

APHC010071522023



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

[3529]

WEDNESDAY, THE FIFTEENTH DAY OF APRIL  
TWO THOUSAND AND TWENTY SIX

**PRESENT**

**THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO**

**THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR**

**WRIT PETITION NO: 4725/2023**

**Between:**

1. MYTRAH ENERGY INDIA PRIVATE LIMITED, REPRESENTED THROUGH ITS AUTHORIZED REPRESENTATIVE, SHRI KRISHNA RACHURI S/O. PRABHAKAR RACHURI AGED 43 YEARS, HAVING ITS REGISTERED OFFICE AT 8001, Q-CITY, NANAKRAMGUDA, GACHIBOWLI, HYDERABAD, TELANGANA - 500032 AND PRINCIPAL PLACE OF BUSINESS AT SY NO. 292/2, JUTUR VILLAGE, PATTIKONDA MANDAL, KURNOOL, ANDHRA PRADESH - 518380.

**...PETITIONER**

**AND**

1. UNION OF INDIA, THROUGH SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NEW DELHI - 110001.
2. DEPUTY COMMISSIONER STATE TAX, OFFICES OF THE JOINT COMMISSIONER (STATE TAX), KURNOOL SURVEY NO. 7/B, NEAR INDUS MONTESSORI SCHOOL, GOOTY ROAD, KURNOOL, ANDHRA PRADESH - 518002.
3. STATE OF ANDHRA PRADESH, THROUGH ITS PRINCIPAL SECRETARY REVENUE(CT-II) DEPARTMENT, SECRETARIAT, VELAGAPUDI, AMARAVATI, DISTRICT - GUNTUR, ANDHRA PRADESH.
4. GOODS AND SERVICES TAX COUNCIL, 5TH FLOOR, TOWER II,

JEEVAN BHARTI BUILDING, JANPATH ROAD, CONNAUGHT PLACE,  
NEW DELHI-110 001.

5. THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,  
NORTH BLOCK, DEPARTMENT OF REVENUE, MINISTRY OF  
FINANCE, GOVERNMENT OF INDIA, NEW DELHI - 110001.

**...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 a writ of Mandamus or any other order or direction to declare the impugned Explanation inserted vide Notification No.24/2018 - Central Tax (Rate) dated 31.12.2018 appended to Sl.No.234 of Notification No.1/2017 - Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST act and IGST act as being manifestly arbitrary and violative of Article 14, Article 19 1 g and Article 265 of Constitution of India, 1950. ii. A writ of Mandamus or any other order or direction to declare the impugned Services Explanation inserted vide Notification No.27/2018-Central Tax (Rate) dated 28.06.2017, and the corresponding notification issued under the APGST Act and IGST Act, as being manifestly arbitrary and violative of Article 14, Article 19(1)(g) and Article 264 of Constitution of India, 1950. iii. A writ of Mandamus or any other order or direction to declare Section 16(2)(c) of the CGST Act and the corresponding Section 16(2)(c) of the CGST Act and the corresponding section 16(2)(c) of the APGST Act, as being arbitrary and violative of Article 14 and Article 19(1)(g) of Constitution of India, 1950 since the same imposes an unreasonable condition which is impossible to be performed by the Petitioner. iv. iv. A writ of Mandamus or any other order or direction to declare the impugned Circular as being arbitrary and violative of Article 14 and Article 19(1)(g) of Constitution of India, 1950 since the same seeks to create substantive disabilities on a retrospective basis not contemplated under the CGST Act. v. In the alternative to prayer clause (i) supra., a writ of Mandamus or any other order or direction reading down the impugned Explanation inserted vide Notification No.24/2018 - Central Tax (Rate) dated 31.12.2018 appended to Sl.No.234 of Notification No.1/2017 - Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being not mandatory and to that extent allowing taxpayer to compute the value of supplies on actual basis. vi. In the alternative to prayer clause (ii) supra., a writ of Mandamus or any other order or direction reading down the impugned services Explanation inserted vide Notification No.27/2018-Central Tax (Rate) dated 31.12.2018

appended to Sl.No.38 of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act as being not mandatory and to that extent allowing taxpayer to compute the value of supplies on actual basis. vii. A writ of mandamus or any other order or direction to quash and set aside the impugned notice dated 19.12.2022, and the Impugned Order dated 11.07.2024 (that arises as a consequence to the impugned notice), issued to the Petitioner and quash the same as illegal, arbitrary, without jurisdiction and unconstitutional. viii. Costs of the petition ix. Any other order which this Honble Court may deem fit in the interest of justice, equity and good conscience. Prayer is amended as per the Court Order dt.24.09.2025 vide Orders passed in IA No.2 of 2025.

**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 grant interim relief in the form of a direction to the Respondent No. 2 refrain from adjudication of the impugned notice dated 19.12.2022 as also from initiating any precipitative action pursuant to the impugned notice dated 19.12.2022 or pass

**IA NO: 1 OF 2024**

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 extend interim orders dated 15 March 2023 in W.P No. 4725 of 2023, which was further extended by Order dated 04 October 2023 and list the W.P No. 4725 of 2023 for final hearing expeditiously 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 to permit the Petitioner to amend the Main Prayer clause: Old Prayer “/. A writ of Mandamus or any other order or direction to declare the impugned Explanation inserted vide Notification No. 24/2018 - Central Tax (Rate) dated 31.12.2018 appended to Sl. No. 234 of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being manifestly arbitrary and violative of Article 14, Article 19(1)(g) and Article 265 of Constitution of India, 1950; a. A writ of Mandamus or any other order or direction to declare the impugned Services Explanation inserted vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018 appended to SL No. 38 of Notification

No. 11/2017-Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being manifestly arbitrary and violative of Article 14, Article 19(1)(g) and Article 265 of Constitution of India, 1950; Hi. A writ of Mandamus or any other order or direction to declare Section 16(2)(c) of the CGST Act and the corresponding Section 16(2)(c) of the APGST Act, as being arbitrary and violative of Article 14 and Article 19(1)(g) of Constitution of India, 1950 since the same imposes an unreasonable condition which is impossible to be performed by the Petitioner; iv. A writ of Mandamus or any other order or direction to declare the impugned Circular as being arbitrary and violative of Article 14 and Article 19(1)(g) of Constitution of India, 1950 since the same seeks to create substantive disabilities on a retrospective basis not contemplated under the CGST Act; i/. In the alternative to prayer clause (i) supra., a writ of Mandamus or any other order or direction reading down the impugned Explanation inserted vide Notification No. 24/2018 - Central Tax (Rate) dated 31.12.2018 appended to Sl. No. 234 of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being not mandatory and to that extent allowing taxpayer to compute the value of supplies on actual basis; vi. In the alternative to prayer clause (ii) supra., a writ of Mandamus or any other order or direction reading down the impugned Services Explanation inserted vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018 appended to Sl. No. 38 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being not mandatory and to that extent allowing taxpayer to compute the value of supplies on actual basis; vii. A writ of Mandamus or any other order or direction to quash and set aside the impugned notice dated 19.12.2022 issued to the Petitioner being and quash the same as illegal, arbitrary, without jurisdiction and unconstitutional; via. Costs of the petition; ix. Any other order which this Hon'ble Court may deem fit in the interest of Justice, equity and good conscience.” to the new prayer which reads as follows: “/. A writ of Mandamus or any other order or direction to declare the impugned Explanation inserted vide Notification No. 24/2018 - Central Tax (Rate) dated 31.12.2018 appended to Sl. No. 234 of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being manifestly arbitrary and violative of Article 14, Article 19(1)(g) and Article 265 of Constitution of India, 1950; a. A writ of Mandamus or any other order or direction to declare the impugned Services Explanation inserted vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 appended to SL No. 38 of Notification

No. 11/2017-Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being manifestly arbitrary and violative of Article 14, Article 19(1)(g) and Article 265 of Constitution of India, 1950; i. A writ of Mandamus or any other order or direction to declare Section 16(2)(c) of the CGST Act and the corresponding Section 16(2)(c) of the APGST Act, as being arbitrary and violative of Article 14 and Article 19(1)(g) of Constitution of India, 1950 since the same imposes an unreasonable condition which is impossible to be performed by the Petitioner; iv. A writ of Mandamus or any other order or direction to declare the impugned Circular as being arbitrary and violative of Article 14 and Article 19(1)(g) of Constitution of India, 1950 since the same seeks to create substantive disabilities on a retrospective basis not contemplated under the CGST Act; V. In the alternative to prayer clause (i) supra., a writ of Mandamus or any other order or direction reading down the impugned Explanation inserted vide Notification No. 24/2018 - Central Tax (Rate) dated 31.12.2018 appended to Sl. No. 234 of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being not mandatory and to that extent allowing taxpayer to compute the value of supplies on actual basis; vi. In the alternative to prayer clause (ii) supra., a writ of Mandamus or any other order or direction reading down the impugned Services Explanation inserted vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018 appended to Sl. No. 38 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being not mandatory and to that extent allowing taxpayer to compute the value of supplies on actual basis; vii. A writ of Mandamus or any other order or direction to quash and set aside the impugned notice dated 19.12.2022, and the Impugned Order dated 11.07.2024 (that arises as a consequence to the impugned notice), issued to the Petitioner and quash the same as illegal, arbitrary, without jurisdiction and unconstitutional; via. Costs of the petition; ix. Any other order.

### **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 to amend the old prayer which reads as follows A writ of Mandamus or any other order or direction to declare the impugned Explanation inserted vide Notification No. 24/2018 - Central Tax (Rate) dated 31.12.2018 appended to Sl. No. 234 of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act

and IGST Act, as being manifestly arbitrary and violative of Article 14, Article 19(1)(g) and Article 265 of Constitution of India, 1950; 3 A writ of Mandamus or any other order or direction to declare the impugned Services Explanation inserted vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 appended to SL No. 38 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being manifestly arbitrary and violative of Article 14, Article 19(1)(g) and Article 265 of Constitution of India, 1950; Hi. A writ of Mandamus or any other order or direction to declare Section 16(2)(c) of the CGST Act and the corresponding Section 16(2)(c) of the APGST Act, as being arbitrary and violative of Article 14 and Article 19(1)(g) of Constitution of India, 1950 since the same imposes an unreasonable condition which is impossible to be performed by the Petitioner; iv. A writ of Mandamus or any other order or direction to declare the Impugned Circular as being arbitrary and violative of Article 14 and Article 19(1)(g) of Constitution of India, 1950 since the same seeks to create substantive disabilities on a retrospective basis not contemplated under the CGST Act; V. In the alternative to prayer clause (i) supra., a writ of Mandamus or any other order or direction reading down the impugned Explanation inserted vide Notification No. 24/2018 - Central Tax (Rate) dated 31.12.2018 appended to SI. No. 234 of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being not mandatory and to that extent allowing taxpayer to compute the value of supplies on actual basis; vi. In the alternative to prayer clause (ii) supra., a writ of Mandamus or any other order or direction reading down the impugned Services Explanation inserted vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018 appended to SI. No. 38 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being not mandatory and to that extent allowing taxpayer to compute the value of supplies on actual basis; vii. A writ of Mandamus or any other order or direction to quash and set aside the impugned notice dated 19.12.2022 issued to the Petitioner being and quash the same as illegal, arbitrary, without jurisdiction and unconstitutional; via. Costs of the petition; ix. Any other order which this Hon'ble Court may deem fit in the interest of justice, equity and good conscience. r' to this New prayer which reads as follows: i. A writ of Mandamus or any other order or direction to declare the impugned Explanation inserted vide Notification No. 24/2018 - Central Tax (Rate) dated 31.12.2018 appended to SI. No. 234 of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being manifestly arbitrary and

violative of Article 14, Article 19(1)(g) and Article 265 of Constitution of India, 1950; a. A writ of Mandamus or any other order or direction to declare the impugned Services Explanation inserted vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 appended to SL No. 38 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being manifestly arbitrary and violative of Article 14, Article 19(1)(g) and Article 265 of Constitution of India. 1950; Hi. A writ of Mandamus or any other order or direction to declare Section 16(2)(c) of the CGST Act and the corresponding Section 16(2)(c) of the APGST Act, as being arbitrary and violative of Article 14 and Article 19(1)(g) of Constitution of India. 1950 since the same imposes an unreasonable condition which is impossible to be performed by the Petitioner; iv. A writ of Mandamus or any other order or direction to declare the impugned Circular as being arbitrary and violative of Article 14 and Article 19(1)(g) of Constitution of India, 1950 since the same seeks to create substantive disabilities on a retrospective basis not contemplated under the COST Act; V. In the alternative to prayer clause (i) supra., a writ of Mandamus or any other order or direction reading down the impugned Explanation inserted vide Notification No. 24/2018 - Central Tax (Rate) dated 31.12.2018 appended to SI. No. 234 of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being not mandatory and to that extent allowing taxpayer to compute the value of supplies on actual basis; vi. In the alternative to prayer clause (ii) supra., a writ of Mandamus or any other order or direction reading down the impugned Services Explanation inserted vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018 appended to SI. No. 38 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, and the corresponding notifications issued under the APGST Act and IGST Act, as being not mandatory and to that extent allowing taxpayer to compute the value of supplies on actual basis; vii. A writ of Mandamus or any other order or direction to quash and set aside the impugned notice dated 19.12.2022, and the Impugned Order dated 11.07.2024 (that arises as a consequence to the impugned notice), issued to the Petitioner and quash the same as illegal, arbitrary, without jurisdiction and unconstitutional; via. Costs of the petition; ix. Any other order which this Hon'ble Court may deem fit in the interest of justice, equity and good conscience and pass

**IA NO: 3 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 amend the Writ Petition by adding additional Ground K to the writ petition affidavit and pass

**IA NO: 4 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 to amend the writ petition affidavit by adding Paras 48(a) to 48(d) to the writ petition and pass

**IA NO: 5 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 to receive the counter copies on record by allowing the leave petition in the above writ petition and pass

**Counsel for the Petitioner:**

- 1.SAI SUNDEEP MANCHIKALAPUDI

**Counsel for the Respondent(S):**

- 1.DEPUTY SOLICITOR GENERAL OF INDIA
- 2.SURESH KUMAR ROUTHU (SR SC FOR CBIC)
- 3.GP FOR COMMERCIAL TAX

**The Court made the following order:**

(per Hon'ble Sri Justice R. RaghunandanRao)

Heard Sri Avinash Desai, Sri Rishab Prasad learned counsel appearing for the petitioner, the learned Deputy Solicitor General of India, Sri Suresh Kumar Routhu and the learned Government Pleader for Commercial Taxes, appearing for the respondents.

2. The petitioner is in the business of manufacturing and installing Solar Panels and Solar Power Generating Systems. The 2<sup>nd</sup> respondent initiated proceedings for assessing turnover of the petitioner for the period from March, 2018 to April, 2019. At that stage, the petitioner had approached this Court, by way of this Writ Petition, contending that the 2<sup>nd</sup> respondent lacked jurisdiction. During the pendency of the Writ Petition, the 2<sup>nd</sup> respondent passed an order of assessment, dated 11.07.2024. The petitioner had thereupon amended the prayer in the Writ Petition to include a challenge to the order, dated 11.07.2024.

3. The 2<sup>nd</sup> respondent sought to tax the petitioner, at the rate of 5% for 70% of the turnover and at the rate of 18% for 30% of the turnover, based upon the explanation added to Notification No.24/18 with effect from 01.01.2019. The petitioner sought to dispute the proposed levy on the ground that the supply of goods and services made by the petitioner in the process of selling Solar Panels or Installing Solar Power Generating Systems has always been composite supply of services and goods, as defined under Section 2(30)

of the GST Act, and that such supply should be taxed, in accordance with the provisions of Section 8 of the GST Act.

4. The 2<sup>nd</sup> respondent took the stand that even in case of such composite supplies, the explanation added to Sl. No.234 of Notification No.1 of 2017, introduced a legal fiction, whereby the value of the supply was to be deemed as supply of goods to the extent of 70% of the consideration and supply of services for the remaining 30% of the consideration.

5. The GST Act does not provide for any rate of tax on the supply of goods or services. The said rate of tax is stipulated under various notifications, issued under the GST Act. One of the first notifications issued for fixing rate of tax, on supply of goods, has been Notification No.1/2017-Central Tax (Rate), dated 28.06.2017. In this notification, Sl.No.234 provided for a rate of tax on non-conventional power systems. The said entry reads as follows:

234. Following renewable energy devices & parts for their manufacture

- (a) Bio-gas plant
- (b) Solar power based devices
- (c) Solar power generating system
- (d) Wind mills, Wind Operated Electricity Generator (WOEG)
- (e) Waste to energy plants/devices
- (f) Solar lantern/solar lamp
- (9) Ocean waves/tidal waves energy devices/plants

25(h) Photo voltaic cells, whether or not assembled in modules or made up into panels]

321 [Explanation: If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 (G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.]"

6. In the case of works contracts, resulting in formation of an immovable property, the rate of tax was fixed at 18%.

7. Various manufacturers and suppliers of solar equipment, including solar power generating systems, contended that the supplies made by them of solar power generating systems or any of the goods mentioned in Sl.No.234, would have to be treated as 'supply of movable property', and that the rate of tax payable by such suppliers would be 5% on the supply of services and goods in view of Section 8 of the GST Act, which stipulates that the rate of tax in the case of a composite supply of services and goods, would have to be the rate applicable to the majority of the turnover.

8. This Court, by an order, dated 10.01.2025, in W.P.No.20096 of 2020 in the case of **Sterling & Wilson Private Limited Bs. Joint Commissioner & Ors.,<sup>1</sup> M/s. Siemens Gamesa Renewable Power Private Limited vs. The Assistant Commissioner ST Kavali Circle, Nellore**

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<sup>1</sup> 2025 SCC Online AP 63 : (2025) 140 GSTR 383

**Division and Ors, Kavali Circle, Nellore dated 03.12.2025, 2025:APHC:56076 and M/s. Arka Green Power Private Limited vs. The State of Andhra Pradesh, dated 24.12.2025, 2025:APHC:59797** had held that the installation of a solar power generating system, would be a composite supply of movable goods and services. On the basis of such finding, this Court had held that the rate of tax applicable for such supplies would be 5%, as stipulated in Sl.No.234 of Notification No.1 of 2017.

9. In a parallel development, a large number of suppliers of goods mentioned in Sl.No.234, has approached the State for relief, inasmuch as the tax component was placing a burden on the suppliers. The GST Council, after considering the said representation had inserted an explanation to Sl.No.234, by way of Notification No.24 of 2018. The said explanation reads as follows:

"Explanation: If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service."

10. In the present case, the petitioner contended that, the supplies made by the petitioner should be treated as a composite supply which should be taxed at 5%. While considering this objection, the 2<sup>nd</sup> respondent took the view that the Explanation to Sl.No.234 had created a legal fiction, on account of which even composite supplies should be taxed at the rate of 5% for 70% of

the value of supply and 18% for 30% of the value of supply. This view was contested by the petitioner on two grounds. Firstly, no such legal fiction arises inasmuch as the explanation was only added to aid the suppliers of the goods mentioned in Sl.No.234, and the same cannot be treated as a mandatory provision which would straitjacket suppliers into paying a tax which was not payable. The petitioner had also raised a second objection, that the said explanation even if applicable, would be applicable only from 01.01.2019 and the major part of the turnover of the petitioner relates to a period prior to 01.01.2019.

11. The 2<sup>nd</sup> respondent rejected both these contentions and held that a subsequent Circular No.163/19/2021-GST, dated 06.10.2021, had clarified that the explanation can be extended prior to 01.01.2019.

12. A reading of Circular No. 163/19/2021-GST dated 06.10.2021 would show that the said circular only extended the applicability of the explanation at the option of the tax payer, and not as an absolute retrospective application of the explanation, which was brought into effect from 01.01.2019.

13. It is clear from the order of assessment, that the 2<sup>nd</sup> respondent has not gone into the question of whether the supplies made by the petitioner had resulted in immovable property coming into existence, or whether the supply was for the installation of movable goods due to which the provisions of Section 8 read with the rate of tax stipulated under Sl.No.234 of Notification

No.1 of 2017, would be applicable. It is also clear that the 2<sup>nd</sup> respondent has not gone into the question as to the turnover of the petitioner which had occurred before 01.01.2019. As already held above, the view of the 2<sup>nd</sup> respondent, that the Circular No. 163/19/2021-GST, dated 06.10.2021 would give retrospective effect to the explanation is incorrect.

14. For all the aforesaid reasons, it would be appropriate that the present order of assessment, dated 11.07.2024, is set aside and the matter is remanded back to the 2<sup>nd</sup> respondent for passing a fresh order of assessment, after going in to the question of whether the supplies made by the petitioner are works contracts resulting in immovable property, or whether supplies of goods and services in relation to movable property. The 2<sup>nd</sup> respondent would also have to go into the question of whether the explanation, added in Sl.No.234 of Notification No.1 of 2017, is a mandatory deeming fiction which results in higher taxation on the petitioner. Needless to say, the question of whether the explanation, added by Notification No.24/2018, is ultra vires Section 8 of the GST Act is left open for future consideration.

15. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs.

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

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**R. RAGHUNANDAN RAO, J**

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**T.C.D. SEKHAR, J**

RJS

**THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**  
**&**  
**THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR**

**WRIT PETITION No: 4725 of 2023**

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

**15.04.2026**

**RJS**