[3379]

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI

WRIT PETITION Nos. 24121, 24123, AND 24227 OF 2018; WRIT PETITION Nos.19069, 19044, 16294, 12665, 8616 AND 8455 OF 2020; WRIT PETITION Nos.5550, 5546 AND 7562 OF 2021; 8404 AND 8526 OF 2022 AND WRIT PETITION Nos.26297 AND 26152 OF 2023

WRIT PETITION No.24121 OF 2018

Between:

M/s. Owens Corning Industries, India Private Limited, Having its registered office at 37 to 44. Hyderabad Bangalore Highway Road, Thimmapur Village, Thimmapur, Mahbubnagar, Telangana 509325 Represented by its General Manager - Plant Operations, Mr. Mahender Boda.

...PETITIONER

AND

1. The Commercial Tax Officer, Begumpet Circle, Hyderabad
2. Deputy Commissioner (CT), Begumpet Division
3. State of Telangana, Through Principal Secretary to Government Revenue Department (Commercial Tax) Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or direction particularly one in the nature of a WRIT OF MANDAMUS declaring the action of the 1st Respondent in passing the

Assessment Order bearing A.O. No. 30858 passed by the 1st Respondent, dated 31.05.2018 confirming a demand of INR 69,21,067/- for the FY 2012-13 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001 on use of furnace oil as inputs for the manufacture of glass fibres as being illegal, arbitrary, barred by limitation, violative of Section 3(2) of the said Act, and principles of natural justice for not having considered all the submissions of the Petitioner, and without jurisdiction and violative of Article 14 and Article 19(1)(g) of the Constitution of India.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the recovery of the tax demanded pursuant to the said impugned assessment order bearing A.O.No. 30858 passed by the 1st Respondent, dated 31.05.2018 confirming a demand of INR 69,21,067/- for the FY 2012-13.

Counsel for the Petitioner: SRI KARAN TALWAR

**Counsel for the Respondents: SRI SWAROOP OORILLA,
SPECIAL GOVERNMENT PLEADER**

WRIT PETITION NO: 24123 OF 2018

Between:

M/s. Owens Corning Industries India Private Limited, Having its registered office at 37 to 44-Hyderabad Bangalore Highway Road. Thimmapur Village, Thimmapur, Mahbubnagar, Telangana 509325 Represented by its General Manager - Plant Operations, Mr. Mahender Boda.

...PETITIONER

AND

1. The Commercial Tax Officer, Begumpet Circle, Hyderabad.
2. Deputy Commissioner (CT), Begumpet Division.
3. State of Telangana, Through Principal Secretary to Government Revenue Department (Commercial Tax) Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ. Order or direction particularly one in the nature of a WRIT OF MANDAMUS declaring the action of the 1st Respondent in passing the Assessment Order bearing A.O. No. 30859 passed by the 1st Respondent, dated 31.05.2018 confirming a demand of INR 2,43,03,414/- for the FY 2013-14 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001 on use of furnace oil as inputs for the manufacture of glass fibres as being illegal, arbitrary, barred by limitation, violative of Section 3(2) of the said Act, and principles of natural justice for not having considered all the submissions of the Petitioner, and without jurisdiction and violative of Article 14 and Article 19(1)(g) of the Constitution of India.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the recovery of the tax demanded pursuant to the said impugned assessment order bearing AO No. 30859 passed by the 1st Respondent, dated.31.05.2018 confirming a demand of INR 2,43,03,414/- for the FY 2013-14.

Counsel for the Petitioner: SRI KARAN TALWAR

Counsel for the Respondents: SRI SWAROOP OORILLA,
SPECIAL GOVERNMENT PLEADER

WRIT PETITION NO: 24227 OF 2018

Between:

M/s. HSR Ventures Pvt. Ltd, Having its office at 1-1-230/13/5, Viveknagar, Chikkadpally, Hyderabad.

...PETITIONER

AND

1. The State of Telangana, Rep. by the Principal Secretary, Revenue Department, Telangana Secretariat, Hyderabad

2. Assistant Commissioner of State Taxes, Ashoknagar Circle, Secunderabad Division Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, direction or order more particularly in the nature of a writ of mandamus declaring the Assessment Order no. 21223 dated 31-03-2018 issued by Respondent No. 2 for the assessment year 2012-13 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001 as being void, illegal, and unsustainable, and quash the same.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the collection of tax under the impugned Assessment Order no. 21223 dated 31-03-2018 issued by Respondent No. 2 for the assessment year 2012-13 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001.

Counsel for the Petitioner: SRI M. NAGA DEEPAK

Counsel for the Respondents: SRI SWAROOP OORILLA, SPECIAL GOVERNMENT PLEADER

WRIT PETITION NO: 19069 OF 2020

Between:

M/s Isitva Steel Pvt. Ltd., S.No 58, Nagaram, ECIL, Hyderabad, Rangareddy, Telangana -62 Represented by its Director, K.Bhaskara Rao

...PETITIONER

AND

1. Commercial Tax Officer, Keesara Circle, 3rd Floor, Block -M- IV, Manoranjan Complex, MJ Road, Hyderabad Telangana.
2. Assistant Commissioner of State Tax, Keesara Circle, Saroornagar Division, Hyderabad.
3. Appellate Joint Commissioner (ST), Hyderabad Rural Division, Hyderabad.

4. State of Telangana, Rep. by its Principal Secretary (Revenue)(CT) department, Telangana Secretariat Buildings, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or direction particularly one in the nature of a WRIT OF MANDAMUS declaring the definition of importer under Section 2 (1) (h) read with Section 3(1) (a) of the Telangana Tax on Entry of Goods into Local Areas Act, 2001 as being unconstitutional on account of being vague, arbitrary, violative of Article 14 and Article 265 of the Constitution of India, and as also that of Section 174 of the Telangana Goods and Services Tax Act, 2017 as being ultra vires the Constitution 101st Amendment Act, 2016 and devoid of legislative competence on account of Entry 52 of List II of Schedule VII being omitted from 16/9/2016. and the legality and validity of the Impugned Order bearing ADC No.982 dated 30/05/2020 confirming demand of INR 4.45,164/- for the FY 2012-13 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001 on the importation of Furnace Oil, as being illegal, arbitrary, violative of Section 3(2) of the said Telangana Tax on Entry of Goods into Local Areas Act, 2001, and without jurisdiction and violative of Article 14 and Article 19(1)(g) of the Constitution of India.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the recovery of the tax demanded pursuant to the said Impugned Order bearing ADC No.982 by the Respondent No.3, dated 30/05/2020 confirming demand of INR 4,45,164/- for the FY 2012-13 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001.

Counsel for the Petitioner: SRI KARAN TALWAR

Counsel for the Respondents: ~~SRI SWAROOP OORILLA,~~
SPECIAL GOVERNMENT PLEADER

WRIT PETITION NO: 19044 OF 2020

Between:

M/s Isitva Steel Pvt Ltd., S.No 58, Nagaram, ECIL, Hyderabad, Rangareddy, Telangana -62 Represented by its Director, K.Bhasker Rao

...PETITIONER

AND

1. Commercial Tax Officer, Keesara Circle, 3rd Floor, Block - M- IV, Manoranjan Complex, MJ Road, Hyderabad Telangana.
2. Assistant Commissioner of State Tax, Keesara Circle, Saroornagar Division, Hyderabad.
3. Appellate Joint Commissioner (ST), Hyderabad Rural Division, Hyderabad.
4. State of Telangana, Rep. by its Principal Secretary (Revenue)(CT) department, Telangana Secretariat Buildings, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or direction particularly one in the nature of a WRIT OF MANDAMUS declaring the definition of "importer" under Section 2 (1) (h) read with Section 3(1) (a) of the Telangana Tax on Entry of Goods into Local Areas Act, 2001 as being unconstitutional on account of being vague, arbitrary, violative of Article 14 and Article 265 of the Constitution of India, and as also that of Section 174 of the Telangana Goods and Services Tax Act, 2017 as being ultra vires the Constitution 101st Amendment Act 2016 and devoid of legislative competence on account of Entry 52 of List 11 of Schedule VII being omitted from 16.9.2016, and the legality and validity of the Impugned Order bearing ADC No.981 dated 30.05.2020 confirming demand of INR 4,03,390/- for the FY 2011-12 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001 on the importation of Furnace Oil, as being illegal, arbitrary, violative of Section 3(2) of the said Telangana Tax on Entry of Goods into Local Areas Act, 2001, and without jurisdiction and violative of Article 14 and Article 19(1)(g) of the Constitution of India.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the recovery of the tax demanded pursuant to the said Impugned Order bearing ADC No.981 by the Respondent No.3, dated 30.05.2020 confirming demand of INR 4,03,390/- for the FY 2011-12 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001.

Counsel for the Petitioner: SRI KARAN TALWAR

Counsel for the Respondents: SRI SWAROOP OORILLA,
SPECIAL GOVERNMENT PLEADER

WRIT PETITION NO: 16294 OF 2020

Between:

Kumuda Creative Engineers Pvt. Ltd., Plot No.2B, Phase-I, I D A, Jeedimetla, Telangana 500055 Represented by its Authorized Signatory, Koneru Srinivasa Rao, S/o. K. Murahari Rao, Aged 67 Years, R/o. Hyderabad

...PETITIONER

AND

1. Appellate Deputy Commissioner (CT), Hyderabad Rural Division, Hyderabad
2. The Commercial Tax Officer, Jeedimetla Division, Hyderabad, Telangana.
3. The State of Telangana, Rep. by Principal Secretary, Revenue (ST), Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, direction or order more particularly in the nature of a writ of mandamus declaring the assessment order AO No. 28998 dated 21/05/2018 passed by the Respondent No.2 and consequently the impugned ADC Order No. 1188 dated 27/06/2020 passed by the Respondent No.1 as being void, illegal, violative of Article 265 and consequently Article 286 of the Constitution of India, totally without jurisdiction and violative of the principles of natural justice.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings and consequential actions pursuant to the ADC Order No. 1188 dated 27/06/2020 passed by the Respondent No. 1.

Counsel for the Petitioner: SRI M. NAGA DEEPAK

Counsel for the Respondents: SRI SWAROOP OORILLA,
SPECIAL GOVERNMENT PLEADER

WRIT PETITION NO: 12665 OF 2020

Between:

M/s.Gayatri Sugars Limited, 6-3-1090, B2, II Floor, Rajbhavan Road, Somajuguda, Hyderabad, Represented by its Authorized Signatory V R Prasad, S/o of V. Sreehari Rao, Aged 63 years, R/o Hyderabad.

...PETITIONER

AND

1. Appellate Deputy Commissioner (CT), Secundrabad Division.
2. Assistant Commissioner (ST), Ashoknagar Circle, Hyderabad
3. State of Telangana, Represented by the Principal Secretary, Revenue Department, Telangana Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, direction or order more particularly in the nature of a writ of mandamus declaring the assessment order A.O.No. 13888 dated 23/03/2018 passed by the Respondent No. 2 and consequently the impugned ADC Order No. 984 dated 28/05/2020 passed by the Respondent No. 1 as being void, illegal, violative of Article 265 and consequently Article 286 of the Constitution of India, totally without jurisdiction and violative of the principles of natural justice.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings and consequential actions pursuant to the ADC Order No. 984 dated 28/05/2020 passed by the Respondent No.1.

Counsel for the Petitioner: SRI M. NAGA DEEPAK

Counsel for the Respondents: SRI SWAROOP OORILLA,
SPECIAL GOVERNMENT PLEADER

WRIT PETITION NO: 8616 OF 2020

Between:

M/s, Bhoorathnom Construction Company Pvt. Ltd., 7-3-720, R.P.Road, Secundrabad - 500 003 Reoresented by its Managing Director, Mr. A.L.Rajashanker, S/o. Late A. K. Lakshmipathy, Aged about 66 Years, R/o. Hyderabad.

...PETITIONER

AND

1. The State of Telangana, Rep. by the Principal Secretary, Revenue Department, Telangana Secretariat, Hyderabad
2. Appellate Dy.Commissioner (CT), Secundrabad Division.
3. The Commercial Tax Officer, Hisamganj Circle, Secundrabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, direction or order more particularly in the nature of a writ of mandamus declaring the impugned ADC Order No. 805 dated 30/04/2020 passed by the Respondent No. 2 and consequently the Assessment order No. 6758 dated 28/02/2018 issued by Respondent No. 3 for the assessment year 2011-12 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001 as being void, illegal, and unsustainable, and quash the same.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the collection of tax under the impugned ADC Order No 805 dated 30-04-2020 issued by Respondent No. 3 for the assessment year 2011-12 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001.

Counsel for the Petitioner: SRI M. NAGA DEEPAK

Counsel for the Respondents: SRI SWAROOP OORILLA,
SPECIAL GOVERNMENT PLEADER

WRIT PETITION NO: 8455 OF 2020

Between:

M/s. Bhoorathnom Construction Company Pvt. Ltd., 7-3-720, R.P.Road, Sceundrabad - 500 003 Represented by its Managing Director, Mr. A.L.Rajashanker, S/o. Late A.K.Lakshmipathy Aged about 66 Years, R/o. Hyderabad.

...PETITIONER

AND

1. The State of Telangana, Rep. by the Principal Secretary, Revenue Department, Telangana Secretariat, Hyderabad
2. Appellate Dy.Commissioner (CT), Secundrabad Division
3. The Commercial Tax Officer, Hisamganj Circle, Secundrabad

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, direction or order more particularly in the nature of a writ of mandamus declaring the impugned ADC Order No. 806 dated 30-04-2020 passed by the Respondent No. 2 and consequently the Assessment order No. 6760 dated 28-02-2018 issued by Respondent No. 3 for the assessment year 2012-13 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001 as being void, illegal, and unsustainable and quash the same.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the collection of tax under the impugned ADC Order No. 806 dated 30-04-2020 issued by Respondent No. 3 for the assessment year 2012-13 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001.

Counsel for the Petitioner: SRI M. NAGA DEEPAK

Counsel for the Respondents: SRI SWAROOP OORILLA,
SPECIAL GOVERNMENT PLEADER

WRIT PETITION NO: 5550 OF 2021

Between:

M/s. ABB India Limited, rep. by its Head of Indirect Taxes, Mr. Santhosh Kumar, Plot No. 1,2,3,4, 10th Floor, Western Aqua, Hitech City, Whitefield, Kondapur, Hyderabad-500 084.

...PETITIONER

AND

1. Commercial Tax Officer, Hyderguda-Ashoknagar Circle, Hyderabad.
2. State of Telangana, rep. by its Principal Secretary to Government, Revenue (CT-II) Department, Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Prohibition interdicting the 1st Respondent from proceeding with the assessment of the Petitioner under the Telangana Tax on Entry of Goods into Local Areas Act, 2001for the assessment year 2011-12 initiated under show cause notice dated 2/2/2021 as being barred by limitation and without jurisdiction.

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings pursuant to the show cause notice dated 2/2/2021 of the 1st Respondent for the assessment year 2011-12 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001, pending disposal of the Writ Petition, as otherwise the Petitioner will be put to severe loss and hardship.

Counsel for the Petitioner: SRI S. DWARAKANATH, SENIOR COUNSEL

Counsel for the Respondents: SRI SWAROOP OORILLA, SPECIAL GOVERNMENT PLEADER

WRIT PETITION NO: 5546 OF 2021

Between:

M/s. ABB India Limited, rep. by its Head of Indirect Taxes, Mr. Santhosh Kumar, Plot No. 1,2,3,4, 10th Floor, Western Aqua, Hitech City, Whitefield, Kondapur, Hyderabad-500 084.

...PETITIONER

AND

1. Commercial Tax Officer, Hyderguda-Ashoknagar Circle, Hyderabad.
2. State of Telangana, rep. by its Principal Secretary to Government, Revenue (CT-II) Department, Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Prohibition interdicting the 1st Respondent from proceeding with the assessment of the Petitioner under the Telangana Tax on Entry of Goods into Local Areas Act, 2001for the assessment year 2012-13 initiated under show cause notice dated 2.2.2021 as being barred by limitation and without jurisdiction.

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings pursuant to the show cause notice dated 2.2.2021 of the 1st Respondent for the assessment year 2012-13 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001, pending disposal of the Writ Petition, as otherwise the Petitioner will be put to severe loss and hardship.

Counsel for the Petitioner: SRI S. DWARAKANATH, SENIOR COUNSEL

**Counsel for the Respondents: SRI SWAROOP OORILLA,
SPECIAL GOVERNMENT PLEADER**

WRIT PETITION NO: 7562 OF 2021

Between:

M/s. G. Krishna Reddy, Rep. by its Partner, Mr. G. Prashanth Reddy, Flat No.508, Surya Mansion, Old Bowenpally, Secunderabad-500 003.

...PETITIONER

AND

1. Deputy Commercial Tax Officer-1, Nizamabad Circle, Nizamabad.
2. Commercial Tax Officer-II, Nizamabad Circle, Nizamabad.
3. Commissioner of Commercial Taxes, Opp: Gandhi Bhavan, Nampally, State of Telangana, Hyderabad.
4. State of Telangana, Rep. by its Principal Secretary to Government, Revenue (CT-II) Department, Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Certiorari or any other appropriate writ or order or direction quashing the impugned order of the 1st Respondent dated 9/2/2019 (received by the Petitioner on 17/3/2020) bearing AAO No.6305/2019 for the assessment year 2014-15 under the Telangana Tax on Entry of Goods into Local

Areas Act, 2001 as being illegal, arbitrary, without jurisdiction and contrary to the Circular of the 3rd Respondent, dated 17/8/2002.

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of recovery of disputed tax of Rs.3,71,874/-pursuant to the impugned order of the 1st Respondent dated 9/2/2019 for the assessment year 2014-15 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001, pending disposal of the Writ Petition as otherwise the Petitioner will be put to severe loss and hardship.

Counsel for the Petitioner: SRI S. DWARAKANATH, SENIOR COUNSEL
SRI KARTHIK RAMANA PUTTAMREDDY

Counsel for the Respondents: SRI SWAROOP OORILLA,
SPECIAL GOVERNMENT PLEADER

WRIT PETITION NO: 8404 OF 2022

Between:

M/s.Shankara Building Projects Limited, Having its office at 5/1/571/1, HILL Street, Ranigunj, Secundrabad, Hyderabad, Telangana - 500 003 Represented by its Authorized Signatory Sachin Kumar S/o Narayana Moolyan, aged 37 years.

...PETITIONER

AND

1. The State of Telangana, Rep. by the Principal Secretary, Revenue Department, Telangana Secretariat, Hyderabad.
2. Deputy Commercial Tax Officer - I, Ramgopalpet, Ranigunj Circle, Begumpet Division Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, direction or order more particularly in the nature of a writ of mandamus declaring the Assessment Order no. 40 dated 05/01/2022 issued by

Respondent No. 2 for the assessment year 2012-13 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001 as being void, illegal, without jurisdiction and without authority of law and unsustainable, and consequently set aside the same.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the collection of tax under the impugned Assessment Order no. 40 dated 05/01/2022 issued by Respondent No. 2 for the assessment year 2012-13 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001.

Counsel for the Petitioner: SRI M. NAGA DEEPAK

Counsel for the Respondents: SRI SWAROOP OORILLA,
SPECIAL GOVERNMENT PLEADER

WRIT PETITION NO: 8526 OF 2022

Between:

M/s.Shankara Building Projects Limited, Having its office at 5/1/571/1, HILL Street, Ranigunj, Secundrabad, Hyderabad, Telangana - 500 003 Represented by its Authorized Signatory Sachin Kumar S/o. Narayana, 1900149, aged 37 years

...PETITIONER

AND

1. The State of Telangana, Rep. by the Principal Secretary, Revenue Department, Telangana Secretariat, Hyderabad
2. Deputy Commercial Tax Officer - I, Ramgopalpet, Ranigunj Circle, Begumpet Division Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, direction or order more particularly in the nature of a writ of mandamus declaring the Assessment Order no. 41 dated 05/01/2022 issued by Respondent No. 2 for the assessment year 2013-14 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001 as being void, illegal, without jurisdiction and without authority of law and unsustainable, and consequently set aside the same.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the collection of tax under the impugned Assessment Order no. 41 dated 05/01/2022 issued by Respondent No. 2 for the assessment year 2013-14 under the Telangana Tax on Entry of Goods into Local Areas Act 2001.

Counsel for the Petitioner: SRI M. NAGA DEEPAK

Counsel for the Respondents: SRI SWAROOP OORILLA,
SPECIAL GOVERNMENT PLEADER

WRIT PETITION NO: 26297 OF 2023

Between:

M/s. Merugu Venkata Reddy, rep. by its Proprietor Mr. M. Venkata Reddy Door No.103, Siri Apartment, Kodad-508206, Telangana State.

...PETITIONER

AND

1. The Commercial Tax Officer, Kodad circle Kodad, Telangana State.
2. The Appellate Joint Commissioner (ST), Hyderabad Rural Division, Hyderabad
3. The Commissioner of Commercial Taxes, Nampally, Hyderabad, Telangana State
4. State of Telangana, rep. by its Secretary to Government, Revenue (CT-II) Department Secretariat, Telangana State, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction setting aside the order of the 2nd Respondent dated 15.5.2023 (AO No.279) confirming the assessment order dated 13.9.2021 for the period 2017-18 (April to June 2017) under the Telangana Tax on Entry of Goods into Local Areas

Act, 2001 as being illegal, arbitrary, in violation of principles of natural justice and barred by limitation and contrary to the decisions of the Hon'ble Courts.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct grant stay of recovery of the impugned demand of Rs.11,29,570/- for the period 2017-18 (April to June 2017)under the Telangana Tax on Entry of Goods into Local Areas Act, 2001, pending disposal of the Writ Petition as otherwise the Petitioner will be put severe loss and hardship.

Counsel for the Petitioner: SRI SRINIVASA RAO KUDUPUDI

Counsel for the Respondents: SRI SWAROOP OORILLA,
SPECIAL GOVERNMENT PLEADER

WRIT PETITION NO: 26152 OF 2023

Between:

M/s. Merugu Venkata Reddy, rep. by its Proprietor Mr. M. Venkata Reddy Door No.103, Siri Apartment, Kodad-508206, Telangana State

...PETITIONER

AND

1. The Commercial Tax Officer, Kodad circle Kodad, Telangana State.
2. The Appellate Joint Commissioner (ST), Hyderabad Rural Division, Hyderabad
3. The Commissioner of Commercial Taxes, Nampally, Hyderabad, Telangana State
4. State of Telangana, rep. by its Secretary to Government, Revenue (CT-II) Department Secretariat, Telangana State, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction setting aside the order of the 2nd Respondent dated 15.5.2023 (AO No.278) confirming the assessment order dated 13.9.2021 for the period 2016-17 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001 as being illegal, arbitrary, in violation of principles of natural justice and barred by limitation and contrary to the decisions of the Hon'ble Courts.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct grant stay of recovery of the impugned demand of Rs.22,05,351/- for the period 2016-17 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001, pending disposal of the Writ Petition as otherwise the Petitioner will be put severe loss and hardship.

Counsel for the Petitioner: SRI SRINIVASA RAO KUDUPUDI

Counsel for the Respondents: SRI SWAROOP OORILLA,
SPECIAL GOVERNMENT PLEADER

The Court made the following: COMMON ORDER

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

Writ Petition Nos. 24121, 24123, and 24227 of 2018;
Writ Petition Nos.19069, 19044, 16294, 12665, 8616 and 8455 of 2020;
Writ Petition Nos.5550, 5546 and 7562 of 2021; 8404 and 8526 of 2022
and
Writ Petition Nos.26297 and 26152 of 2023

COMMON ORDER: *(per the Hon'ble Sri Justice **P.SAM KOSHY**)*

Heard the learned Senior Counsel, Mr. S. Dwarakanath, and Mr. Karan Talwar, learned counsel for the petitioners and Mr. Swaroop Oorilla, learned Special Government Pleader for State Tax, for the respondents.

2. The instant batch of writ petitions are filed under the Telangana Tax on Entry of Goods into Local Areas Act, 2001. All these batch of writ petitions are being taken up for consideration on one preliminary objection raised by the petitioners and for which some of the writ petitions were entertained at the show cause notice level, some at the level of assessment orders, and some against the appellate orders.

3. The point for consideration by way of the preliminary objection raised by the petitioners are whether the show cause notice or the assessment orders passed in all these bunch of writ petitions are sustainable at all in view of the specific period of limitation prescribed under Section 21(3) and Section 21(4) of the Telangana Value Added Tax Act, 2005 (for short, 'TSVAT Act').

4. Before we delve into the issue of limitation, it would be relevant at the outset itself to reproduce the two sub-sections under which the petitioners are backing upon their case. The said two sub-sections of TSVAT Act read as under:

> *"(3) Where the authority prescribed is not satisfied with a return filed by the VAT dealer or TOT dealer or the return appears to be incorrect or incomplete, he shall assess to the best of his judgment within four years of due date of the return or within four years of the date of filing of the return whichever is later.*
>
> *(4) The authority prescribed may, based on any information available or on any other basis, conduct a detailed scrutiny of the accounts any VAT dealer or TOT dealer and where any assessment as a result of such scrutiny becomes necessary, such assessment shall be made within a period of four years from the end of the period for which the assessment is to be made."*

5. Though there are various other grounds also which have been raised by few of the petitioners like the impugned orders being violative of the principles of natural justice, but we proceed to decide the batch of writ petitions only on the aspect of limitation. The need for considering the other aspects would only come, in case if the objections of the petitioners so far as limitation is concerned, is overruled or rejected.

6. To set right the facts, it would also be appropriate at this juncture, to reproduce the details of each of the writ petitions so as to ensure that in terms of the given facts in each of these cases, the show cause notice, assessment orders as also the appellate orders as the case may be in each of the cases, have been issued beyond a period of four (04) years as is stipulated under the aforesaid two sub-sections of Section 21 of the TSVAT Act.

7. The details of each of the writ petitions are reproduced herein under:

Sl. No.	Writ Petition No.	Assessment Year	Date of Show Cause Notice	Date of Assessment Order	Date of Appellate Order
1.	24123 of 2018	2013-14	-	31.05.2018	-
2.	24121 of 2018	2012-13	-	31.05.2018	-
3.	24227 of 2018	2012-13	26.07.2017	31.03.2018	-
4.	19069 of 2020	2012-13	-	29.03.2018	30.05.2020
5.	19044 of 2020	2011-12	-	29.03.2018	30.05.2020
6.	16294 of 2020	2013-14	28.10.2017	21.05.2018	27.06.2020
7.	12665 of 2020	2012-13	22.07.2017	23.03.2018	28.05.2020
8.	8616 of 2020	2011-12	22.08.2017	28.02.1018	30.04.2020
9.	8455 of 2020	2012-13	27.10.2017	28.02.2018	30.04.2020

10.	5550 of 2021	2011-12	02.02.2021	-	-
11.	5546 of 2021	2012-13	02.02.2021	-	-
12.	7562 of 2021	2014-15	-	09.02.2019	-
13.	8404 of 2022	2012-13	05.02.2021	05.01.2022	-
14.	8526 of 2022	2013-14	05.02.2021	05.01.2022	-
15.	26152 of 2023	2016-17	-	13.09.2021	-
16.	26297 of 2023	2017-18 (April 2017 to June 2017)	-	19.09.2021	-

8. From the details of the writ petitions provided in the chart above, *prima facie,* there is no dispute so far as the show cause notices which are under challenge in few writ petitions and the assessment orders in other writ petitions have all been passed beyond a period of four (04) years as is stipulated under Section 21(3) and 21(4) of the Act. Section 6 of the Telangana State Entry Tax Act, 2001, clearly envisages that for the purpose of assessment, inspection, seizure, enforcement of payment of any tax, so also payment of interest or penalty by the dealers, the provisions of law to be applied by the authority concerned is that which is provided in the Telangana State General Sales Tax Act, 2005. The Telangana State General Sales Tax Act subsequently has been abolished and the TSVAT Act has been introduced and therefore it is the provisions of the TSVAT Act which stands imported for Entry Tax assessment also and it is in this context that Section 21 of the TSVAT Act is being invoked.

9. Another fact which is apparent from the details provided in respect of different writ petitions mentioned in the preceding paragraphs, except for Writ Petition No.26152 of 2023, Writ Petition No.26297 of 2023 and Writ Petition No.7562 of 2021, is that in the said three writ petitions there is a slight dispute of four (04) years period of limitation prescribed. All the other petitions in this batch of writ petitions being decided there is an undisputed clear gap of more than (04) years from the date of filing of the return or four (04) years from the end of the period for which the assessment is to be made i.e. by 31st day of March of the fourth year.

10. According to the learned counsel for the petitioners, an assessment which has been initiated beyond a period of limitation prescribed under the statute, amounts to be an assessment without jurisdiction and *void ab initio.* According to the learned counsel for the petitioners once when the period of limitation itself had lapsed there was no occasion for the respondents to have at the cost of the resources of the state, subject the petitioners to undergo the rigors of an assessment for a period which no longer could had been subjected to assessment under Section 21 of the TSVAT Act on the ground of limitation.

11. Learned counsel for the petitioner contended that the State authorities cannot be permitted to generate revenue invoking the provisions of law which otherwise debars them from invoking. It was also the contention of the learned counsel for the petitioner that even the statute does not provide for any powers upon officers of the respondents to extend the period of limitation beyond a period of four (04) years as per Section 21(4) of the TSVAT Act.

12. Per contra, the learned Special Government Pleader appearing for the respondents opposing the writ petitions drew the attention of the Court to Section 21(7) of the TSVAT Act giving his explanation and justification for having initiated the proceedings under the Telangana State Entry Tax Act beyond a period of four (04) years.

13. One of the preliminary objections raised by the learned Special Government Pleader was that these writ petitions do not deserve to be entertained by the High Court for the reason that in most of the cases or rather in all the cases where an assessment order has been passed, there is a remedy of appeal available to the concerned dealer even in cases where the show cause notices have been challenged. It is the further contention of the learned Special Government Pleader that since they are at the show cause stage, the assessee or the dealers would be at liberty to raise all their submissions, contentions and defense through their counter and thereafter it should be left for the Adjudicating Authority or the Appellate Authority or the Assessment Officer, as the case may be, to take an appropriate decision.

14. According to the learned Special Government Pleader the authority concerned had initiated the proceedings in all these cases in the teeth of the judgment of the Hon'ble Supreme Court in the case of **M/s. Jindal Stainless Ltd & Anr vs. State of Haryana**[1] wherein in a batch of petitions, one among them also being that of **State of A.P. vs. M/s. Sree Rayalseema Alkalies Company Limited**. The Hon'ble Supreme Court held that levy of tax by the State under the Act is upon entry of notified goods and the same cannot be equated with levy of tax on sale of goods levied by the State under Entry 54 List II of the VII Schedule of the Constitution of India. It was also held by the Hon'ble

[1] (2017) 12 SCC 1

Supreme Court that in addition the levy of Entry Tax by the State does not impede the free flow of interstate trade as guaranteed under Articles 301 and 304 of the Constitution of India. Therefore, it was contended by the learned Special Government Pleader that the aspect of limitation in the given factual backdrop as envisaged under Section 21(3) and Section 21(4) of the TSVAT Act would not get attracted herein.

15. According to the learned Special Government Pleader in the light of the judgment of the Hon'ble Supreme Court in the case of **M/s. Jindal Stainless Ltd & Anr** (supra) or in the case of **Sree Rayalseema Alkalies Company Limited** (supra), the authority concerned have initiated the step with an intention to boost and increase the revenue of the State which otherwise was in a very bad shape. Learned Special Government Pleader further harped upon the provisions of Section 21(7) of the TSVAT Act to justify the action of the respondents in initiating the proceedings beyond a period of four (04) years.

16. It was also contended that since in the appeal to the Hon'ble Supreme Court, the issue of validity of levy of Entry Tax of notified goods was pending consideration before the Hon'ble Supreme Court from the year 2008 onwards, the period during which such appeals were pending before the Hon'ble Supreme Court would stand excluded by the application of Section 21(7) of the TSVAT Act. Thus, this authority is empowered to make an assessment under the provisions of Section 6 of the Telangana State Entry Tax Act on the petitioner for the period 2011-12.

17. According to the learned Special Government Pleader, having regard to scheme of the Act and in particular the mention of the words such as "using them" as "input" for manufacture of other goods" in sub-section (2), the Legislature sought to qualify and provide such exemption only in relation to 'inputs' which are used for manufacture of other goods. The word "input" has not been defined and the general meaning as understood in common parlance is "what is put in". The term "input" cannot be given a wider meaning that those goods which are actually put in to derive the output. Applying the general meaning of the above said word, read along with the context in which it is used, the said word "input" is prefixed with the term "using them" and is further qualified and suffixed with the words "for manufacture of other goods". Thus, if all the words providing for exemption are construed in its letter and spirit, it would indicate that such exemption is available only in respect of goods which are put in, the process of manufacture to bring about a change resulting in the new goods coming into existence.

18. According to the learned Special Government Pleader the term 'input' used in sub-section (2) of Section 3 would indicate indirect nexus of the modified goods to the resultant new product emerging out of manufacturing process and in order to be eligible for such an exemption under Section 3(2) of the Entry Tax Act, there has to be a direct nexus between the input so used and the resultant output. All the other goods which may aid the process of manufacture cannot be considered as inputs since the legislature sought to provide for exemption only in respect of a class of goods which go into manufacture of other goods as 'inputs'.

19. Having heard the contentions put forth on either side and on perusal of records, it would be relevant at this juncture to take note of Section 21(7) of the TSVAT Act also, which has been strongly relied upon by the learned Special Government Pleader in defending the action of the respondents in respect of issuance of show cause notice or the order of assessment and also in matters where the appellate jurisdiction has also been exercised.

The relevant portion of Section 21(7) of the TSVAT Act, for ready reference, is reproduced herein under:

> *"Where an assessment has been deferred by the Commissioner under sub-section (5) of Section 32 or as the case may be, the Appellate Tribunal under the proviso to sub-section (4) of Section 33 on account of any stay granted by the Appellate Tribunal, or as the case may be the Telangana High Court or Supreme Court respectively, or whereas appeal or other proceedings is pending before the Appellate Tribunal or the High Court or Supreme Court involving a question of law having a direct bearing on the assessment in question, the period during which the stay order was in force or such appeal or proceeding was pending shall be excluded in computing the period of four years or six years as the case may be for the purpose of making the assessment."*

In the context of the aforesaid provisions of Section 21(7) of the TSVAT Act, the learned Special Government Pleader banked hard on the said provision.

20. According to learned Special Government Pleader, appearing for the respondents-Authorities, as per Section 21(7) in a case where proceedings were *sub judice* the appellate Tribunal or the High Court for the State of Telangana or the Hon'ble Supreme Court, as the case may be, such period during which the proceedings were pending before the aforesaid judicial forums would get excluded from being calculated for the purpose of computing the period of four (04) years under Section 21(3) and 21(4) and as per Section 21(5) for the purpose of assessment. In this regard, the learned Special Government Pleader submitted that since in the matters of **M/s. Jindal Stainless Ltd** (supra) as also that of **Sree Rayalseema Alkalies Company Limited** (supra) were pending before the Hon'ble Apex Court, the period of limitation would automatically stand extended. It was also his contention that though there was no litigation *qua* the petitioners herein before any appellate tribunal or any judicial forums, the question of law being the same was under consideration before the Hon'ble Supreme Court in the aforesaid two decisions and the connected batch of petitions which were decided together. This argument of the learned Special Government Pleader may not have sufficient force of law for the simple reason that the judgment of the Hon'ble Supreme Court in the aforesaid batch of matters was delivered on 11.11.2016, and the impugned notices issued in most of these cases itself or the assessment orders passed was much beyond the period of four years from the date of the judgment and the Hon'ble Supreme Court in the aforesaid batch of matters dealing with the validity of the provisions of the Entry Tax. This argument also would not be sustainable for the reason that there are petitioners in whose cases the respondent-Authorities have not waited till the judgment of the Hon'ble Supreme Court to commence the proceedings so as to take a uniform stand so far as the limitation is concerned; and in a few cases, the notices were issued much before the decision of the Hon'ble Supreme Court though the adjudication part has been done subsequently, but notices were definitely been issued earlier which is sufficient to show that pendency of the matter before the Hon'ble Supreme Court was not a criteria at all.

21. The Hon'ble Supreme Court in the case of **State of Punjab and others vs. Shreyans Indus Ltd.**[2] held at paragraph Nos.21, 22 and 24 as under, viz.,

> *"**21.** Clause (b) of sub-section (6) indicates that Joint Commissioner, in appropriate cases, may pass an order for deferment of assessment order to be passed by the assessing authority and once such an order is passed, that period has not to be counted while computing the period of limitation. Significantly, this provision also mandates the Joint Commissioner to record reasons for deferring the orders of assessment. In essence, therefore, the purport and objective behind the provisions in the Punjab Act as well as in the Karnataka Act remains the same. By making any*

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[2] (2016) 4 S.C.C. 769

order of deferment under sub-section (6) of Section 12 of the Karnataka Sales Tax Act, the Joint Commissioner is, in fact, achieving the same purpose of granting more time to the assessing officer to pass the assessment order. Same is the purpose behind sub-section (11) of Section 10 of the Punjab Act. In view thereof, it may not be appropriate to go into the nuanced distinction between "deferment" and "extension" as per the definitions contained in Black's Law Dictionary in the given situation, which is dealt with in the instant appeals.

22. *Even otherwise, it is important to understand the ratio laid down in the judgment of the Karnataka High Court in BHEL [BHEL v. CCT, (2006) 143 STC 10 (Kar)] . The issue in the said case before the Karnataka High Court was as to whether the power to pass a deferment order is to be exercised even after the expiry of the period of limitation which was answered in the negative. The reasons given in support of this conclusion are as follows: (STC pp. 15-16, para 8)*

> *"8. ... Deferment of assessment has the effect of enlarging the period of limitation which did not expire by the time the deferment order is contemplated to be passed. When once the period of limitation expires, the immunity against being subject to assessment sets in and the right to make assessment gets extinguished. Resort to deferment provisions does not retrieve the situation. There is no question of deferring assessment which had already become time-barred. The provision for exclusion of time in computing the period of limitation of deferment of assessment is meant to prevent further running*

of time against the Revenue if the limitation had not expired."(emphasis supplied)

It was also observed that upon the lapse of the period of limitation prescribed, the right of the Department to assess an assessee gets extinguished and this extension confers a very valuable right on the assessee.

23. ... ...

24. *The argument of the learned Senior Counsel for the appellants based on Section 148 CPC would be of no consequence. This section categorically states that power to enlarge the period can be exercised even when period originally fixed has expired. Likewise, reliance upon Section 139(2) of the Income Tax Act is misconceived. That provision is made for the benefit of the assessee which empowers the assessing officer to grant an extension of time for filing of the return of income and, therefore, obviously will have no bearing on the issue at hand. Moreover, this Court in Ajanta Electricals case [CIT v. Ajanta Electricals, (1995) 4 SCC 182], which is relied upon by the learned counsel for the appellant, held that the time can be extended even after the time allowed originally has expired on the interpretation of the words "it has not been possible" occurring in Section 133(2) of the Act. The Court, thus, opined that the aforesaid expression would mean that the time can be extended even after original time prescribed in the said provision has expired. Same is our answer to the argument of Mr Ganguli predicated on Section 28 of the Arbitration Act, 1940 as that provision was in altogether different context."*

22. Similarly, in the case of **KMK Event Management Ltd. vs. The Commissioner of Commercial Taxes**[3], a Division Bench of the High Court for the State of Andhra Pradesh held at paragraph Nos.26, 27, 29 and 33 as under, viz.,

> "**26.** *The first limb of both section 21(7) and section 31(4A), which provide for the consequences of deferment of assessment and appellate proceedings, would operate only when the power of deferment is specifically conferred on a specified authority/authorities and is exercised by them pursuant to such conferment. A plain and literal reading of the aforesaid provisions make it clear that section 21(7), section 32(4A) and section 32(7) only provide for the consequences of deferment of (i) assessment, (ii) appeal before the appellate authority, and (iii) revision under section 32 of the VAT Act, respectively. They do not, by themselves, confer on the said authorities the power to defer the proceedings. It is only because section 32(5) specifically confers such a power, can the Commissioner defer revision proceedings initiated under section 32(1) and (2) of the VAT Act. The very fact that, while the consequences of deferment of assessment proceedings, appellate proceedings before the appellate authority and revision proceedings are specifically provided for, but the power of deferment of proceedings is restricted only to revision proceedings under section 32 of the VAT Act, shows that the Legislature has for the present, neither explicitly nor by necessary implication, chosen to confer the power to defer either the assessment proceedings*

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[3] 2014 SCC Online Hyd 1101

under section 21 of the VAT Act or the appellate proceedings under section 31 of the VAT Act.

27. *This question can be examined from another angle also. Ambiguity, if any, in a statutory provision can be removed applying the Heydon's Rule. The Heydon's Rule is that, for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered : (1) what was the common law before the making of the Act/Rules ; (2) what was the mischief and defect for which the common law did not provide ; (3) what remedy the Legislature has resolved to cure ; and (4) the true reason of the remedy. The court is always to make such construction as shall : (a) suppress the mischief and advance the remedy ; and (b) suppress subtle inventions and evasions for the continuance of the mischief pro privato commodo (for private benefit) ; and (c) add force and life to the cure and remedy according to the true intent of the makers of the Act/Rules pro publico (for the public good). The Heydon's Rule is applied in order to suppress the mischief which was intended to be remedied as against the literal rule which could have otherwise covered the field. (Parayankandiyal Eravath Kanapravan Kalliani Amma v. K. Devi (1996) 4 SCC 76, Goodyear India Ltd. v. State of Haryana [1997] 105 STC 465 (P&H) ; (1997) 116 PLR 252, Ameer Trading Corpn. Ltd. v. Shapoorji Data Processing Ltd. (2004) 1 SCC 702, Halsbury's Laws of England, Volume 44(1), 4th Reissue, para 1474, pages 906-07, Bengal Immunity Company Limited v. State of Bihar [1955] 6 STC 446 (SC) ; (1955) 2 SCR 603 ; AIR 1955 SC 661 ; In re Mayfair Property Company (1898) 2 Ch 28, Eastman Photographic Materials Company Limited v.*

Comptroller-General of Patents, Designs and Trade Marks [1898] AC 571 (HL), National Insurance Co. Ltd. v. Baljit Kaur (2004) 118 C-C 435 (SC) ; (2004) 2 SCC 1).

29. *Section 14(6) of the APGST Act provided that it shall be lawful for the Commissioner of Commercial Taxes to direct, by general or special order, any assessing authority to defer assessment in respect of any class of goods or any class of dealers pending clarification by it of any question referred to it, if such question has a direct bearing on such assessment. The proviso to section 21(4) of the APGST Act, which is in pari materia with the proviso to section 33(4) of the VAT Act, also enabled the STAT, in certain circumstances, to defer hearing of the appeal before it. Section 14(5) of the APGST Act was identical to section 21(7) of the VAT Act before its amendment, and similar to section 21(7) of the VAT Act after its amendment. It is useful to read section 14(5) of the APGST Act in juxtaposition with section 21(7) of the VAT Act both before, and after, its amendment by Act 21 of 2011.*

33. *The Legislature, having retained a provision similar to section 14(5) of the APGST Act in section 21(7) of the VAT Act, has consciously chosen not to make a provision similar to section 14(6) of the APGST Act which conferred on the Commissioner the power, in certain circumstances, to direct the assessing authority to defer assessment proceedings. The Commissioner has not been conferred the power to defer assessment proceedings under the VAT Act, and his power is now limited only to defer revision proceedings under section 32 thereof, that too only in the circumstances referred to, and subject to the limitations prescribed, in sub-section (5) thereof. The Legislature has consciously chosen not to confer on the Commissioner the* *power to defer assessment proceedings under the VAT Act evidently because, unlike the APGST Act, sections 20(2) and (4) of the VAT Act provide for self-assessment and, except in the circumstances referred to in sub-sections (3) to (5) of section 21, no assessment order need be passed under the VAT Act. The legislative intent is to remedy the mischief which, under section 14(6) of the APGST Act, enabled the Commissioner to defer assessment proceedings, and thereby ensure that assessment proceedings, under the VAT Act, are not interdicted before its completion, and are completed without hindrance. In the absence of a provision in the VAT Act, similar to section 14(6) of the APGST Act, none of the authorities under the VAT Act can be said to have been empowered to defer assessment proceedings.*

23. Dealing with the words "or" as well as "and", recently the Hon'ble Supreme Court in the case of **Commissioner, Customs Central Excise and Service Tax, Patna vs. Shapoorji and Pallonji & Company Pvt. Ltd.**[4] held at paragraph Nos.22 and 23 as under, viz.,

"22. *Having noticed some of the precedents in the field of interpretation of statutes, we now move on to a little bit of English grammar. The word "or" as well as the word "and" is a conjunction; and it is well known that a conjunction is used to join words, phrases, or clauses. On how the conjunctions "or" and "and" are to be read, guidance could be drawn from authoritative texts and judicial*

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[4] (2023) S.C.C. Online SC 1330

decisions. As per Justice G.P. Singh's Principles of Statutory Interpretation, the word "or" is normally disjunctive while the word "and" is normally conjunctive. In English law, the position is clear as crystal, as explained by Lord Scrutton in Green v. Premier Glynrhonwy Slate Co. Ltd. [Green v. Premier Glynrhonwy Slate Co. Ltd., (1928) 1 KB 561 at p. 569 (CA)], that one does not read "or" as "and" in a statute unless one is obliged, because "or" does not generally mean "and" and "and" does not generally mean "or".

23. *When the meaning of the provision in question is clear and unambiguous by the usage of "or" in Clause 2(s), there remains no force in the submission of Ms Bagchi that "or" should be interpreted as "and". In our opinion, the word "or" employed in Clause 2(s) manifests the legislative intent of prescribing an alternative. Going by the golden rule of interpretation that words should be read in their ordinary, natural, and grammatical meaning, the word "or" in Clause 2(s) clearly appears to us to have been used to reflect the ordinary and normal sense, that is, to denote an alternative, giving a choice; and, we cannot assign it a different meaning unless it leads to vagueness or makes Clause 2(s) absolutely unworkable. We are fortified in our view by the decision of this Court in Sri Jeyaram Educational Trust v. A.G. Syed Mohideen [Sri Jeyaram Educational Trust v. A.G. Syed Mohideen, (2010) 2 SCC 513 : (2010) 1 SCC (Civ) 498], wherein it was held thus : (SCC p. 516, para 11)*

> *"11. It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provision should be*

assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity, vagueness, uncertainty, or absurdity which were not obviously intended by the legislature or the lawmaker, a court should open its interpretation toolkit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the court should remember that it is not the author of the statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be."

24. Very recently, a Division Bench of the Gujarat High in the case of **Reliance Industries Ltd. and another vs. State of Gujarat and others**[5], held at paragraph Nos.168, 170 & 171 as under, viz.,

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[5] (2020) 82 G.S.T.R. 32 (Guj)

*"**168.** The illustration given by Mr. Soparkar for the purpose of demonstrating that the impugned amendment is arbitrary and unreasonable is quite apt.*

... ...

***170.** Then we are taking about unreasonableness in the impugned provision, we should look into the English decision in the case of Kruse v. Johnson [1895-90] All ER 105. It has been observed as under :*

> *"Unreasonableness in what sense : If for instance they were found to be partial and unequal in their operation between different classes, if they were manifestly unjust, if they disclosed bad faith, if they involved such oppressive or gratuitous interference with rights of those subject to them as could find no justification in the minds of the reasonable men, the court might well say Parliament never intended to give authority to make such rules and that they are unreasonable and ultra vires.'*
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> *24. In Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi AIR 1968 SC 1232, a Constitution Bench of the apex court had occasion to examine the issue. The court approved the aforesaid principle enunciated in the case of Kruse v. Johnson [1895-90] All ER 105.*
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> *25. Chief Justice Wanchoo approving the principle said :*

'26. In such case of the act of such a body in exercise of the power conferred on it by law is unreasonable, the court can held that such exercise is void for unreasonableness. This principle was laid down as far back as 1898 in Kruse v. Johnson (1898) 2 QB 91, in connection with a bye law made by a county Council.. .. The court held that a bye law could be struck down on the ground of unreasonableness.'

Hidayatullah, J. agreed and said :

'Now the rule regarding reasonableness of bye laws was laid down in Kruse v. Johnson (1898) 2 QB 91. The rule has been universally accepted and applied in India and elsewhere.'

Sikri, J. concurred :

'I agree with the learned chief justice and Hidayatullah, J. that in suitable cases taxation in pursuance of delegated powers by a Municipal Corporation can be struck down as unreasonable by courts. If Parliament chooses to delegate wide powers it runs the risk of the bye laws or the rules framed under the delegated powers being challenged as unreasonable'."

***171.** In the case of Mafatlal Industries Ltd. v. Union of India [1998] 111 STC467 (SC), the Supreme Court observed that allowing refund claims beyond the stipulated period of limitation based on the decisions rendered in other cases would "do violence to several well-accepted principles of law". It was further observed that "one of the important* *principles of law, based upon public policy, is the sanctity attaching to the finality of any proceeding, be it a suit or any other proceeding". Denouncing the legality of the practice of claiming refund after number of years based on subsequent decisions it was observed that "But according to the present practice, writs and suits are being filed after lapse of a long number of years and the rule of limitation applicable in that behalf is said to be three years from the date of discovery of mistake of law. The incongruity of the situation needs no emphasis."*

25. Earlier also the Hon'ble Supreme Court in the case of **Spentex Industries Limited vs. Commissioner of Central Excise and others**[6], dealing with the interpretation of the word "or" at paragraph Nos.28 to 32, held as under, viz.,

> "**28.** *The aforesaid discussion leads us to the only inevitable consequence which is this: the word "OR" occurring in Rule 18 cannot be given literal interpretation as that leads to various disastrous results pointed out in the preceding discussion and, therefore, this word has to be read as "and" as that is what was intended by the rule-maker in the scheme of things and to carry out the objectives of Rule 18 and also to bring it on a par with Rule 19.*
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> **29.** *We are conscious of the principle that the word "or" is normally disjunctive and "and" is normally conjunctive (see Union of India v. Kamalabai Harjivandas Parekh [AIR 1968 SC 377 : (1968) 1 SCR 463]). However, there may be*

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[6] (2016) 1 S.C.C. 780

circumstances where these words are to be read as vice versa to give effect to manifest intention of the legislature as disclosed from the context.

30. *Of course, these two words normally "or" and "and" are to be given their literal meaning in unless some other part of the same statute or the clear intention of it requires that to be done. However, wherever use of such a word viz. "and"/"or" produces unintelligible or absurd results, the Court has the power to read the word "or" as "and" and vice versa to give effect to the intention of the legislature which is otherwise quite clear. This was so done in State of Bombay v. R.M.D. Chamarbaugwala [AIR 1957 SC 699 : 1957 SCR 874] and while doing so, the Court observed as under: (AIR p. 709, para 20)*

> *"20. ... Considering the nature, scope and effect of the impugned Act, we entertain no doubt whatever that the first category of prize competitions does not include any innocent prize competitions. Such is what we conceive to be the clear intention of the legislature as expressed in the impugned Act read as a whole and to give effect to this obvious intention as we are bound to do, we have perforce to read the word 'or' appearing in the qualifying clause after the word 'promoter' and before the word 'or' as 'and'. Well-known canons of construction of statutes permit us to do so. (See Maxwell on the Interpretation of Statutes, 10th Edn., p. 238.)"*

31. *In J. Jayalalitha v. Union of India [(1999) 5 SCC 138 : 1999 SCC (Cri) 670] , the provisions of Section 3 of the Prevention of Corruption Act, 1988 empower the Government to appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases, as may be specified in the notification. Construing the italicised "or" it was held that it would mean that the Government has the power to do either or both the things i.e. the Government may, even for an area for which a Special Judge has been appointed, appoint a Special Judge for a case or group of cases.*

32. *Likewise, in Mazagaon Dock Ltd. v. CIT and Excess Profits Tax [AIR 1958 SC 861 : (1959) 1 SCR 848] , word "or" occurring under Section 42(2) of the Income Tax Act, 1922 was construed as "and" when the Court found that the legislature "could not have intended" use of the expression "or" in that Section. We have already explained the statutory scheme contained in the Act and the Rules which express manifest intention of the legislature which provide for granting of both kinds of rebates to the assessee. In Mazagaon Dock Ltd. [AIR 1958 SC 861 : (1959) 1 SCR 848] , this aspect was explained in the following manner: (AIR p. 865-66, para 10)*

> *"10. The word 'or' in the clause would appear to be rather inappropriate, as it is susceptible of the interpretation that when some profits are made but they are less than the normal profits, tax could only be imposed either on the one or on the other, and that accordingly a tax on the actual profits earned would bar the imposition of tax on profits which might have*

> *been received. Obviously, that could not have been intended, and the word 'or' would have to be read in the context as meaning 'and'. Vide Maxwell's Interpretation of Statutes, 10th Edn., pp. 238-39. But that, however, does not affect the present question which is whether the word 'derived' indubitably points to the business of the non-resident as the one taxable under Section 42(2), and for the reasons already given, the answer must be in the negative."*

26. The two decisions referred to by the learned Special Government Pleader for the respondents in the case of **Competition Commission of India vs. Steel Authority of India Limited and another**[7] and **Union of India vs. Ind-Swift Laboratories Limited**[8]**,** dealing with the interpretation of the word "or", the Hon'ble Supreme Court has categorically held in both these decisions that the provision of a taxing statute must be interpreted in the light of what is clearly expressed. It further held that it would not be permissible to import provisions in a taxing statute so as to supply any assumed deficiency. The Hon'ble Supreme Court found the view taken by the High Court in reading down the provision of law by

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[7] (2010) 10 S.C.C. 744
[8] (2011) 4 S.C.C. 635

substituting the word "or" by an "and" so as to give relief, was found to be erroneous.

27. As regards the other three writ petitions, viz., Writ Petition No.26152 of 2023, Writ Petition No.26297 of 2023 and Writ Petition No.7562 of 2021 are concerned where there was an issue as regards the proceedings being barred by limitation or not, in Writ Petition No.26152 of 2023 the Assessment Order is for the year 2016-17 which is four (04) years from the last date of the Financial Year, i.e., from 31.03.2017 till 31.03.2021, whereas the Assessment Order in the instant case is one which has been issued on 30.09.2021 which is much beyond the four year period. Therefore, for the reasons stated in the preceding paragraphs, we are of the considered opinion that the said Writ Petition No.26152 of 2023 also for the same ground deserves to be and is accordingly allowed. No costs.

28. Similarly, in Writ Petition No.26297 of 2023, the Assessment Order is for the period April, 2017 to June, 2017, i.e., for a period of two (02) months, as subsequently the new tax regime under the G.S.T. had come into force. For these two month period also, i.e., from April, 2017 to June, 2017, the four year period would come to an end in June, 2021. However, the

Assessment Order in the said writ petition had been passed on 13.09.2021 which again is beyond a period of four (04) years, and for the reasons mentioned in the earlier writ petition, viz., Writ Petition No.26152 of 2023, the present Writ Petition also deserves to be and is accordingly allowed on the same ground on which the other batch of writ petitions have been allowed. No costs.

29. Coming to the third writ petition, i.e., Writ Petition No.7562 of 2021, the Assessment Order is for the year 2014-15, i.e., which is four (04) years from the last date of financial year, i.e., from 31.03.2015 to 30.01.2019, and the impugned show-cause notice was issued on 30.01.2019 and the Assessment Order was passed on 09.02.2019, i.e., just around ten (10) days' time from the date of issuance of the show-cause notice. Therefore, though the period of limitation hits the assessment up till January, 2015, but the period February and March, 2015, the period comes within the four years of limitation prescribed. Thus, the Assessment Order would be sustainable on the aspect of limitation only for the period February and March, 2015. However, the learned Senior Counsel appearing on behalf of the petitioners drew the attention of the Court to the hasty manner in which the proceedings were concluded, i.e., the show-cause notice issued on 30.01.2019 and also the final Assessment Order passed on 09.02.2019, i.e., just around ten (10) days. He further made a categorical statement that even the show-cause notice which was issued by the respondent-Authorities was not effectively served and no opportunity of personal hearing was provided to the petitioners. He, therefore, contended that for the reason that the limitation had expired, the respondents, by-passing the statutory proceedings prescribed for an effective hearing, abruptly issued the impugned notice and concluded the proceedings in ten (10) days' time. Thus, we do not find any hesitation in reaching to the conclusion that the impugned Assessment Order dated 09.02.2019 even though is within limitation for a period of two (02) months, i.e., February and March, 2015, but for the reason that there is a clear violation of principles of natural justice and also violation of the statutory provisions prescribed before passing of the impugned Assessment Order, the order dated 09.02.2019 passed by the Assessing Officer would not be sustainable and the same deserves to be set aside. Therefore, the Writ Petition No.7562 of 2021 therefore also deserves to be and is accordingly allowed. No costs.

30. It is by now a well settled proposition of law that when the plain reading of the provision of law is unambiguous and is very clear in its intent and object, the need for giving a different interpretation which is otherwise not reflected on its plain reading, cannot be permitted or that may not be sustainable. The argument advanced by the learned Special Government Pleader in the given factual backdrop and the judicial precedents referred to in the preceding paragraphs would not be sustainable. Therefore, all the Writ Petitions to the aforesaid extent would be liable to be allowed, as either the show-cause notices or the assessment orders in all the writ petitions have been issued beyond the period envisaged under Section 21 of the Act. Therefore, the impugned notices and orders are all set aside. The Writ Petitions are allowed. No costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

That Rule Nisi has been made absolute in respect of W.P.No.19069, 19044, 16294, 12665, 8616 and 8455 of 2020. Witness the HON'BLE THE CHIEF JUSTICE SRI ALOK ARADHE, on this Friday, the Twenty Sixth Day of April, Two Thousand and Twenty Four.

SD/-B. SARASWATHI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Commercial Tax Officer, Begumpet Circle, Hyderabad
2. The Deputy Commissioner (CT), Begumpet Division
3. The Principal Secretary to Government Revenue Department (Commercial Tax) State of Telangana, Secretariat, Hyderabad.

4. The Principal Secretary, Revenue Department, State of Telangana, Telangana Secretariat, Hyderabad
5. The Assistant Commissioner of State Taxes, Ashoknagar Circle, Secunderabad Division Hyderabad
6. The Commercial Tax Officer, Keesara Circle, 3rd Floor, Block -M- IV, Manoranjan Complex, MJ Road, Hyderabad Telangana.
7. The Assistant Commissioner of State Tax, Keesara Circle, Saroornagar Division, Hyderabad.
8. The Appellate Joint Commissioner (ST), Hyderabad Rural Division, Hyderabad.
9. The Appellate Deputy Commissioner (CT), Hyderabad Rural Division, Hyderabad
10. The Commercial Tax Officer, Jeedimetla Division, Hyderabad, Telangana.
11. The Principal Secretary, Revenue (ST), State of Telangana, Secretariat, Hyderabad.
12. Appellate Deputy Commissioner (CT), Secundrabad Division.
13. Assistant Commissioner (ST), Ashoknagar Circle, Hyderabad
14. The Commercial Tax Officer, Hisamganj Circle, Secundrabad
15. The Commercial Tax Officer, Hyderguda-Ashoknagar Circle, Hyderabad.
16. The Principal Secretary to Government, Revenue (CT-II) Department, State of Telangana, Secretariat, Hyderabad
17. The Deputy Commercial Tax Officer-1, Nizamabad Circle, Nizamabad.
18. The Commercial Tax Officer-II, Nizamabad Circle, Nizamabad.
19. The Commissioner of Commercial Taxes, Opp: Gandhi Bhavan, Nampally, State of Telangana, Hyderabad.
20. The Deputy Commercial Tax Officer - I, Ramgopalpet. Ranigunj Circle, Begumpet Division Hyderabad.
21. The Commercial Tax Officer, Kodad circle Kodad, Telangana State.
22. One CC to SRI KARAN TALWAR, Advocate [OPUC]
23. Two CCs to SRI SWAROOP OORILLA, Special Government Pleader, High Court for the State of Telangana at Hyderabad [OUT]
24. One CC to SRI M. NAGA DEEPAK, Advocate [OPUC]
25. One CC to SRI S. DWARAKANATH, Senior Counsel [OPUC]
26. One CC to SRI SRINIVASA RAO KUDUPUDI, Advocate [OPUC]
27. One CC to SRI KARTHIK RAMANA PUTTAMREDDY, Advocate [OPUC]
28. Two CD Copies

MP

HIGH COURT

DATED:26/04/2024

COMMON ORDER

W.P. Nos. 24121, 24123, AND 24227 OF 2018;
W.P. Nos.19069, 19044, 16294, 12665, 8616 AND 8455 OF 2020;
W.P. Nos.5550, 5546 AND 7562 OF 2021; 8404 AND 8526 OF 2022
AND
W.P. Nos.26297 AND 26152 OF 2023

ALLOWING THE WRIT PETITIONS
WITHOUT COSTS

21
26/06/24