IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

****

WRIT PETITION Nos.26352, 26371 & 26377 of 2025

WRIT PETITION NO: 26352/2025

Between:

1. CHUKKAPALLI RAMAKRISHNA PRASAD, FORMER DIRECTOR, M/S. KUSALAVA BATTERIES PRIVATE LIMITED, RESIDING AT D. NO. 60-28-3, VASIREDDY SIVARAMAKRISHNAYYA STREET, GAYATRI NAGAR, VIJAYAWADA, ANDHRA PRADESH - 520 008.

...PETITIONER

AND

1. THE DEPUTY COMMERCIAL TAX OFFICER, GOVERNORPET CIRCLE D.NO 27-6-19, SAI SOUDHA BUILDING, 1ST AND 2ND FLOOR, SBI OPP. ALI BEIG STREET, GOVERNORPET, VIJAYAWADA, NTR DISTRICT, ANDHRA PRADESH - 520 002
2. STATE BANK OF INDIA LABBIPET BRANCH, REPRESENTED BY THE BANK MANAGER KUSALAVA BUILDING, ACHARYA RANGA NAGAR VIJAYAWADA, ANDHRA PRADESH - 520 010
3. THE COMMISSIONER OF STATE TAXES, D.NO 5-59, BANDAR ROAD, R K SPRING VALLEY APARTMENTS, RAJIV BHARGAV COLONY ROAD, EDUPUGALLU, VIJAYAWADA, ANDHRA PRADESH - 521 152
4. STATE OF ANDHRA PRADESH, THROUGH SECRETARY TO GOVERNMENT, COMMERCIAL TAXES (FAC), SECRETARIAT BUILDINGS VELAGAPUDI, AMARAVATI, GUNTUR ANDHRA PRADESH - 522 238.

...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 pleased to issue a Writ, Order, or direction particularly one in the nature of a Writ of Mandamus or any other appropriate writ (i) to declare as illegal and set aside the Notice dated 18.09.2025 under Section 29 of the APVAT Act 2005 issued by the Respondent No. 1 as being null and void, illegal, without jurisdiction, violative of the principles of natural justice and contrary to law (ii) to declare that the Petitioner is not liable to pay an amount of Rs. 23,37,027/- against the dues of M/s. Kusalava Batteries Private Limited as being illegal, arbitrary, and violative of Article 14 and Article 19(1)(g) of the Constitution of India and pass such other order or orders as the Hon'ble High Court may deem fit and proper in the circumstances of the case. and pass

IA NO: 1 OF 2025

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 pleased to order stay the recovery of demand of Rs. 23,37,027/- pursuant to the Impugned Notice dated 18.09.2025 issued by the Respondent No. 1 and pass

IA NO: 2 OF 2025

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 may be pleased to receive the additional facts and documents and the additional affidavit into the record which is to be read as part and parcel of the affidavit filed in support of the Writ Petition and pass such

Counsel for the Petitioner:

1. KARAN TALWAR

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX

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1. CHUKKAPALLI SIDDHARTH, FORMER DIRECTOR, M/S. KUSALAVA BATTERIES PRIVATE LIMITED, RESIDING AT D. NO. 60-28-3, VASIREDDY SIVARAMAKRISHNAYYA STREET, GAYATRI NAGAR, VIJAYAWADA, ANDHRA PRADESH - 520 008
2. KUSALAVA FINANCE LIMITED, REPRESENTED BY CHUKKAPALLI SIDDHARTH HAVING REGISTERED OFFICE AT 40-2-16, M.G. ROAD, LABBIPET, VIJAYAWADA, KRISHNA, ANDHRA PRADESH - 520 010.

...PETITIONER(S)

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1. THE DEPUTY COMMERCIAL TAX OFFICER, GOVERNORPET CIRCLE D.NO 27-6-19, SAI SOUDHA BUILDING, 1ST AND 2ND FLOOR, SBI 0PP. AN BEIG STREET, GOVERNORPET, VIJAYAWADA, NTR DISTRICT, ANDHRA PRADESH - 520 002
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4. STATE OF ANDHRA PRADESH, THROUGH SECRETARY TO GOVERNMENT, COMMERCIAL TAXES (FAC), SECRETARIAT BUILDINGS VELAGAPUDI, AMARAVATI, GUNTUR ANDHRA PRADESH - 522 238

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Counsel for the Petitioner(S):

1. KARAN TALWAR

Counsel for the Respondent(S):

1. SANTHI CHANDRA

WRIT PETITION NO: 26377/2025

Between:

1. CHUKKAPALLI CHAKRAVARTHY, FORMER DIRECTOR, M/S. KUSALAVA BATTERIES PRIVATE LIMITED, RESIDING AT H. NO. 40-15/2-10, BRINDAVAN COLONY, LABBIPET, VIJAYAWADA, ANDHRA PRADESH- 520 008.

...PETITIONER

AND

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1. KARAN TALWAR

Counsel for the Respondent(S):

1. SANTHI CHNDRA

Date of Judgment pronounced on: 08-12-2025

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

AND

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

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 the Lordship wishes to see the fair copy Of the Judgment? : Yes/No

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

AND

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

+ WRIT PETITION Nos.26352, 26371 & 26377 of 2025

% Dated: 08-12-2025

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Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX

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Counsel for the Respondent(S):

1. SANTHI CHANDRA

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Counsel for the Petitioner(S):

1. KARAN TALWAR

Counsel for the Respondent(S):

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<GIST :

>HEAD NOTE:

Cases referred:

APHC010509762025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3529]**
(Special Original Jurisdiction)

MONDAY, THE EIGHTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

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IA NO: 1 OF 2025

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 Pleased to order stay the recovery of demand of Rs. 23,37,027/- pursuant to the Impugned Notice dated 18.09.2025 issued by the Respondent No. 1 and pass

IA NO: 2 OF 2025

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 Pleased to receive the additional facts and documents and the additional affidavit into the record which is to be read as part and parcel of the affidavit filed in support of the Writ Petition and pass such

Counsel for the Petitioner:

1. KARAN TALWAR

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX

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

As the three Writ Petitions arise out of the same issue and relate to the same company in liquidation, they are being disposed of, by way of this Common Order.

2. Heard Sri Karan Talwar, learned counsel for the petitioners and the Learned Government Pleader for Commercial Tax, appearing for the respondents.

3. The petitioners, in these Writ Petitions, are directors of a private limited company called M/s. Kusalava Batteries Private Limited. This company has been liquidated under the provisions of the Insolvency & Bankruptcy Code, 2016, by virtue of the Orders of the National Company Law Tribunal, Amaravati Bench, in C.P(IB) No.546/9/HDB/2018. During the course of liquidation, the commercial tax authorities had approached the Liquidator, by way of an E-mail, dated 30.10.2019, seeking recovery of Rs.24,14,944/- out of the amounts received on account of the liquidation of the company. The liquidator is said to have rejected the said claim on the ground that the claim has not been filed in the prescribed format and within the prescribed limitation. The liquidator, in the course of liquidation, had also filed IA(IBC) No.62 of 2021, setting out all the facts, including the fact that the claim of the sales tax authorities had been rejected by the liquidator. The liquidator had also stated that certain show-cause notices had also been received for recovery of money and the same had not been accepted. In any event, the National Company

Law Tribunal, Amaravati Bench, disposed of this application, with permission being granted to the liquidator to dissolve the company.

4. The Deputy Assistant Commissioner (ST)-I, Krishnalanka Circle, Vijayawada, had issued a notice, dated 27.01.2021, under Section 24(5) of the Andhra Pradesh Value Added Tax Act, 2005 [for short “the AP VAT”], contending that a sum of Rs.24,14,944/- was due on account of the tax demands and called upon the petitioners herein, to clear the same within seven days from the date of receipt of the notice, failing which, action would be initiated for recovery. The petitioners had replied to the same by a letter, dated 05.02.2021. In this reply, the petitioners contended that the question of recovery under Section 24(5) of the AP VAT would arise only if the authorities could not recover the tax and a notice under Section 24(5) of the AP VAT Act, without exhausting all the avenues of recovery, was not permissible. Apart from this, the petitioners also contended that the directors of a private limited company cannot be required to make good the tax dues of the company unless the requirements of Section 24(5) of the AP VAT Act, namely inability to collect on account of gross negligence, misfeasance or breach of duty, are made out. No further action appears to have been taken by the authorities, after these objections were filed, till 18.09.2025. The 1st respondent, on 18.09.2025, attached the back accounts of the petitioners, by issuing a notice under Section 29 of the AP VAT Act, to the 2nd respondent, in which the petitioners are maintaining their bank account.

5. The petitioners being aggrieved by the said orders of attachment, have approached this Court, by way of the present set of Writ Petitions.

6. Sri Karan Talwar, learned counsel for the petitioners, essentially reiterated the aforesaid objections set out in their objection, dated 05.02.2021. He would contend that the tax authorities, having delayed filing the necessary claim applications, had shut themselves out of the liquidation process and the authorities cannot turn around and seek recovery from the petitioners. He would submit that the State cannot take advantage of its own mistakes and negligence and seek recovery from the petitioners. Apart from the above, the learned counsel for the petitioners would also contend that no steps can be initiated under Section 24(5) of the AP VAT Act unless and until a *prima facie* case, setting out the reasons which the authorities believe, makes out a case for invocation of Section 24(5) of the AP VAT.

7. The learned Government Pleader for Commercial Tax, appearing for the respondents, would contend that there is no need for any adjudication of any nature and it would be open to the authorities to recover money under Section 24(5) of the AP VAT Act, from any director of a private limited company, in liquidation, which has defaulted on payment of tax and the burden of demonstrating that such money cannot be recovered falls on the director of the company. He further submits that the language of the provision itself makes that clear.

8. Section 24 of the AP VAT Act reads as follows:-

> Section-24. Liability of partnership firms:
>
> (1)Where any firm is liable to pay any tax or other amount under the Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.
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> (2)Where any business carried on by a firm or a Hindu Undivided Family or an Association has been discontinued or dissolved, the authority prescribed shall make an assessment on the taxable turnover and determine the tax payable as if no such discontinuance or dissolution had taken place and all the provisions of the Act including provisions relating to levy of penalty or any other amount payable under any of the provisions of the Act shall apply, to such assessment.
>
> (3)Every person who was at the time of such discontinuance or dissolution, a partner of the firm, or a member of such Hindu Undivided Family or Association and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or any other amount payable, and all the provisions of the Act shall apply to any such assessment or levy of penalty or any other amount.
>
> (4)Where such discontinuance or dissolution takes place after any proceedings in respect of any year have commenced, the proceedings may be continued against the VAT dealer or TOT dealer referred to in sub-section (2) from the stage at which such proceedings stood at the time of such discontinuance or dissolution and all the provisions of the Act shall apply accordingly.
>
> (5)When any private company is wound up and any tax assessed on the company under the Act for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due, shall be jointly and severally liable for the payment of such tax, unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

9. The relevant provision, for the purposes, of this Writ Petition, is Section 24(5) of the AP VAT Act. Under this provision, unpaid taxes and other amounts, due under the AP VAT Act or the Central Sales Tax Act, 1956, can be recovered from any director of a private limited company, which goes into liquidation and has not paid its tax dues. However, this right to recover is subject to two conditions. Firstly, the authorities must be in a position where

they cannot recover any tax dues from the company. Secondly, the non-payment of tax by the company should be on account of gross negligence, misfeasance, or breach of duty on the part of the directors, in question, in relation to the affairs of the company under liquidation.

10. The first condition, is that the taxes due from the company cannot be recovered by the authorities, and all avenues of such recovery are closed. This condition does not have any qualification. This would mean that Section 24(5) of the AP VAT Act can be invoked by the authorities, as and when all ways of recovery of tax is shut out, either on account of non-availability of funds or assets against which such taxes can be recovered, or on account of any statutory bar, such as the bar under the Insolvency & Bankruptcy Code, 2016, which prohibits any claim to be made after the period of limitation is over. To the mind of this Court, the negligence or otherwise of the authorities, in recovering the taxes cannot fall outside the term “cannot be recovered”. In the circumstances, this said condition would be complied with when the authorities have made their efforts, negligently or otherwise, to recover taxes and such taxes cannot be recovered at all.

11. On the question of the second condition, the requirement appears to be that the directors would have to be called upon to pay the dues of the company in liquidation, by calling upon to demonstrate that non-payment of taxes was not on account of gross negligence, misfeasance, or breach of duty. However, this condition would have to be understood to mean that there is an initial responsibility on the tax authorities to indicate the nature of such

gross negligence, misfeasance, or breach of duty. It is only upon such an indication being given that the duty of demonstrating that there was no such gross negligence, misfeasance, or breach of duty on the part of the directors, would fall upon the directors of such a private limited company in liquidation.

12. We are fortified in this view by the Judgment of the High Court of Gujarat at Ahmedabad, in R/Special Civil Application Nos.5354 & 5355 of 2018, dated 27.08.2018. The view of the High Court of Gujarat at Ahmedabad, can be extracted from the following:-

> *"7. At the outset, we may notice that section 179 of the Act would enable the Revenue to recover the unpaid tax dues of a private company from its director, unless he proves that the non-recovery cannot be attributed to any gross negligent, misfeasance or breach of duty on his part in relation to the affairs of the company. Of course this requirement is cast in the negative and the burden is on the person who was a director of the company at the relevant time to establish the relevant facts. Nevertheless, it would be the onus of the Assessing Officer to draw the primary facts to the notice of the assessee on the basis of which, he proposes to invoke powers under section 179 of the Act. Essentially, this statutory provision provides for lifting of corporate vell and enable the Revenue to recover the unpaid tax dues of a private company from its directors, provided the requirements referred to in sub-section (1) of section 179 of the Act are satisfied. In case of Pravinbhai M. Kheni vs. Assistant Commissioner of Income Tax and ors reported in 353 ITR 585 2012-TIOL-1048-HC-AHM-IT in the context of the said provision, the Division Bench had observed as under:-*
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> *……..*
>
> *8. Reverting back to the facts of the case, we notice that in show-cause notice the Assessing Officer has not laid down sufficient foundation for Invoking section 179 of the Act leave alone broadly pointing out he has not even alleged that non-recovery was on account of gross negligent, misfeasance or breach of duty on part of the petitioner in relation to the affairs of the company. His final conclusions in the impugned order are therefore based on the material at his command which was never shared with the petitioner."*

13. The contention of the learned Government Pleader for Commercial Tax that no further notice is necessary under this provision is also belied by the fact that the Deputy Assistant Commissioner (ST)-I,

Krishnalanka Circle, Vijayawada, had in fact issued such a notice on 27.01.2021 itself. This notice was in line with the requirements of Section 24(5) of the AP VAT Act. However, this notice was not in full compliance of the said requirement as no indication has been given, in this notice, as to the nature of gross negligence, misfeasance, or breach of duty of the directors, that had resulted in non-recovery of the taxes.

14. For all the aforesaid reasons, the attachment of the bank accounts of the petitioners is clearly not in accordance with the requirements of Section 24(5) of the AP VAT Act and the said bank attachments are set aside. However, it shall not preclude the authorities from seeking recovery of the dues of the company, in liquidation, provided the requirements of Section 24(5) of the AP VAT Act are complied with and opportunity for filing their objections is given to the petitioners.

15. Accordingly, these Writ Petitions are allowed. There shall be no order as to costs.

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

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R. RAGHUNANDAN RAO, J.

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T.C.D. SEKHAR, J.

Dated: 08.12.2025
BSM

THE HONOURABLE SRI JUSTICE R. RAGHUNANDAN RAO

AND

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION Nos.26352, 26371 & 26377 of 2025

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

Date: 08.12.2025

Note:-

LR copy marked and transferred to LR Folder.

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