

**IN THE HIGH COURT FOR THE STATE OF TELANGANA :
HYDERABAD**

*** * ***

TAX REVISION CASES NOS.1, 3 AND 7 OF 2008

Between:

M/s. Andhra Fuels Private Limited,
Amrutha Mall Somajiguda, Hyderabad-500 016,
rep by its General Manager-Finance.

Petitioner

VERSUS

State of Andhra Pradesh,
Rep. b y its State Representative,
Before Sales Tax Appellate Tribunal
Nampally, Hyderabad.

Respondent

ORDER PRONOUNCED ON: 28.03.2025

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes/**No**
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : **Yes**/No.
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : **Yes**/No.

NARSING RAO NANDIKONDA, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**
AND
THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA
+ TAX REVISION CASES NOS.1, 3 AND 7 OF 2008

% 28.03.2025

Between:

Between:

M/s. Andhra Fuels Private Limited,
 Amrutha Mall Somajiguda, Hyderabad-500 016,
 rep by its General Manager-Finance.

Petitioner

VERSUS

State of Andhra Pradesh,
 Rep. b y its State Representative,
 Before Sales Tax Appellate Tribunal
 Nampally, Hyderabad.

Respondent

! Counsel for Petitioner(s)

: Mr.Karthik Ramana Puttam
 Reddy.

^Counsel for the respondent(s)

: Learned Special Government
 Pleader for State Taxes.

<GIST:

> HEAD NOTE:

? Cases referred

¹ (2004)4 Supreme Court Cases 489

² (2001) 1 Supreme Court cases 201

³ (2016) 16 Supreme Court Cases 122

**THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA
TAX REVISION CASES NOS.1, 3 AND 7 OF 2008**

COMMON ORDER: *(per Hon'ble Sri Justice Narsing Rao Nandikonda)*

These instant Tax Revision Cases are filed by the petitioner under Section 22 (1) of the Andhra Pradesh General Sales Tax Act, 1957 (for short, 'APGST Act, 1957') challenging the orders, dated 17.10.2007 passed in T.A.No.774 of 2006, T.A.No.364 of 2007 and T.A.No.712 of 2005 by the Sales Tax Appellate Tribunal, Hyderabad (for short, 'STAT').

2. Heard Mr.Karthik Ramana Puttamreddy, learned counsel for the petitioner and learned Special Government Pleader for State Taxes appearing for the respondents.

3. Thesethree Tax Revision Cases are filed by the same petitioner and the respondent arising out of different Tribunal Appeals.

(i) T.R.C.No.1 of 2008 is filed aggrieved by the order, dated 17.10.2007, in Tribunal Appeal No.774 of 2006 for the Assessment Year 2000-2001.

(ii) T.R.C.No.3 of 2008 is filed aggrieved by the order, dated 17.10.2007 in Tribunal Appeal No.364 of 2007 for the Assessment Year 2002-2003.

(iii) T.R.C.No.7 of 2008 is filed aggrieved by the order, dated 17.10.2007 in Tribunal Appeal No.712 of 2005 passed by the STAT for the Assessment Year 2001-2002.

4. As the question of law involved in these three Tax Revision Cases is one and the same, all these three Tax Revision Petitions are being heard together and disposed of by way of common order.

5. The factual aspects in the present Tax Revision Cases are being one and the same. The issue that emerges for consideration before the Assessing Officer was **whether the 'natural gas' falls under entry 118 of the 1st schedule or whether it falls under entry 23 of 6th schedule?**

6. The brief facts relevant for adjudication of these Tax Revision Cases are that the petitioner is a registered dealer under the Commercial Tax Department in the State. It is engaged in the business of trading in natural gas. The petitioner purchased natural gas from the Gas Authority of India Limited (for short, 'GAIL') who is the first seller and, in

turn, the petitioner after purchasing natural gas from GAIL sells it to other legal entities. In the instant case, the petitioner happens to sell the natural gas that it purchases to its sister concern M/s. RVK Energy Private Limited, who in turn is engaged in generation of power. The natural gas sold by the petitioner to M/s. RVK Energy Private Limited is being used by the said company.

7. The matter in the instant case pertains to the Assessment Year 2000-01. The petitioner had claimed the natural gas to be one which comes under the purview of industrial gas where the point of levy on tax is at the point of first sale. According to the petitioner, since it is a industrial gas under Entry 118 of 1st Schedule of the APGST Act, 1957 and the levy of tax being at the first point of sale which in the instant case when the sale is made by GAIL to the petitioner, the petitioner could not have been subjected to levy of tax on the sale of natural gas by the petitioner. On the contrary, the Assessing Authority under the APGST Act, 1957 contended that the tax purchased by the petitioner from GAIL is one which is classified under Entry 23 of 6th Schedule. According to the State Authorities, the sale of goods under Entry 23 of 6th

Schedule is leviable on tax at every point of sale in the State. Thus, the sale of natural gas by the petitioner to other companies is also amenable to payment of tax under the APGST Act, 1957.

8. This contention of the petitioner stood rejected by the Assessing Officer and which has been upheld till the stage of Sales Tax Appellate Tribunal, leading to filing of the instant Tax Revision Cases.

9. The rate of tax on items reflected in Entry 118 of 1st Schedule as claimed by the petitioner is taxed on 12% on the point of first sale. Whereas, the commodities classified under Entry 23 of 6th Schedule are liable to be taxed at every point of sale in the State and rate of tax also is 16%. The Commercial Tax Officer passed the assessment order holding that the commodities sold by the petitioner being natural gas and not industrial gas, was one which would fall under Entry 23 of the 6th Schedule leviable of tax at every point of sale at 16%. Against which, the petitioner-company approached the Deputy Commissioner of Commercial Tax, who too was convinced that the commodity of 'Natural gas' falls under entry 23 of 6th schedule of the APGST Act, 1957 and thus, held that "the levy

made by the Assessing Authority is in order and does not warrant any interference and consequently appeals fail and are accordingly dismissed.” Being aggrieved by the same, the petitioner-company preferred appeals before the Sales Tax Appellate Tribunal, *vide* T.A.Nos.774 of 2006, T.A.364 of 2007 and 712 of 2005 for the Assessment Years 2000-2001, 2002-2003 and 2001-2002. Since the issue in these appeals is being common and it is in respect of classification of natural gas, all these appeals were decided by the Sales Tax Appellate Tribunal under the common order. The Tribunal held that ‘natural gas’ sold by the petitioner-company has been rightly classified as falling under entry 23 of 6th schedule of APGST Act, 1957 and taxed accordingly granting due deduction of tax paid at the first point of sale and dismissed the appeals upholding the orders of the appellate authority.

10. The main grievance of the petitioner-company is that the present Tax Revision Cases were preferred by the petitioner-company being aggrieved by the orders passed by the Sale Tax Appellate Tribunal. Admittedly, the petitioner is a registered dealer under the APGST Act, 1957 and it was engaged in the business of trading in natural gases. It is the

case of the petitioner that it purchased the natural gas from Gas Authority of India Limited (GAIL) which is the first seller and in turn, it sells the entire gas so purchased to the sister concern i.e., M/s. RVK Energy Private Limited, who is engaged in generation of power. It is contended that natural gas so purchased by M/s. RVK Energy Private Limited used the same as fuel in their industry. It is further contended that the GAIL selling natural gas to the petitioner-company by charging tax at 16% under entry 23 of 6th scheduled as per APGST Act, 1957. On seeing the entire case facts, the main contention of the petitioner is that whether the assessment made by the Assessing Officer, which is confirmed by the Commercial Tax Officer, Deputy Commercial Tax Officer and the Appellate Authority i.e., the Sale Tax Appellate Tribunal held that the natural gases which are dealt with, by the petitioner would fall under Entry 23 of 6th schedule of the APGST Act, 1957 or Entry 118 of schedule 1st schedule. It is further stated that the natural gas falls under entry 118 and being a second seller, there is no liability to tax at the basic rate except for turnover tax at the rate of 1% **under Section 5(E) of the APGST Act, 1957.** The learned Sales Tax Appellate Tribunal after going into the merits

of the case at paragraph No.8 of its Judgment it was held as under:

“...Admittedly, GAIL who are the first sellers of natural gas in Andhra Pradesh and who obtain it from Oil and Natural Gas Commission of India (ONGC), after the latter has obtained the same during the process of drilling for crude petroleum, have treated natural gas as falling under Entry 23 of Sixth Schedule of APGST Act. Admittedly also M/s. Andhra Fuels Pvt Ltd have not made any change in the gas purchased from GAIL and have sold the same as it is by way of second sales. Therefore, when there is no change by way of any further process, how can the classification of natural gas be under entry 23 of Sixth Schedule at the point of first sale and under serial No.118 of First Schedule at the point of second sale? We are also of the opinion that organizations like GAIL are technically better qualified and equipped to understand the nature of natural gas and petroleum gases and if they have considered natural gas and petroleum gases as one and the same, then their opinion carries considerable weight. We are therefore of the opinion that natural gas, which is a mixture of gases containing considerable proportion a mixture of Butane, Ethane, Propane etc., must in our opinion be regarded as petroleum gas and be classified under Entry 23 of 6th schedule and taxed accordingly.”

11. In support of his contentions, learned counsel for the petitioner relied upon the following decisions of the Hon'ble Supreme Court in **Association of natural Gas and**

Others v.Union of India and Offices¹; Indian Aluminium Company Limited v. Assistant Commissioner of Commercial Taxes (Appeals) and another² and Commissioner of Commercial Tax, Uttar Pradesh v. A.R.Thermosets Private Limited³

12. Learned counsel for the petitioner further contended that the Assessing Authority and Appellate Authority ought to have considered that the said gases as natural gases of sales which are purchased from the GAIL. Basing on the second sales as per entry 118 of 1st schedule, he further argued that considering Judgment of the Hon'ble Supreme Court in **Association of Natural Gas's** Case, the Hon'ble Supreme Court has dealt with the definition of the petroleum and petrol products and all the natural gases and at paragraph No.35, it was held as under:

“35. All the materials produced before us would only show that natural gas is a petroleum product. It is also important to note that in various legislations covering the field of petroleum and petroleum products, either the word “petroleum” or “petroleum products” has been defined in an inclusive way, so as to include natural gas. In Encyclopaedia Britannica, 15th Edn., Vol. 19, p.589 (1990), it is stated that “liquid and gaseous hydrocarbons are so intimately associated

¹ (2004)4 Supreme Court Cases 489

² (2001) 1 Supreme Court cases 201

³ (2016) 16 Supreme Court Cases 122

*in nature that it has become customary to shorten the expression 'petroleum and natural gas' to 'petroleum' when referring to both'. The word petroleum literally means 'rock oil'. It originated from the Latin terms *petra* and *oleum* (*Petra* means rock or stone and *oleum* means oil). Thus, natural gas could very well be comprehended within the expression "petroleum" or "petroleum product."*

13. Further, in support of his case, the learned counsel for the petitioner has also relied upon the Judgment of the Hon'ble Supreme Court **in Indian Aluminium's case**, wherein at paragraph No.3 it was held as under:

"3. Under Section 3 of the aforesaid Act, tax on entry of goods specified in the First Schedule into a local area for consumption, use or sale therein can be levied at the rates specified by the State Government b y notification. It is common ground that prior to amendment of the Act in 1992, there was one Schedule which specified the various items on which entry tax could be levied. Entry 11 of the said Schedule was as follows:

"11. All petroleum products, that is to say, - Petrol, diesel, crude oil, lubricating oil, transformer oil, brake or clutch fluid, bitumen (asphalt), tar and others, but excluding LPG, kerosene and naphtha for use in the manufacture of fertilizers."

14. Learned counsel for the petitioner further contended that as the petitioner has already paid the turnover tax at 1% as per Section 5(a) of the APGST Act, 1957 on the total turnover, the petitioner-company is not liable to pay tax for the

sale of natural gas which is classified as petrolas being the first sale. He also further argued that classification by the Tribunal as natural gas under entry 23 of 6th schedule is contrary to the judgment of the Hon'ble Supreme Court in **Indian Aluminium's** case.

15. On perusal of the judgment, which is relied upon by the learned counsel for the petitioner in **Indian Aluminium's** case it is clear that the Hon'ble Supreme Court having dealt with the definition of the petroleum products, i.e., petrol, diesel, crude oil and lubricating oil, transfer mono oil, brake and clutch fluid, bitumen as sulphate, tar and others, excluded the aviation fuel, liquid petroleum gas, LPG, kerosene and naphtha for use in the manufacture of fertilizers, which the Hon'ble Supreme Court taking it from the entry to 67.

16. In **Association of Natural Gases case**, the Hon'ble Supreme Court held that natural gas is very well be comprehended within the expression 'petroleum' or 'petroleum product.' But it cannot be termed as petroleum products. But the natural gas though may be the genesis of petroleum product, the same can be taken into consideration as a petroleum product.

17. For the sake of convenience and for ready reference, the schedules are reproduced as under:

Schedule 1

Entry No.	Description of Goods	Point of Levy	Rate of Tax
118	Industrial Gases other than petroleum gases and gases specified elsewhere in the Schedules	First sale in the State	12 paise in the Rupee
72	Petrol other than aviation motor spirit	First sale in the State	30.55 paise in the Rupee.

Schedule 6

Entry No.	Description of Goods	Point of Levy	Rate of Tax
23	All kinds of gases whether in compressed, liquefied or solidified or in any other form other than industrial gases.	Every point of sale in the State	

Schedule 7

Entry No.	Description of Goods	Point of Levy	Rate of Tax
1	Goods other than those specified in First to Six Schedules. Provided that a dealer other than a casual trader and an agent of a non-resident dealer whose total turnover for a year is less than rupees two lakhs shall not be liable to pay tax in respect of the goods mentioned in this Schedule.	First sale in the State	12 paise in the Rupee

18. As seen from entry 118 of 1st schedule, it says that the industrial gases other than petroleum gases and gases specified elsewhere in these schedules, entry 118 excludes the petroleum gases and the gases specified elsewhere in the schedule and it applies only to the industrial gases. The argument of the learned counsel for the petitioner that though the petitioner is dealing with industrial gases and the usage of the natural gas is also meant for the purpose of using it in the industries, but as there is a specific exclusion of petroleum gases prescribed in the Industrial gases, as such the contention of the petitioner that it falls under entry 118 or the 1st schedule cannot be taken into consideration and cannot be accepted.

19. Coming to the other entry which the learned counsel for the petitioner is now trying to impress upon is entry 72 of 1st schedule. On perusal of the said entry, it shows that said entry exclusively deals with that of the petrol other than the aviation motor spirit which means that the said entry is only related to the petrol which is used for the commercial and domestic purpose and usage in the vehicles and for transportation. No doubt the same would come under the definition of the petroleum products, as seen from the entire

record and the APGST Act, 1957, nowhere natural gas has been defined or reflected in any of the entries in any of the schedules.

20. On careful reading of the entries with all kinds of gases, whether it is compressed, liquified or solidified, nowhere in the said entries there is a mention of natural gas. On perusal of the decisions cited by the learned counsel for the petitioner, wherein, it is specifically stated that the natural gas is made up of Carbon and Hydrogen and scientifically called as 'methane' and it is readily combustible and generates heat. It is a fossil fuel like coal and petroleum under the APGST Act, 1957.

21. On a reading of entry 23 of 6th schedule it shows that the goods which fall under the said entry are all kinds of gases whether in compressed, liquified or solidified or in any other form other than industrial gases.

22. This bench is of the firm opinion that the findings given by the Tribunal holding that the natural gas sold by the petitioner falls under entry 23 of 6th schedule is proper and the contention of the petitioner that it is a specific entry over any

general entry has to be applied. In the present facts of the case, it cannot be accepted for the reason stated above. Further, this Bench does not find any error committed by the STAT that natural gas and petroleum gas can be equated as similar basing on the usage and that the natural gas consists of methane and other gases like ethane, propane, and butane. While the petroleum gases are essentially ethane, propane, and butane, except the methane and both the products are predominantly same.

23. Therefore, the contention of the petitioner cannot be accepted and this bench do not see any error committed by the STAT to interfere with the findings that natural gas sold by the petitioner is rightly classified as falling under Entry 23 of the 6th schedule of the APGST Act 1957 and imposing the tax accordingly by the Assessment Authority cannot be interfered for the reasons aforementioned.

24. Hence, for the said reasons, the substantial questions of law stands decided against the petitioner-assessee and no case has been made out for interfering with the findings of the STAT or Assessing Officer. For the aforesaid reasons,

these three Tax Revision Cases fail and the same are liable to be dismissed.

25. Accordingly, these three Tax Revision Cases are dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE P.SAM KOSHY

JUSTICE NARSING RAO NANDIKONDA

Date: 28.03.2025

YVL