



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3529]

WEDNESDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION Nos.6319 & 6321 & 5089 of 2010

WRIT PETITION NO: 6319/2010

Between:

1. M/S.HELIX ENERGY SOLUTIONS GROUP INC., -

...PETITIONER

AND

1. THE COMMERCIAL TAX OFFICER KAKAINADA ANOTHER, -

...RESPONDENT

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

IA NO: 1 OF 2010(WPMP 8149 OF 2010

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

IA NO: 4 OF 2010(WVMP 163489 OF 2010

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

Counsel for the Petitioner:

1.KADIMISETTY SAI SREENADH

Counsel for the Respondent:

1.GP FOR COMMERCIAL TAX

WRIT PETITION NO: 6321/2010**Between:**

- 1.M/S. HELIX ENERGY SOLUTIONS GROUP INC., DOOR NO. 51-3-8/A,
JAGANNAYAKPUR, KAKINADA, EAST GODAVARI DISTRICT, REP
BY ITS VICE PRESIDENT - TAX MR. CHARLES JOHN MC GREGOR

...PETITIONER**AND**

- 1.THE COMMERCIAL TAX OFFICER, JAGANNAYAKPUR DIVISION,
KAKINADA.
- 2.THE APPELLATE DEPUTY COMMISSIONERC, VISAKHAPATNAM,

...RESPONDENT(S):

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 an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in passing the impugned order dated 20-2-2010 in Form 305 for the assessment year 2008-2009 under the provisions of AP VAT Act, 2005 as illegal, arbitrary, high handed, without authority of law and jurisdiction, violation of principles of natural justice and in contravention of the provisions of the Act and set aside the same

IA NO: 1 OF 2010(WVMP 5854 OF 2010)

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 vacate the interim orders passed on 19-03-2010 in WPMP.No.8152/2010 in WPNo.6321/2010 dt. 19-03-2010 as modified on 15-04-2010 and to pass

IA NO: 2 OF 2010(WPMP 8152 OF 2010)

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 impugned order passed by the 1st respondent dated 20-2-2010 in Form 305 for the assessment year 2008-2009 under the provisions of AP VAT Act, 2005 pending disposal of the writ petition

Counsel for the Petitioner:

- 1.KADIMISETTY SAI SREENADH

Counsel for the Respondent(S):

- 1.GP FOR COMMERCIAL TAX (AP)
- 2.SURIBABU S(SPL SC FOR CT AP)

WRIT PETITION NO: 5089/2010**Between:**

1.M/S. HELIX ENERGY SOLUTIONS GROUP INC.,, DOOR NO. 51-3-8/A, JAGANNAYAKPUR, KAKINADA, EAST GODAVARI DISTRICT, REP. BY ITS VICE PRESIDENT - TAX, MR. CHARLES JOHN MC GREGOR

...PETITIONER

AND

1.THE COMMERCIAL TAX OFFICER, JAGANNAYAKPUR DIVISION, KAKINADA
 2.THE APPELLATE DEPUTY COMMISSIONER CT, VISAKHAPATNAM
 3.M/S ALLSEAS MARINE CONTRACTORS S A, 5-6-45/12, NEAR VUDA PARK, BEACH ROAD, VISAKHAPATNAM

...RESPONDENT(S):

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 an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 1st respondent in issuing the impugned Garnishee proceedings in Form 206 dated 25.02.2010 invoking power under Section 29 of AP VAT Act, 2005 even before expiry of the statutory period of 30 days from the date of service of the assessment orders contemplated under the provisions of AP VAT Act, 2005 as illegal, arbitrary high handed without authority of law and jurisdiction and set aside the same and restrain the 1st respondent from taking any coercive steps for recovery of the disputed demands for the assessment years 2007-2008 and 2008-2009 under the provisions of AP VAT Act, 2005 before expiry of 30 days statutory period provided under Section 22 read with Rule 25 (5) and Form 305 and pass

IA NO: 1 OF 2010(WPMP 6561 OF 2010)

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 impugned Garnishee proceedings issued by the 1st respondent in Form 206 dated 25.02.2010 pending disposal of the Writ petition and to pass such

Counsel for the Petitioner:

1.KADIMISSETTY SAI SREENADH

Counsel for the Respondent(S):

1.GP FOR COMMERCIAL TAX

Date of Reserved: 12.11.2025

Date of Pronouncement: 10.12.2025

Date of upload: 10.12.2025

The Court made the following Common Order: (Per Hon'ble Sri Justice R. Raghunandan Rao)

The petitioner is a company incorporated in the United States of America. It had entered into a sub-sea constructions and diving contract, dated 21.12.2006 with M/s. Allseas Marine Contractors S.A, for on off shore Gas field, developed by M/s. Reliance Industries Limited, in the Krishna Godavari Basin situated in the Bay of Bengal. The contract awarded to the petitioner, was for laying a pipeline on the ocean floor, including installation of various sub-sea constructions like suction pipes, manifolds, Christmas trees, rigid jumpers, tying spools and infield umbilical lines etc. Under the contract the material, mentioned above was to be supplied by M/s. Allseas Marine Contractors and the petitioner was required to carry out engineering, planning and fabrication activities in relation to the installation of the sub-sea constructions. It is also the contention of the petitioner that about 80% of this work was done beyond 12 Nautical miles from the coast of Andhra Pradesh.

2. The petitioner had registered itself under the provisions of the Service Tax Act. Apart from this, the petitioner also obtained registration, as a dealer, under the provisions of the Andhra Pradesh Value Added Tax Act, 2005 [for short "the APVAT Act"] and the Central Sales Tax Act, 1956 [for short "the CST Act"]. The petitioner, on the ground that less than 1% of the value of the contract involved transfer of goods, had approached the 1st respondent for quantification of taxable turnover for the purposes of deduction of tax at source. The 1st respondent is said to have issued a certificate, in

Form 501D, dated 10.04.2008, determining the taxable turnover at 3.5% of the total value of the contract on which tax would be liable to be deducted at 4%.

3. The 1st respondent initiated proceedings by issuing of a notice, dated 28.08.2008, calling for information and record in connection with the works executed by the petitioner. After various communication exchanged between the petitioner and the 1st respondent, the 1st respondent passed Orders, dated 15.06.2009, for the period 2007-08 and 2008-09 raising a demand of Rs.2,51,61,401/-. The 1st respondent rejected the accounts produced by the petitioner, on the ground that these were not a complete set of accounts and that the books of account, required to be maintained, under the Income Tax Act, 1961 was not produced. This order came to be challenged before the 2nd respondent. The 2nd respondent, by an Order, dated 11.08.2009, had set aside the levy and remanded the matter back to the 1st respondent for passing orders afresh after considering the objections raised by the petitioner as well as the books of accounts and other material that would be produced by the petitioner.

4. The petitioner, in pursuance of the directions of the 2nd respondent, is said to have filed month wise details of expenses incurred as per Rule-31 and copies of contracts etc obtained from vendors of the petitioner. At that stage, the 1st respondent again issued a notice, dated 29.10.2009, proposing to levy tax of Rs.19,01,11,662/- and Rs.60,74,59,981/-, for the assessment years 2007-08 & 2008-09 respectively. The 1st respondent, issued this notice, on the ground that the petitioner had failed to

produce the books of accounts and consequently, the entire turnover would have to be taxed at 12.5% after allowing a deduction of 30% under Rule 17(1)(g) of the APVAT Rules. The petitioner claims that it had filed detailed objections and documentary evidence, in reply to this notice, on 24.11.2009 and 26.12.2009. However, the 1st respondent passed Orders, dated 20.02.2010, for both the assessment years confirming the levy of tax, proposed under the show-cause notice, dated 29.10.2009. Thereafter, recovery proceedings were initiated by issuance of a garnishee notice. Aggrieved by the same, the petitioner approached the erstwhile High Court of Andhra Pradesh at Hyderabad, by way of W.P.No.5089 of 2010. Thereafter, the petitioner again approached this Court by way of W.P.Nos.6319 & 6321 of 2010, challenging the orders of assessment, dated 20.02.2010.

5. The petitioner contends that it has produced all its accounts, before the 1st respondent. However, the 1st respondent instead of going through the said accounts, to satisfy himself, on the turnover which would be exigible to tax, had arbitrarily rejected all the accounts and the documents produced by the petitioner and proceeded to complete the assessment by invoking the Rule-17(1)(g) of the APVAT Rules. Under the said Rule, the assessment authority, in the absences of books and accounts of a dealer, is entitled to levy tax on 70% of the disclosed turnover after giving a standard deduction of 30%. The petitioner contends that Rule-31, which requires maintenance of accounts does not contemplate maintenance of profit and loss account and only requires maintenance of accounts showing the purchase of

goods etc. It is contended that the 1st respondent, refused to accept this interpretation of the Rule-31 and insisted on proper books of accounts being placed before the 1st respondent. As such books of account were not produced, the 1st respondent, invoked Rule 17(1)(g) of the APVAT Rules without any further verification and the same is invalid.

6. Sri V. Sridharan, Learned Senior Counsel appearing for the petitioner, contends that Rule-17(1)(g) of the APVAT Rules could not have been invoked by the 1st respondent and he should have gone through the accounts and material placed before him, by the petitioner. Secondly, 80% of the work was executed beyond 12 Nautical miles and would fall outside the territorial limits under the APVAT Act.

7. The 1st respondent has filed a counter affidavit. In the counter affidavit, the 1st respondent has taken the stand that the petitioner being a works contractor had to maintain its books of accounts as per the provisions of Rule-31 of the APVAT Rules. As the petitioner had not produced its books of accounts, required to be maintained under Rule-31 of the APVAT Rules, Rule 17(1)(a) of the APVAT Rules had to be invoked. It is contended, by the 1st respondent, that the petitioner had only produced a summary statement of purchases and expenditure without any details being disclosed. It is further contended that the petitioner only filed some sample agreements and some invoices. As no details had been placed before the 1st respondent regarding the labour charges and hiring of machinery, the only option available to the 1st respondent, was to invoke Rule 17(1)(g) of the APVAT Rules. Even after the

initial orders had been set aside by the appellate deputy commissioner and the matter had been remanded back, no books of accounts had been produced before the 1st respondent on account of which the 1st respondent had to invoke Rule 17(1)(g) of the APVAT Rules. It is further submitted, in the counter affidavit, that there are discrepancies in the reporting of the total consideration received by the petitioner for the years 2007-08 & 2008-09 on account of which also the material produced by the petitioner could not be accepted. The 1st respondent would contend that the petitioner has not produced any material to demonstrate that the work had been executed beyond 12 Nautical miles and as such, the said argument also cannot be accepted.

8. The assessment proceedings had been initiated on account of the notices issued by the 1st respondent, dated 28.08.2008 and 31.10.2008, calling upon the petitioner to produce its books of accounts, in relation to the work contracts executed by the petitioner. The petitioner is said to have submitted its records from time to time. When the 1st respondent sought additional information including profit and loss account and trial balance for the period March, 2008 to December, 2008, the petitioner had submitted a letter, dated 03.02.2009, stating that the petitioner was not required to maintain any books of accounts in India, under the provisions of Income Tax Act, 1961 [for short "the IT Act 1961"], as the petitioner had opted to offer its income on deemed basis of 10% gross receipts under the provisions of Section 44 BB (3) of the IT Act 1961 read with Section 44 AA (2) (iii) of the IT

Act 1961. The petitioner also stated that though formal books of accounts were not maintained, project accounts had been maintained and extracts from such account including the profit and loss account from 1st September, 2007 to 31st March, 2008 and 1st April, 2008 to 31st December, 2008 are said to have been sent. Further correspondence continued on these lines where the petitioner continued to insist that it was not required to maintain the books of accounts under the provisions of the IT Act, 1961, but the accounts maintained by the petitioner had been produced before the 1st respondent.

9. The 1st respondent, by its notice, dated 03.04.2009 sought various records including the profit and loss accounts with reference to the income tax returns. The petitioner again reiterated its earlier stand that it had submitted all the details and there is no profit and loss account prepared under the provisions of the IT Act, 1961. The petitioner also took the stand that Rule-31(1) of the APVAT Rules required a dealer to maintain separate books of accounts for each contract and the same would not be applicable to the petitioner as it has executed only one contract, in India.

10. The petitioner contends that the petitioner did not maintain such books of accounts as he had opted for composition, under the Income Tax Act, 1961, and he was not required to maintain any such books of accounts.

Sections 44 AA and 44 BB of the Income Tax Act 1961 read as follows:

“Section-44 AA: Maintenance of accounts by certain persons carrying on profession or business:—(1) Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette shall keep and maintain such books of

account and other documents as may enable the [Assessing Officer] to compute his total income in accordance with the provisions of this Act.

(2) Every person carrying on business or profession [not being a profession referred to in sub-section (1)] shall:

(i) if his income from business or profession exceeds [one lakh twenty thousand] rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession exceed or exceeds [ten lakh] rupees in any one of the three years immediately preceding the previous year; or

(ii) where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed [one lakh twenty thousand] rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession are or is likely to exceed [ten lakh] rupees, [during such previous year; or

(iii) where the profits and gains from the business are deemed to be the profits and gains of the assessee under 6[section 44AE] 7[or section 44BB or section 44BBB], as the case may be, and the assessee has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, during such [previous year; or]]

(iv) where the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,] keep and maintain such books of account and other documents as may enable the 2[Assessing Officer] to compute his total income in accordance with the provisions of this Act.

[Provided that in the case of a person being an individual or a Hindu undivided family, the provisions of clause (i) and clause (ii) shall have effect, as if for the words "one lakh twenty thousand rupees", the words "two lakh fifty thousand rupees" had been substituted:

Provided further that in the case of a person being an individual or a Hindu undivided family, the provisions of clause (i) and clause (ii) shall have effect, as if for the words "ten lakh rupees", the words "twenty-five rupees" had been substituted.]

(3) The Board may, having regard to the nature of the business or profession carried on by any class of persons, prescribe, by rules, the books of account and other documents (including inventories, wherever necessary) to be kept and maintained under sub-section (1) or sub-section (2), the particulars to be contained therein and the form and the manner in which and the place at which they shall be kept and maintained.

(4) Without prejudice to the provisions of sub-section (3), the Board may prescribe, by rules, the period for which the books of account and other documents to be kept and maintained under sub-section (1) or sub-section (2) shall be retained.]

Section-44BB:- Special provision for computing profits and gains in connection with the business of exploration, etc., of mineral oils.—(1) Notwithstanding anything to the contrary contained in sections 28 to 41 and sections 43 and 43A, [in the case of an assessee, being a non-resident,] engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils, a sum equal to ten per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains

of such business chargeable to tax under the head "Profits and gains of business or profession":

Provided that this sub-section shall not apply in a case where the provisions of section 42 or section 44D or [section 44DA or] section 115A or section 293A apply for the purposes of computing profits or gains or any other income referred to in those sections.

(2) The amounts referred to in sub-section (1) shall be the following, namely:—

(a) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils in India; and

(b) the amount received or deemed to be received in India by or on behalf of the assessee on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils outside India.

[(3) Notwithstanding anything contained in sub-section (1), an assessee may claim lower profits and gains than the profits and gains specified in that sub-section, if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB, and thereupon the Assessing Officer shall proceed to make an assessment of the total income or loss of the assessee under sub-section (3) of section 143 and determine the sum payable by, or refundable to, the assessee.]

Explanation:— For the purposes of this section,—

(i) "plant" includes ships, aircraft, vehicles, drilling units, scientific apparatus and equipment, used for the purposes of the said business;

(ii) "mineral oil" includes petroleum and natural gas.]”

11. Section 44 AA (2) of the Income Tax Act, 1961 requires all persons, falling within the parameters set out therein, to maintain books of accounts, as prescribed. Section 44 BB (3) of the IT Act 1961 carves out an exception, for non-resident persons carrying on any business of providing services or facilities relating to extraction of mineral oil. These persons can either maintain the prescribed books of account and undergo assessment proceedings or such persons can offer ten percent of the gross receipts as income and pay tax thereon. The petitioner contends that it has availed of this option and was paying tax on ten percent of its gross receipts. This contention is not disputed by the respondents. The petitioner also contends that it has not

maintained any books of account, required under the provisions of the Income Tax Act, 1961. As there was no duty, cast on the petitioner, to maintain books of accounts or to get them audited and in view of the specific contention of the petitioner, that such books of account had not been maintained, the 1st respondent cannot insist on production of such books of accounts. However, the 1st respondent can ask for the accounts which are required to be maintained under Rule 31. It is also clarified, that an assessing authority can always ask for the books of account required to be maintained, under any other provision of law, for comparing the said accounts with the accounts produced under Rule 31 of the A.P.VAT Rules. In the present case such a course of action is not available to the assessing authority, in the peculiar facts of this case.

12. Rule 31 of the A.P. VAT Rules reads as follows:-

“31. Records to be maintained by a dealer executing works contracts:

- 1) *Every dealer executing works contract shall keep separate accounts for each contract specifying the particulars of the names and addresses of the persons for whom he has executed works contracts*
- 2) *Every dealer executing works contract and opting to pay tax by way of composition shall maintain records of*
 - a) *payments received from the contractee.*
 - b) *records of entry on Form VAT 200*
 - c) *records of tax collection at source or tax deduction at source made from the payments received on the works contracts.*
- 3) *Every dealer executing works contract and not opting to pay tax by way of composition shall keep the following records; namely;-*
 - a) *the particulars of goods procured by way of purchase or otherwise for the execution of works contract;*
 - b) *the particulars of goods to be used or used in the execution of each works contract;*
 - c) *the details of payment received in respect of each works contract*
 - d) *the details of:*
 - i) *labour charges for works executed;*

- ii) *amount paid to sub-contractor for labour and services*
- iii) *charges for planning, designing and architect's fees;*
- iv) *charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;*
- v) *cost of consumables such as water, electricity, fuel etc., used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract;*
- vi) *cost of establishment of the contractor to the extent it is relatable to supply of labour and services;*
- vii) *other similar expenses relatable to supply of labour and services;*
- viii) *profit earned by the contractor to the extent it is relatable to supply of labour and services;*
- ix) *all amounts for which goods exempted under Schedule I are transferred in execution of works contract;*
- x) *turnover of goods involved in the execution of works contract which are transferred in the course of inter-State trade or commerce under Section 3 of the Central Sales Tax Act, 1956 or transferred outside the State under Section 4 or transferred in the course of import or export under Section 5 of the said Act.*

13. Rule 17(1)(g) of the AP VAT Rules reads as follows:

"17.Treatment of works contracts:

1. Treatment of VAT dealer executing works contract

- (a)
- (b) ...
- (c) ..
- (d) ...
- (e) ..
- (f) ..
- (g) *Where the VAT dealer has not maintained the accounts to determine the correct value of the goods at the time of incorporation he shall pay tax at the rate of twelve and a half percent (12.5%) on the total consideration received or receivable subject to the deductions specified in the table below: In such cases the contractor VAT dealer shall not be eligible to claim input tax credit and shall not be eligible to issue tax invoices.*

14. Under Rule 17(1)(g) of the AP VAT Rules, the entire turnover of a dealer, is to be taxed at 12.5% subject to the deductions specified in the table annexed to Rule 17(1)(g) of the AP VAT Rules, where the dealer had not maintained accounts to determine the correct value of the goods at the time of incorporation. This provision does not specify the manner in which such accounts are to be maintained. Rule 31 requires separate accounts, to be maintained, for each work contracts. Taken literally, it would mean that

separate sets of accounts would have to be maintained for each contract. This would not be possible if only one set of books of account is to be maintained. Obviously, the requirement of this rule is maintenance of such separate accounts, for each contract, as would be sufficient to set out the value of the goods which had been incorporated, in the course of the execution of each works contract and the expenditure incurred by the contractor, to ascertain the cost of the goods, incorporated in the property. It is only when such documentation is not produced, before the assessing authority, that Rule 17(1)(g) of the AP VAT Rules could be invoked. In the present case, the petitioner insists that it had maintained an account of the contract, in question, and had produced all its records. The 1st respondent contends that all the records were not produced before the 1st respondent.

15. As far as the question of whether all the material, required by the 1st respondent, had been submitted by the petitioner is concerned, the same would be very difficult for this Court to ascertain, in view of the rival submissions made on both sides. In the circumstances, the only option available to this Court, would be to remand the matter back to the assessing authority to give an opportunity to the petitioner to submit the entire records relating to the works contract executed by the petitioner. Upon such production of the records, the 1st respondent shall then decide whether the said material is sufficient to account for all the material/goods which are being incorporated into the works contract by the petitioner for the relevant period. In the event, the 1st respondent is satisfied with the material produced by the

petitioner, the assessment proceedings can be completed on the basis of such material. In the event, the 1st respondent comes to the opinion that the accounts produced by the petitioner do not meet the requirements of Rule 31, it would be open to the 1st respondent to specifically set out the missing details and material which is required by the 1st respondent to complete the assessment proceedings. The petitioner would be required to make good such deficit of accounts, failing which, it would be open to the 1st respondent to invoke Rule 17 (1)(g) of the A.P.VAT Rules.

16. The petitioner had also raised two additional issues before this Court. Firstly, that the petitioner had carried out 80% of the contract beyond 12 Nautical miles in the sea and consequently, the turnover relating to that part of the contract would not be exigible to tax at all. Secondly, the rate of tax, which would be levied against the petitioner would be 4% and not 14.5%. Sri V. Sridharan, Learned Senior Counsel appearing for the petitioner, has taken great pains to take us through the material produced by the petitioner, to demonstrate that, the incorporation of goods, in the course of the execution of the contract, had taken place, beyond 12 Nautical miles. We do not propose to go into the issue of the location of the execution of the work, as that would be a question of fact, which is best answered by the assessing authority. Similarly, the question of rate of tax that would be applicable is also a matter which can be raised before the 1st respondent and both issues are left open.

17. The learned Government Pleader seriously disputes the contention of the Learned Senior Counsel appearing for the petitioner, that incorporation

of goods, in a works contract, beyond twelve miles in the sea, would not attract tax under the Andhra Pradesh Value Added Tax Act, 2005.

18. Learned Senior Counsel contends that the AP VAT Act, which was enacted by the Andhra Pradesh State Legislature, would be applicable only within the territories of the State of Andhra Pradesh. Such territories, would end with the boundaries of the land adjoining the sea. The territorial waters, which stretch from the boundaries of the land to 12 nautical miles within the sea, would be within the exclusive jurisdiction of the Union and a State cannot levy any tax, in relation to any transaction, occurring within the territorial waters. Learned Senior Counsel would also contend that the sea beyond the territorial waters, would also fall outside the territories of the State of Andhra Pradesh and the Legislature of the State of Andhra Pradesh cannot create any liability over any transaction which takes place beyond the territorial waters. Learned Senior Counsel, in support of these contentions has placed before this Court the following Judgments:-

- I. *AMSSVM & Co. Vs. State of Madras*¹
- II. *Madras Marine & Co. Vs. State of Madras*²
- III. *Fairmacs Trading Vs. State of Tamil Nadu*³
- IV. *Commissioner of Customs, Preventive (Mumbai) Vs. Noble Asset Co. Ltd*⁴
- V. *Great Eastern Shipping Co. Ltd. Vs. State of Karnataka*⁵
- VI. *AbanLoyd Chiles Offshore Ltd. Vs. State of Karnataka*⁶

¹ AIR 1954 Mad 291

² (1986) 3 SCC 552 (SC)

³ [1978] 41 STC 157

⁴ 2008 (230) ELT 22 (Bom.)

⁵ (2020) 3 SCC 354

⁶ (2008) 227 ELT 24 (SC)

- VII. *Raj Shipping Vs. State of Maharashtra*⁷
- VIII. *Larsen and Toubro Ltd. Vs. Union of India*⁸
- IX. *Commissioner of Sales Tax, Mumbai Vs. Pure Helium (India) Ltd.*⁹
- X. *Burmah Shell Oil Storage and Distributing Co. of India Ltd. Vs. Commercial Tax Officer*¹⁰
- XI. *Fairmacs Trading Company Vs. State of Andhra Pradesh*¹¹
- XII. *Decision of US Federal Supreme Court in United States Vs. State of California*¹²
- XIII. *Decision of the Canadian Supreme Court reported as Offshore Mineral Rights*¹³
- XIV. *Reg Vs. Keyn*¹⁴
- 19. Apart from these Judgments, Learned Senior Counsel also cited

extracts, from the following authoritative commentaries, as here under:-

- I. 'Law relating to waters' by Coulson and Forbes, chapter titled 'Of the Sea and Rights Therein' vide the 6th Edition of the book.
- II. Halsbury's Laws of England in the Chapter on "The Sea and the Seashore" in paragraph 31 in Volume 100 of the Fifth Edition.
- 20. These Judgments except the *Commissioner of Customs, Preventive (Mumbai) Vs. Noble Asset Co. Ltd* and *Aban Loyd Chiles Offshore Ltd. Vs. State of Karnataka*, are on the question of what would be territorial waters and whether the Union or the State would have the jurisdiction over such territorial waters.

⁷ (2016) 89 VST 460

⁸ [2011] 45 VST 361 (Guj)

⁹ (2012) 49 VST 12 (Bom.)

¹⁰ (1960) 11 STC 764

¹¹ (1975) 36 STC 260

¹² 332 US 19 (1947)

¹³ [1967] SCR 792

¹⁴ 1876 2 EX D 63, CCR

21. This Court does not have to go into the question of whether the territory of a State would extend to territorial waters also and whether the law enacted by a State Legislature would be applicable over such territorial waters. This is because, the contention of the petitioner is that incorporation of the goods, into the undersea pipeline, had taken place beyond the limit of the territorial waters.

22. The appropriate legislation, for a transaction beyond the limit of the territorial waters would be the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 [for short “the Act, 1976”]. This Act, 1976, which has been enacted by Parliament, defines territorial waters, continental shelf, exclusive economic zone and other maritime zones as the waters, shelf or zone. The sea to a distance of 12 nautical miles from the nearest point of the appropriate base line, would be the territorial waters; the zone adjacent to the territorial waters with a limit of 24 nautical miles from the base line would be the contiguous zone of India; the sea adjacent and beyond the territorial waters belt to a limit of 200 nautical miles from the base line would be treated as the exclusive economic zone of India. Another zone enumerated, in the Act, 1976, is the continental shelf. This continental shelf, would comprise of the sea belt and sub soil of the submarine areas which would be the natural prolongation of the land or a distance of 200 nautical miles from the base line, if such a natural prolongation is not available.

23. After enumerating these zones, the Act, 1976 stipulates, under Section 3, that the sovereignty of India would extend to the territorial waters; the Central Government would exercise the powers stipulated in Section-5, over the contiguous zone of India. Similarly, it is the Central Government which would exercise powers enumerated in Section-7 in relation to the exclusive economic zone and the powers enumerated in Section-6 over the continental shelf.

24. The petitioner contends the transactions, in question, took place beyond the territorial waters of India as the said transaction took place beyond 12 nautical miles from the shore. These transactions would fall either within ambit of the contiguous zone or the exclusive economic zone. In such circumstances, it would only be Parliament which would have the jurisdiction and power to levy tax, in relation to any sale of goods. However, such power to levy tax on sale of goods has been confined to the State Legislature, under Entry-54 of the Second list, in the VII Schedule to the Constitution. Thus, neither the State Legislature nor the Central Legislature would have power, to levy tax on the sale of goods made beyond the territorial waters of India. Needless to say, this Court is not going into the question of the impact of the insertion of Article 246-A, in the Constitution, and the introduction of the Goods & Services Tax Act, 2017, on this issue. The said question is left open.

25. For all the foresaid reasons, these Writ Petition Nos.6319 & 6321 of 2010 are disposed of setting aside the impugned assessment orders, dated 20.02.2010 and remanding the matters back to the 1st respondent or such

appropriate assessing authority, as may be determined, to give an opportunity to the petitioner to produce all the records and accounts in relation to the aforesaid works contract for the relevant period and to take up assessment proceedings on the said basis and in accordance with the observations of this Court, in this Order.

26. Writ Petition No.5089 of 2010 which had been filed against the garnishee order does not require any further orders as the orders of assessment themselves are set aside and this Writ Petition is closed accordingly. There shall be no order as to costs.

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

R RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

Date: 10.12.2025

BSM

HON'BLE SRI JUSTICE R RAGHUNANDAN RAO

AND

HON'BLE SRI JUSTICE T.C.D. SEKHAR

WRIT PETITION Nos.6319 & 6321 & 5089 of 2010

(per Hon'ble Sri Justice R.Raghunandan Rao)

10-12-2025

BSM