INTO SUPPLY AND WORK CONTRACTS PORTIONS IN THE ASSESSMENT ORDER JUSTIFIED?

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioner, would submit that the 2nd respondent had artificially bifurcated the turnover into supply portion and works contract portion, and had raised a huge demand of Rs. 18,13,69,785/- for both the years put together; though the agreements are composite in nature, the 2nd respondent presumed some independent supplies relying on some bills raised by the petitioner in respect of one contract i.e. Bonapally – Chittoor transmission line without verifying the agreements which showed that the petitioner was a sub-contractor to EMC which was the main contractor; the goods got manufactured/ procured by the petitioner, as per the designs furnished by the Transmission Corporations and moved to the site for its use in the execution of the works contract, cannot constitute supplies independent of the contract under execution; works contract is in respect of movable goods where the concept of deemed sale would come into operation; as the goods were specifically got manufactured/ procured in terms of the composite agreement, the petitioner was paid by the contractee only in terms of the agreement; full payment for the work was to be made by the contractee only on successful completion and handing over the project; supply of goods cannot be said to be independent of the work; as all the subject contracts/agreements are composite in nature, the question of segregating the turnover, into supply portion and works contract portion, does not arise; and artificial bifurcation by the 2nd respondent, of a composite contract, is unwarranted.

On the other hand Sri K.Vivek Reddy, Learned Special Counsel appearing on behalf of the learned Advocate-General, would submit that the finding, regarding bifurcation between supply contracts and works contracts, is not a perverse finding; the petitioner's contention, that all the contracts executed by them were indivisible works contracts, is not tenable; the petitioner has, in their Writ Petition, specifically pleaded that they had entered into works contracts and supply contracts; and, in the *course* of assessment, the Petitioner has produced sales invoices which clearly show

that sale contracts were executed by the petitioner.

On the petitioners own admission, (in para 6 of the affidavit filed in support of both W.P.No.17911 of 2015 and W.P.No.17932 of 2015), they had classified the various contracts executed by them, during the years 2011-12 and 2012-13, as material supply contracts and works contracts; and, in respect of these two categories, had specified various works that were executed, amounts received from the contractees during the period 2011-12 and 2012-13, and the amounts that were yet to be received. Sri K. Vivek Reddy, Learned Special Counsel, has also placed before us tax invoice dated 27.04.2012 whereby the petitioner had sold ACSR MOOSE conductor for Rs.12,25,81,365/-, to the Government, and another invoice also dated 27.04.2012 whereby the petitioner had sold 120 KN Antifog Zinc Sleeve Disc. Insulators (460 mm Creepage) and 160 KN Antifog Zinc Sleeve Disc. Insulators (470 mm Creepage) for a total sum of Rs.6,18,24,619/-.

In the light of the aforesaid admissions in the affidavits filed in support of the Writ Petitions, and the tax invoices placed for our perusal, it does appear that the petitioner has, in addition to executing works contracts, also supplied goods to the contractees. It would be difficult for us, therefore, to hold that the finding recorded by the assessing authority, of the petitioner having supplied goods to the contractees, is perverse or that all the contracts executed by the petitioner are indivisible works contracts, and not separate contracts for the sale of goods and for execution of works. This contention, urged on behalf of the petitioner, necessitates rejection.

VII. WERE EVEN PURELY LABOUR CONTRACTS SUBJECTED TO VAT UNDER THE IMPUGNED ASSESSMENT ORDERS?

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioner, would submit that the 2nd respondent, instead of examining the petitioner's claim that certain works/RA bills raised in respect of the works did not involve any material component and should be excluded from the taxable turnover, has erroneously confirmed the levy observing that, since the contractee had deducted tax at source, the turnover has to be assessed to tax as works contract turnover; though the 2nd respondent had, in one breath, stated that the petitioner was liable to be assessed in the year in

which the goods were incorporated in the works irrespective of when consideration was received, he however included the turnover of the year 2010-11 in that of the year 2011-12; the petitioner had filed detailed objections and had placed ample evidence in support of their claim that some of the works, and RA Bills raised in respect of some works, involved only labour and there was no material component involved; the action of the 2nd respondent in confirming the demand by construing purely labour works as part of the turnover of works contracts is not tenable; and the 2nd respondent is bound by law to examine the agreements/ bills, raised by the petitioner, before coming to the conclusion that they pertain to works contract receipts.

On the other hand Sri K. Vivek Reddy, Learned Special Counsel appearing on behalf of the learned Advocate-General, would submit that the petitioner's contention on earth work is not tenable; in the second additional affidavit, filed in W.P.M.P. No.52641 of 2015 in WP No. 17911 of 2015 dated 22.12.2015 and in WPMP. NO. 52768 in WP No. 17932 of 2015, the petitioner had contended that some of the works performed by them were mere earth works, and were not subject to tax; the said contention is not tenable; the finding, that a particular work is a mere earth work and not a works contract, is on a question of fact; the petitioner cannot question findings of fact, recorded in the assessment order, without even a proper pleading; all the contracts given to the petitioner are contracts for erection, installation and commission and, accordingly, they were assessed as works contracts; and, in the course of assessment as works contracts, deduction was given for all the labour charges. By way of an illustration, Learned Counsel would submit that in the Nagarjunasagar Project, from the total work done bill of Rs. 21.31 Crores, a deduction of Rs. 19.10 crores was given solely on account of sub-contract labour expenses; in addition other deductions, on account of labour charges, cess, vehicle maintenance and site expenses, were also given; and this clearly demonstrated that appropriate deduction, for the labour component, was made.

It is in the second additional affidavit filed by them in WPMP No.52641 of 2015 in W.P.No.17911 of 2015 dated 08.12.2015 and in WPMP No.52768 of 2015 in W.P. No.17932 of 2015 dated 08.12.2015, that the

petitioner has contended that some of the works executed by them were purely earth works, and did not involve supply/deemed sale of goods. It is no doubt true that it is only sale of goods/deemed sale of goods which are liable to tax under the Act, and no tax can be levied on purely labour contracts which do not involve supply of material/sale of goods. However the question, whether the subject contracts are pure labour contracts or involve both supply of material/sale of goods and supply of labour, are again questions of fact which, save perversity, would not be examined even in certiorari proceedings under Article 226 of the Constitution of India. Even if the relief sought by the petitioner is said to include a Writ of Certiorari to quash the assessment order, the nature of enquiry would nonetheless have been confined to the narrow limits within which such a Writ can be issued. A writ of certiorari can be issued for correcting errors of jurisdiction such as in cases where orders are passed without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction or where, in exercise of the jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly. The jurisdiction to issue a writ of certiorari is supervisory and not appellate. An error of law which is apparent on the face of the record can be corrected by a Writ, but not an error of fact however grave it may appear to be. The adequacy or sufficiency of evidence, and the inference of fact to be drawn therefrom, cannot be agitated in certiorari proceedings. (**Syed Yakoob v. K.S. Radhakrishnan**^[90]).

If the tribunal (assessing authority) has erroneously refused to admit admissible and material evidence, or has erroneously admitted inadmissible evidence, or if a finding of fact is based on no evidence, it would be an error of law which can be corrected by a writ of certiorari. Where the conclusion of law by the tribunal is based on an obvious mis-interpretation of the relevant statutory provisions, or in ignorance of it or even in disregard of it or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. Whether or not an error is an error of law, and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case, and upon the nature and scope of the legal provisions which are alleged to have been misconstrued or contravened. (**Syed Yakoob**⁹⁰). We are satisfied that the

question, whether some of the subject contracts are purely labour contracts without any material component involved therein, is not an error of law much less one which is apparent on the face of the record.

Sri K. Vivek Reddy, Learned Special Counsel appearing on behalf of the learned Advocate-General, would draw our attention to the assessment order dated 22.05.2015, for the tax period 2011-12, with regards Nagarjuna Sagar project. In the said assessment order, the assessing authority has recorded that the project of NSP-APWSIP-Resectioning of Darsi Branch Canal and Pamidipadu Branch Canal in Block No.19 and 20 of NSJC (package No.23) (Nagarjuna Sagar) was awarded to the petitioner; the petitioner had submitted that the said work was irrigation work and the total contract receipts during the tax period was Rs.21,31,62,102/-; most of the work involved digging and excavation of the canal, and the material involvement was very nominal which was below 10% of the contract value; the petitioner had further submitted that the labour component, claimed under Rule 17(1)(e), was Rs.20,28,87,396/-; but, while levying tax, the assessing authority had not considered the sub-contract expenses as the same was purely earth work for which work orders, along with payments made for labour, had already been provided for verification; and the petitioner itself had executed the work engaging the required labour. The table, given thereunder, shows that, as against the work done bills of Rs.21,31,62,102/-, deduction was given for sub-contract labour expenses of Rs.19,10,86,480/-.

It does appear that the assessing authority has not levied tax on the labour component of the works. While purely labour contracts, which do not involve any supply of material, cannot be subjected to tax at all, the subject contracts appear to include contracts where supply of material is minimal and a substantial portion relates to supply of labour. Such contracts, undoubtedly, constitute works contracts from which the labour component of the works are required to be deducted, and only the material component is liable to be taxed in accordance with the procedure prescribed under the Act and the Rules. As we are satisfied that the findings, recorded by the assessing authority in this regard, are not perverse, we see no reason to minutely dissect the assessment order, or undertake a detailed exercise of verification of the manner in which the turnover has been determined,

deductions have been provided, and the tax has been assessed by the assessing authority.

VIII. IS LEVY OF TAX AT 14.5% BY THE ASSESSING AUTHORITY, ON A PART OF THE TURNOVER, ILLEGAL?

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioner, would submit that levy of tax at 14.5% on the turnover is unwarranted, without authority of law and jurisdiction; the tax liability can, at best, be 5% in terms of Entry 116 of Schedule IV; the 2nd respondent's justification that the turnover may involve use of only cement is baseless, and is not borne out by the record; the 2nd respondent is put to strict proof of the same; as the 2nd Respondent had subjected to tax that part of the turnover which was not taxable, and at a rate which was ex-facie illegal, the burden lay heavily upon him to sustain the impugned order of assessment.

On the other hand Sri K. Vivek Reddy, Learned Special Counsel appearing on behalf of the learned Advocate-General, would submit that levy of tax at 14.5%, on certain components of the works contract executed by the petitioner, is in accordance with law; the petitioner's contention, that the assessing officer ought not to have levied tax at 14.5% in the works contracts, is not tenable; the said contention has not been raised in the Writ Petition, but only in the additional affidavit which was filed after the pleadings were completed; the respondent did not have the opportunity to respond to the said ground by way of a counter-affidavit; in particular the assessee's contention that, notwithstanding their letter, the assessing officer should have mentioned the precise provision under which sales, attracting tax at 14.5%, was made, has no basis in the pleadings; even on merits, levy of 14.5% tax was justified, as Entry 116 of Schedule IV of the TVAT Act carves out an exception for certain goods including cement; during the course of assessment, the assessee itself categorically stated, in their letter dated 23.02.2015, that, in the course of execution of contracts, it had incorporated material which would attract 14.5% tax; the assessment order, whereby tax at 14.5% was levied, was passed after due application of mind, and the finding recorded therein cannot be considered a perverse finding; in the show-cause notice, the assessing officer proposed to levy tax at 14.5% even on sales; however, after considering the petitioner's reply to the show-

cause notice, the assessing officer dropped the proposal to levy tax @ 14.5%, and taxed the subject goods at 5%; and this shows application of mind by the assessing officer.

Schedule-IV of the Act contains the list of goods taxable at 5%. Entry 116, thereunder, relates to sale of goods other than petrol, all kinds of diesel oils including C9, petroleum gases, lubricants, other minor petroleum products, liquor, automobiles, tyres and tubes and cement, by a registered dealer to the Transmission Corporation of Andhra Pradesh incorporated as a company under the provisions of the Companies Act and the Central Power Distribution Companies of Andhra Pradesh/Telangana. While goods sold to the Transmission Corporation, and the Central Power Distribution Companies, are liable to tax at 5% under Entry No.116 of Schedule-IV of the Act, certain goods, including cement, are excluded from its ambit.

By their letter dated 22.01.2015, the petitioner informed the Assistant Commissioner, CT-I, Enforcement Wing, that, as per the books of accounts maintained for the year 2011-12, their sales and purchases etc under the VAT and CST Acts, were as specified therein. Clause (d) of the said letter relates to the actual taxable sales turnover under the VAT Act in 2011-12 (net turnover), and thereunder sales at 14.5% is shown to be for Rs.4,08,91,389/-. It is no doubt true that the petitioner had also stated that levy of tax at 14.5% is incorrect as their supplies of material, in the year 2011-12, fell under Item 116 of Schedule-IV and supplies were made to A.P. Transco only. They requested the Assistant Commissioner to withdraw the proposal for levy of tax at 14.5% on a turnover of Rs.130,10,74,149/-. The statement annexed to the said letter also contain the project-wise break-up of 14.5% sales, and the petitioners themselves have shown six works as including goods taxable at 14.5%.

The question whether all the goods supplied to the Transmission Corporation fall within the ambit of Entry 116 of Schedule-IV or included goods, such as cement, which fall outside its ambit, are all questions of fact. While these factual issues could have been examined by the appellate authority, in case the petitioner had availed the remedy of a statutory appeal under Section 31 of the Act, it would be wholly inappropriate for this Court to undertake any such exercise in proceedings under Article 226 of the Constitution of India more so as, under Section 16(1) of the Act, the burden

of proving that any sale or purchase, effected by a dealer, is not liable to tax, or is liable to be taxed at a reduced rate or eligible for input tax credit, is on the dealer.

As this contention was raised for the first time in the additional affidavit filed by the petitioner, after a counter-affidavit was filed by the respondents, the latter cannot be faulted for not dealing with these contentions in detail. The assessment order dated 22.05.2015 records (at page 5 thereof) that, in respect of supplies made to contractee i.e., A.P. TRANSCO, the petitioner had submitted that, except Nagari Project, the supplies were totally made to A.P. TRANSCO; and the goods supplied to them fall under Item No.116 of the IV-Schedule to the AP VAT Act, and is liable to be taxed at 5% only. The assessment order records that, in support of the said contention, the dealer had submitted the circular memo issued by Commissioner of Commercial Taxes clarifying that the goods supplied to AP TRANSCO are to be taxed at 5%. After going through the said circular, the assessing authority accepted the contention of the petitioner that supplies, referred to in Entry 116 to the IV Schedule, should be taxed at 5%, and not at 14.5%. It does appear that the assessing authority, while subjecting certain supplies made to the Transmission Corporation to tax at 5%, has subjected certain other supplies to tax at 14.5%. As the question whether certain turnover relating to supply/deemed supply of goods to the Transmission Corporation is liable to be taxed at 5% or 14.5% is a question of fact, we see no reason to take upon ourselves the task of elaborately examining the sales which were brought to tax at 14.5%, and whether it included goods which do not fall within the ambit of Entry 116 such as cement etc.

IX. WAS THE ASSESSING AUTHORITY JUSTIFIED IN FORFEITING THE TAX COLLECTED AT SOURCE WITHOUT NOTICE TO THE PETITIONER?

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioner, would submit that the tax collected at source was forfeited on erroneous grounds without notice to the petitioner. On the other hand Sri K.Vivek Reddy, Learned Special Counsel appearing on behalf of the learned Advocate-General, would submit that the finding recorded by the assessing authority on forfeiture is valid; while conducting assessment, the assessing officer forfeited Rs.3,19,09,173 for the assessment years 2011-

2012 and 2012-2013; forfeiture was under Rule 18(3)(b) of the TVAT Rules; forfeiture is a consequential step which can only be arrived at after the entire tax liability is determined at the final stage of passing the assessment order; it is a pure mathematical step undertaken at the conclusion of the assessment; it is a mandatory consequential step like levy of interest; the assessing officer, at the time of the show cause notice, could not have included forfeiture since the tax liability could not have been determined at that point of time; in the present case the assessing officer, on conclusion of assessment, found that the tax collected at source, in respect of various contracts with the Government and Government Corporations, exceeded the tax liability of the assessee; consequently, forfeiture was made; since forfeiture is just a consequential step, notice to the assessee would be an empty formality; and, without prejudice to the above, if this Court were to find that forfeiture does require prior notice, the assessing officer be granted time of seven days to issue notice, and a period of three weeks thereafter to decide the petitioner's claim that the amount not be forfeited.

Rule 18(3)(b) of the Rules stipulates that where tax, collected at source, is in excess of the liability of the contractor, who have not opted for payment of tax by way of composition, such amount of tax, collected in excess of the liability, shall be deemed to have been payable by the contractor and shall be liable to be forfeited. It is only to the extent that the tax collected at source exceeds the contractor's liability can the excess amount be forfeited in terms of the aforesaid Rule.

Notwithstanding the assessing authority's premise, that the tax collected at source was in excess of the tax liability of the petitioner, it was always open to the petitioner-assessee to show that it was not so. The assessing authority was, therefore, required to put the petitioner on notice of his intention to forfeit the excess tax collected at source, and give them an opportunity to show-cause against such a proposal. We find no merit in the submission of Sri K. Vivek Reddy, Learned Special Counsel, that it is purely a consequential mathematical step to an assessment order, and are satisfied that no such order of forfeiture could have been passed without complying with the rules of natural justice. The impugned assessment orders, to the extent the assessing authority forfeited certain amounts on the

premise that they constitute excess tax collected beyond the tax liability of the petitioner-contractor, are set aside. It is made clear that this order shall not preclude the 2nd respondent from putting the petitioner on notice regarding his proposal to forfeit certain excess tax collection, give them an opportunity of being heard, and thereafter pass orders afresh in accordance with law.

X. CAN THE PETITIONER BE SUBJECTED TO TAX, ON THE SAME TRANSACTIONS, TWICE?

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioner, would submit that the 2nd respondent was not justified in changing the earlier practice of assessing the petitioner to tax on receipt basis; a unilateral change in procedure had caused the petitioner irreparable loss and hardship, since they were unable to take credit of the TDS available in respect of the receivable turnover, and the allowable deductions; as the petitioner had reported the receivable portion of the turnover, in the respective years in which they had actually received consideration, and have discharged their tax liability in the said year, there is no revenue loss to the Government; and a change in the procedure in assessing the petitioner to tax, on the value of the goods at the stage of its incorporation in the works, is not warranted in the facts and circumstances of the present case. Learned Senior Counsel would place reliance on **Glimmer Exports**² in this regard.

On the other hand Sri K. Vivek Reddy, Learned Special Counsel appearing on behalf of the learned Advocate-General, would submit that the previous assessment orders cannot be relied upon to avoid tax liability for the current assessment year; the petitioner's contention, that the assessment orders for the previous assessment years would show that the bills payable are liable to be deducted for computing works contract tax liability, is not tenable; the Order of the Assessing Authority, for the previous years (2010-2011), has not yet become final as it was passed only on 31.03.2015; the impugned assessment order, for FY 2011-12, was passed only on 22.05.2015; the assessment orders are subject to revision under Section 32 of the TVAT Act; the time period for revision has not yet expired; in the previous assessment orders, there is no specific finding that the bills

receivable are not subject to tax in the said year; there is no application of mind by the assessing officer with respect to chargeability of tax on bills receivable; res-judicata does not apply to assessment proceedings; any observation made by the assessing officer would not bind him in passing an assessment order for another year; the ruling cited by the Petitioner, in **Glimmer Exports**², is not applicable to the present case; in the said case, the High Court pointed out that the assessment for the subsequent years had become final as they had not been revised by the Deputy Commissioner; in the present case, the assessments have yet to become final; the assessment order, for the previous years (2010-2011), is subject to revision under Section 32 of the TVAT Act; there is no legal duty cast on the assessing officer to undertake a block assessment; there is no provision for a block assessment under the VAT Act; if the assessment order is valid, the Petitioner is not entitled for the relief of keeping the assessment order in abeyance; the Petitioner's claim that they have been subjected to double taxation is tenuous and unreliable; in the course of arguments, the petitioner has produced several tables to demonstrate that receivables, for the FY 2011-2012 and 2012-2013, have been offered for tax in the subsequent years; the said table does not form part of the writ petition, and has not been duly sworn in or supported by pleadings; consequently, the assessing officer never had an opportunity to verify the data in the said tables; the assessing officer, therefore, denies all the data in the said table; the assessing officer requests this Court not to entertain a "battle of tables" based on unverified data in a proceeding seeking a writ of mandamus; the data in the said tables is allegedly based on the tax returns filed by the petitioner for the subsequent assessment years; it is not based on the assessment orders passed by the assessing officer in the subsequent years; the factual assertion that the turnover, in the subsequent years, reflects only bills receivable and not any work done during the said period is a question of fact, which has to be empirically verified at the time of assessment; the fact that the petitioners have availed input-tax credit in the subsequent years shows that work was done in the subsequent years; the petitioner's contention that they have not done any work, in the subsequent assessment years, is not true; further, in the assessment orders for FY 2011-12 and

2012-13, the assessing officer has made several adjustments in the returns filed by the assessee; there is no reason to believe that similar adjustments will not be made in the assessment for the subsequent assessment years; ITC credit, by its very nature, is availed only on the purchases made in the particular month in terms of Rules 20 and 23(8) r/w Form VAT-200; this is the legal requirement for grant of ITC; consequently, the petitioners could not have deferred ITC for the subsequent years; any such deferment would be in violation of the law; the petitioners have availed input tax credit (ITC) on bills received and receivable for FY 2011-2012 and 2012-2013; the assessing officer has, in the course of assessment, allowed the said claim; the petitioner has also not denied, and has not pleaded, that they have not availed input tax credit on bills receivable; having availed ITC, on bills receivable in the assessment year, the petitioners cannot rely on the input tax credit of the subsequent years i.e. 2013-2014 to offset the tax liability of the assessment years 2011-2012 and 2012-2013; the computation given by the assessee also includes TDS payments in the subsequent year; the TDS payments, for the subsequent year, may not be taken into account as the Petitioner has neither pleaded nor produced any material before this Court that the said TDS payments, in the subsequent years (2013-2014 and 2014-2015), relate to bills receivable under the impugned assessment orders (2011-2012 and 2012-2013); consequently, in the absence of any pleading or proof, the assessing officer cannot verify the petitioners claim; after assessment, for the subsequent years 2013-2014 and 2014-2015, is completed and if the assessing officer finds that the Petitioner has paid tax, on the bills receivable for the present years, on receipt basis in the subsequent years, they are always entitled to seek refund in the subsequent year; and a potential and implausible claim, for refund in the subsequent year, cannot form the basis for issuing a writ of mandamus against the assessing officer, or bar him from performing his legal duty to collect tax under valid assessment orders. Learned Counsel would rely on **Instalment Supply v. Union of India**^[91] and **Kamalpat Motilal v. CIT**^[92] in this regard.

It does appear that, for the previous tax periods 2009-10 and 2010-11, the assessing authority had subjected the petitioner to tax only when they

received payment from the contractees, including the Government, and not on the value of the goods when it was incorporated in the works. While we are satisfied that the assessment orders, for the tax period 2011-2012 and 2012-2013, do not suffer from any legal infirmity as the assessing authority had subjected the petitioner to tax on the value of the goods at the stage of its incorporation in the works, the fact remains that, by the time the assessment orders were passed for the tax periods 2011-12 and 2012-13, on 22.05.2015 and 26.05.2015 respectively, the petitioner had filed their monthly returns for the financial years 2013-14 and 2014-15 also.

Rule 23(1) of the Rules stipulates that the return, to be filed by a VAT dealer under Section 20 of the Act, shall be in Form VAT 200, and it shall be filed within twenty days from the end of the tax period of one month. Rule 23(6)(a) stipulates that if any VAT dealer, having furnished a return in Form VAT-200, finds any omission or incorrect information therein, other than as a result of an inspection or receipt of any other information or evidence by the prescribed authority, he shall submit an application in Form VAT 213 within a period of six months from the end of the relevant tax period. The limitation prescribed under Rule 23(6)(a) of the Rules, for filing a revised return, is six months from the end of the tax period of one month which, for the entire financial year 2013-14 and for a substantial part of the financial year 2014-15, expired by the time the assessment order was passed for the financial years 2011-12 and 2012-13 on 22.05.2015 and 26.05.2015 respectively. The petitioner claims to have paid tax for the financial years 2013-14 and 2014-15 as and when they received payment. If that be so, subjecting them to tax on the value of the goods at the stage of its incorporation in the works, for the financial years 2011-12 and 2012-13, and their having paid tax on the same transaction when they received payment, in the financial years 2013-14 and 2014-15, may well result in the same transaction of sale/deemed sale of goods being subjected to tax twice i.e., in double taxation.

It is true that the principles of res-judicata have no application in matters of taxation, as each year's assessment is final only for that year. It does not govern later years, since it determines the tax only for a particular period. (**Instalment Supply (Private) Limited**⁹¹; **Society of Medical Officers of Health v. Hope (Valuation Officer)**^[93]; **Broken Hill**

Proprietary Company Limited v. Municipal Council of Broken Hill^[94]).

An assessment is final and conclusive between the parties only in relation to the assessment for the particular year for which it is made. No doubt a decision reached in one year would be a cogent factor in the determination of a similar point in a following year, but it is not to be treated as an estoppel binding upon the same party for all years. The decision is final not as a judgment inter-parties but as the final estimate of the statutory estimating body. No lis comes into existence until there has been a final estimate of the turnover which determines the tax payable. There can be no lis until the rights and duties are ascertained, and thereafter questioned by litigation. It might well be that, in any one year, the tax-payer might not think it worth while to challenge the decision of the assessing authority for that particular year, though it might in later years prove to be worth his while to contest this view. It is equally likely that there may be cases in which the revenue would be quite prepared to make a concession in one year, whereas they might rightly conclude in subsequent years that it would not be in the interests of the taxpayers generally that they should make such a concession.

(**Commissioners of Inland Revenue v. Sheath**^[95]; **Kamlapat Moti Lal**⁹²).

Where, after full enquiry, an assessment has been made on a particular basis or the turnover has been calculated on determination of certain questions which affect the assessment not only for that year but for several years, it is not open to the department to arbitrarily go back on it unless fresh material has come into its possession which justifies such a change. This does not mean that the assessing authority is bound to accept the conclusion of fact reached by his predecessor for a previous year. An assessment is inherently of a passing nature, and it cannot provide an estoppel by res judicata in later years by reason of a matter being taken into account, or not being taken into account, by the assessing authority in an earlier year of assessment. (**Kamlapat Moti Lal**⁹²).

Where the decision is as regards the title or the rights of the parties in some property or about the nature of the property, and the decision has nothing to do with fluctuations of the turnover, nor is it confined to the ascertainment of the value or the turnover for any particular year, the

decision would operate as res-judicata. (**Broken Hill Proprietary Co., Ltd.**⁹⁴; **Kamlapat Moti Lal**⁹²). If, in the course of assessment for one year, a general question of right or title has been decided, this decision will not only govern the assessment for the year in question, but in subsequent years also. Even if the question has not been expressly decided but the decision is by implication, either because the point was not raised or was conceded, the same result will follow. (**Kamlapat Moti Lal**⁹²).

If any question of right or title which is not peculiar to the year of assessment has been decided by a competent Court, the decision may be treated as res-judicata in subsequent years but, if the decision is of the assessing authorities, that decision cannot operate as res-judicata. The assessing authorities cannot be treated as Courts deciding a disputed point, there is no other party before them, and there are no pleadings. (**Kamlapat Moti Lal**⁹²). There is, in truth, no lis, no controversy inter-parties, and no decision in favour of one of them and against the other unless, indeed, the entire public are regarded as the other party. (**Boulter v. Kent Justices**^[96]; **Kamlapat Moti Lal**⁹²).

With regards decision of Courts in tax matters, a distinction has to be drawn between decisions which affect the assessment of a particular year, and decisions which settle rights or title and which are, therefore, likely to affect the assessment of not only that year but of other years. In the latter class of cases the doctrine of res-judicata would apply. (**Kamlapat Moti Lal**⁹²). Final decisions on questions of law or fact, even by Courts of law, can have binding effect only to the same set of facts and circumstances and cannot operate as res judicata when the facts are different. (**Kamlapat Moti Lal**⁹²). The decision must be confined to the particular set of facts or to the particular transaction and cannot be made applicable to other facts even if those facts are similar. (**Kamlapat Moti Lal**⁹²).

As the assessment order for one assessment year would not constitute res judicata for the subsequent assessment year, the mere fact that the petitioner was subjected to tax on receipt basis, for the financial years 2009-10 and 2010-11, would not bar the assessing authority from subjecting them to tax on the value of the goods, at the stage of its

incorporation in the works, for the financial years 2011-12 and 2012-13. That does not, however, justify the same transaction being subjected to tax twice as Article 265 of the Constitution prohibits tax either being “**levied**” or “**collected**” except by authority of law. The prohibition under Article 265 of the Constitution is not merely on the levy of tax save than by authority of law, but also on its collection. The assessing authority is not empowered to collect tax on the same transaction twice over.

While the submission of Sri K. Vivek Reddy, Learned Special Counsel appearing on behalf of the Learned Advocate General, that the assessing authority has the power to pass an assessment order within four years from the date of the return, under Section 21(3) of the Act, has considerable force, the fact remains that there is no obligation placed, by the provisions of the Act, on the assessing authority to pass an assessment order. Section 20(2) of the Act stipulates that, if the return has been filed within the prescribed time, and the return so filed is found to be in order, it may be accepted as self-assessment. As Section 20(2) provides for self-assessment, the assessing authority is not obligated to pass an assessment order for the financial years 2013-14 and 2014-15, and exercise of the option by him, not to make assessment, may well result in the same transaction being subjected to tax twice i.e, in double taxation. As the petitioner is in no position to file revised returns for the financial year 2013-14 and 2014-15, as the time stipulated therefor expired long ago, they would suffer substantial prejudice if no assessment order is passed for the financial years 2013-14 and 2014-15 and tax is collected from them pursuant to the assessment orders passed for financial years 2011-12 and 2012-13.

In **Glimmer Exports**² the order of the Deputy Commercial Tax Officer was revised by the Deputy Commissioner, under Section 20 (2) of the APGST Act, on the ground that the former did not take the opening and closing stock into consideration while arriving at the net turnover; and neither the assessment order nor the assessment record showed the details for arriving at the last purchase turnover. Against the order in revision the dealer filed an appeal, before the Sales Tax Appellate Tribunal, contending that the Deputy Commissioner had erred in altering the mode of computation of turnover followed by the department throughout. They contended that the

Deputy Commissioner ought to have excluded the turnover which formed part of the closing stock of the preceding assessment year, and had been subjected to tax during the preceding assessment year, as per the system followed by the department throughout. The Tribunal observed that, strictly speaking, the principle enunciated by the Deputy Commissioner was correct; but application of the said principle, contrary to the practice in vogue, would amount to double taxation; and the opening stock, that had met the tax in the previous year, ought to be deducted from the taxable turnover for the assessment year in question. It is in this context that the Division bench of this Court held:-

“.....We agree with the Tribunal that the principle enunciated by the Deputy Commissioner was the correct one. Having regard to entry 6 in the Second Schedule to the Act relating to mica, taxing of closing stock in that assessment year is based on no principle; **but as pointed out by the Tribunal, having regard to the practice that was being followed by the department, the change in the principle would result in double taxation which would not be warranted in the facts and circumstances of the case. The Tribunal has also pointed out that since the assessments for the subsequent years have become final and since they were not revised by the Deputy Commissioner, the principle enunciated by Deputy Commissioner cannot be given effect to uniformly.....**” (emphasis supplied)

While we see no reason to fault the assessing authority for having subjected the petitioner to tax, on the value of the goods at the stage of its incorporation in the works, for the financial years 2011-12 and 2012-13, we are satisfied that, if he were not to pass an assessment order for the financial years 2013-14 and 2014-15, it may well result in the same transactions of sale/deemed sale of goods being subjected to tax twice i.e., in double taxation. While the petitioner can, on an assessment order being passed for the financial years 2013-14 and 2014-15, seek refund of the excess tax paid, including on the transactions which have been subjected to tax in the earlier financial years, such a possibility would only arise if the assessing authority were to pass an assessment order for the financial years 2013-14 and 2014-15 which, as noted hereinabove, the statute does not obligate him to do.

As collection of tax must also be in accordance with law, we consider it appropriate, while refusing to interfere with the assessment orders passed for the financial years 2011-12 and 2012-13 except to the extent the excess tax collected was forfeited, to direct the assessing authority to pass an assessment order for the financial years 2013-14 and 2014-15, after giving the petitioner an opportunity of being heard, with utmost expedition and, in

any event, within four months from the date of receipt of a copy of this order. It is made clear that, on their being so assessed, it is open to the petitioners to place evidence before the assessing authority to show that payment of tax by them, in the financial years 2013-14 and 2014-15, related to transactions which had suffered tax as a result of the assessment orders passed for the financial years 2011-12 and 2012-13. Till assessment orders are passed as aforesaid, for the financial years 2013-14 and 2014-15, the respondents shall not take any coercive steps for collection of the tax determined in terms of the assessment orders passed for the financial years 2011-12 and 2012-13. The interests of the revenue is adequately safeguarded as, if tax is still found to be due from the petitioner for the earlier financial years 2011-12 and 2012-13, after an assessment order is passed for the financial years 2013-14 and 2014-15, the tax due would be liable to be paid by the petitioner, along with interest under Section 22(2) of the VAT Act.

XI. HAS THE RESPONDENT FAILED TO ABIDE BY THE UNDERTAKING GIVEN TO THE COURT?

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioner, would submit that, contrary to his undertaking to this Court, the 2nd respondent recovered Rs.5,98,02,055/-, during the pendency of these Writ petitions, by issuing garnishee proceedings to the Transmission Corporation on the ground that this liability related to the supply portion; the 2nd respondent did not extend credit for the TDS available to the petitioner and initiated action, to recover the balance tax, even without considering the eligible deductions in respect of the receivable portion; the entire demand is artificial in nature; and the impugned orders were passed in haste only with a view to raise a huge demand.

As the Writ Petitions are now being disposed of by this common order, we see no reason to examine whether the 2nd respondent was justified in recovering Rs.5,98,02,055/- during the pendency of the Writ Petitions by issuing garnishee proceedings to the Transmission Corporation. Suffice it to make it clear that no further coercive steps shall be taken for recovery of the tax dues, pursuant to the assessment orders passed for the financial years 2011-12 and 2012-13, till assessment orders are passed, and communicated to the petitioner, for the financial years 2013-

14 and 2014-15.

**XII. CAN THE PETITIONER SEEK ADJUSTMENT OF TAX PAID TO
THE GOVERNMENT OF A.P. WITH THE TAX DUE TO THE
GOVERNMENT OF TELANGANA?**

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioner, would submit that, due to bifurcation of the State, the petitioner has reported a part of the receivable turnover in the State of AP, and has considerable TDS credit pertaining thereto; it would be difficult for the petitioner to adjust the same with the demand in question; it would be equally difficult for them to claim refund of the said amount from the State of AP at this belated stage, as the time for filing revised returns expired long ago; in the event this Court were to hold that the entire turnover is taxable in the manner in which the 2nd Respondent has adjudicated, liberty be reserved to the petitioner to claim refund of the taxes paid, on the very same turnover, to the State of Andhra Pradesh in the subsequent tax period.

On the other hand Sri K. Vivek Reddy, Learned Special Counsel appearing on behalf of the Learned Advocate-General, would submit that, in the Writ Petitions, the petitioners have not pleaded that a portion of the receivable turnover was offered to tax in the subsequent years in the successor State of Andhra Pradesh; there is no way the assessing officer can verify the same; and, even if the same is correct, the only remedy for the petitioner is to seek appropriate legal remedies against the State of Andhra Pradesh and claim refund.

The jurisdiction conferred on the assessing authority is to levy and collect tax in accordance with the provisions of the Telangana Value Added Tax Act and the Rules made thereunder. Consequent upon the bifurcation of the State, any tax paid by the petitioner to the Government of Andhra Pradesh cannot be adjusted against the tax due to the Government of Telangana pursuant to an order of assessment passed under the Telangana Value Added Tax Act. Any grievance, which the petitioner may have, regarding payment of tax to the Government of Andhra Pradesh, can only be agitated in appropriate legal proceedings instituted against them, and it is not open to the petitioner to seek adjustment of the tax so paid to the

Government of A.P. with the taxes due to be paid to the Government of Telangana pursuant to the assessment order passed under the Act. Suffice it to make it clear that this order shall not preclude the petitioner from availing such remedies as are available to them in law for redressal of their grievances against the Government of Andhra Pradesh.

CONCLUSION:

For the aforesaid reasons the impugned assessment orders for the Financial Year 2011-12 and 2012-13, to the extent tax collected at source was forfeited, are set aside. We see no reason to interfere with the assessment orders in all other respects. The 2nd respondent shall, after putting the petitioner on notice and after giving them an opportunity of being heard, pass assessment orders, for the Financial Year 2013-14 and 2014-15, with utmost expedition and, in any event, within four months from the date of receipt of a copy of the order. Till assessment orders are passed for the Financial Year 2013-14 and 2014-15, and are communicated to the petitioner, the respondents shall not take coercive steps for recovery of the taxes due under the impugned assessment orders. Both these Writ Petitions are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

(RAMESH RANGANATHAN, J)

(M. SATYANARAYANA MURTHY, J)

Date: 21-04-2016

Note: L.R. Copy to be marked.
B/O
CS/MRKR

[\[1\]](#) (2012) 54 APSTJ 61

[\[2\]](#) 8 APSTJ 102 = (1990) 76 STC 208

[\[3\]](#) (Order in W.P. No.35628 of 2012 dated 11.10.2013

[\[4\]](#) (1983) 2 SCC 433

[\[5\]](#) (1859) 6 CBNS 336

[\[6\]](#) 1919 All ER REP 61 = 1919 AC 368

- [\[7\]](#) 1935 AC 532
- [\[8\]](#) AIR 1940 PC 105
- [\[9\]](#) (2003) 2 SCC 107
- [\[10\]](#) (2005) 6 SCC 499
- [\[11\]](#) (2004) 7 SCC 166
- [\[12\]](#) (2014) 1 SCC 603
- [\[13\]](#) (1970) 2 SCC 355
- [\[14\]](#) (1998) 8 SCC 1
- [\[15\]](#) 1995 Supp(3) SCC 199
- [\[16\]](#) (1977) 4 SCC 145
- [\[17\]](#) (2002) 4 SCC 638
- [\[18\]](#) (2008) 2 SCC 280
- [\[19\]](#) (2007) 9 SCC 461
- [\[20\]](#) AIR 1966 SC 334
- [\[21\]](#) AIR 1962 SC 1210
- [\[22\]](#) AIR 1973 SC 964
- [\[23\]](#) AIR 1962 SC 1183
- [\[24\]](#) 2004(5) ALD 180 (DB)
- [\[25\]](#) (2013) 5 SCC 470
- [\[26\]](#) AIR 1952 SC 16
- [\[27\]](#) AIR 1969 SC 1306
- [\[28\]](#) (2010) 15 SCC 546
- [\[29\]](#) AIR 2011 SC 2731
- [\[30\]](#) (2012) 7 SCC 261
- [\[31\]](#) (1991) 3 SCC 239
- [\[32\]](#) AIR 1987 SC 2235
- [\[33\]](#) (1989) 4 SCC 635
- [\[34\]](#) (1975) 3 SCC 765
- [\[35\]](#) AIR 1981 SC 711
- [\[36\]](#) AIR 1961 SC 751
- [\[37\]](#) (1988) 2 SCC 351
- [\[38\]](#) Judgment in W.P NOs.31138 AND 31974 OF 2012, dated 31-12-2014
- [\[39\]](#) 2011 (6) ALD 628 (DB)
- [\[40\]](#) (1989) 2 SCC 645
- [\[41\]](#) (1993) 1 SCC 364
- [\[42\]](#) (1978) 42 VST 72
- [\[43\]](#) AIR 1958 SC 560
- [\[44\]](#) AIR 2001 SC 1980
- [\[45\]](#) (2001) 5 SCC 407
- [\[46\]](#) (2001)8 SCC 676
- [\[47\]](#) (2001) 8 SCC 540
- [\[48\]](#) (1964) 7 SCR 539

[\[49\]](#) (1899)2 QB 158

[\[50\]](#) (Order in Rev. P (C) Nos.2715-2721 of 2015 in SLP (C) Nos.1619-1625 of 2015 dated 03.11.2015)

[\[51\]](#) [2015] 83 VST 129

[\[52\]](#) (1986) 4 SCC 447

[\[53\]](#) (1964) 4 SCR 280

[\[54\]](#) (1996) 6 SCC 665

[\[55\]](#) AIR 1959 SC 713

[\[56\]](#) (1985) 1 SCC 591

[\[57\]](#) AIR 1957 SC 281

[\[58\]](#) (1955) 2 SCR 483

[\[59\]](#) (1989) 1 SCC 321

[\[60\]](#) (2004) 1 SCC 574

[\[61\]](#) (1962) 2 SCR 159

[\[62\]](#) AIR 1965 SC 1728

[\[63\]](#) 1992 SUPPL.(2) SCC 651

[\[64\]](#) AIR 1991 SC 1538

[\[65\]](#) (1994)5 SCC 672

[\[66\]](#) (2007) 15 SCC 435

[\[67\]](#) (1944) 71 IA 113, 122 : AIR 1944 PC 71

[\[68\]](#) (2008) 12 SCC 364

[\[69\]](#) (1976) 1 SCC 128

[\[70\]](#) AIR 1959 SC 1012

[\[71\]](#) (2003)2 SCC 455

[\[72\]](#) (2004)11 SCC 625

[\[73\]](#) (1986 (4) SCC 746

[\[74\]](#) AIR 1992 SC 96

[\[75\]](#) (2001)4SCC 139

[\[76\]](#) (2001)3 SCC 735

[\[77\]](#) (2005)10 SCC 437

[\[78\]](#) AIR 1962 SC 83

[\[79\]](#) (1989)1 SCC 101

[\[80\]](#) AIR 1967 SC 1480

[\[81\]](#) (1991) 4 SCC 139

[\[82\]](#) (1996) 6 SCC 44

[\[83\]](#) (2006) 1 SCC 275

[\[84\]](#) (2005) 6 SCC 404

[\[85\]](#) AIR 1968 SC 647

[\[86\]](#) (1901) AC 495

[\[87\]](#) (1991) 3 SCC 655

[\[88\]](#) (2009) 6 SCC 379

[\[89\]](#) (2004) 13 SCC 217

[\[90\]](#) AIR 1964 SC 477

[\[91\]](#) AIR 1962 SC 53

[\[92\]](#) [1950] 18 ITR 812

[\[93\]](#) 1960 AC 551 = 1960 (2) WLR 404

[\[94\]](#) 1926 AC 94

[\[95\]](#) (1932) 2 K. B. 362: (101) L. J. K. B. 330

[\[96\]](#) (1897) A. C. 556: (66 L. J. Q. B. 787