CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CENTRAL SALES TAX APPEAL NO. 01 OF 2011

(Arising order out of date 29.04.2010 passed by the Sales Tax Tribunal, Andhra Pradesh, Hyderabad in T.A. No. 340/04 & 611/04)

M/s. Kedia Vanaspathi Ltd. **.....Appellant**
Malakpet, Hyderabad,
rep. by its Managing Director,
Mr. Umesh Kedia

VERSUS

1. **State of Andhra Pradesh**
(Now in State of Telangana)
rep. by its
Prl. Secretary to Revenue Department,
Government of Andhra Pradesh,
Secretariat, Hyderabad

2. **State of Karnataka**
rep. by its
Prl. Secretary to Revenue Department,
Government of Karnataka,
Secretariat, Bangalore

3. **State of Maharashtra**
rep. by its
Prl. Secretary to Revenue Department,
Government of Maharastra,
Secretariat, Mumbai

4. **State of Tamil Nadu** **.....Respondents**
rep. by its
Prl. Secretary to Revenue Department,
Government of Tamil Nadu,
Secretariat, Chennai

WITH

CENTRAL SALES TAX APPEAL NO. 02 OF 2011

(Arising order out of date 29.04.2010 passed by the Sales Tax Tribunal, Andhra Pradesh, Hyderabad in T.A. No. 340/04 & 611/04)

M/s. Kedia Vanaspathi Ltd. **.....Appellant**
Malakpet, Hyderabad,
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Government of Maharastra,
Secretariat, Mumbai

4. State of Tamil Nadu **.....Respondents**
rep. by its
Prl. Secretary to Revenue Department,
Government of Tamil Nadu,
Secretariat, Chennai

APPEARANCE:

Shri Tej Prakash Toshniwal, Advocate for the Appellant.

Shri Manu Sanan, Shri Dhananjay Yadav, Shri Akshat Jha and Ms. Devina Sehgal, Advocates for the State of Telangana

Ms. Rama Ahluwalia, Advocate for the State of Maharashtra

Shri Ankit Swami and Ms. Pritha Srikumar Iyer, Advocates for the State of Karnataka

Shri C. Kranthi Kumar and Shri Misha Rohatgi, Advocates for the State of Tamil Nadu.

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 19.12.2025
Date of Decision: 12.05.2026

FINAL ORDER NO's. 50864-50865/2026

JUSTICE DILIP GUPTA:

CST Appeal No. 1 of 2011 has been filed by M/s. Kedia Vanaspathi Ltd.[1] to assail the order dated 29.04.2010 passed by the Sales Tax Appellate Tribunal, Andhra Pradesh[2] dismissing the appeal filed by the appellant against the order passed by the Deputy Commissioner on 29.03.2004 in respect of the Assessment Year 2000-2001.

2. **CST Appeal No. 2 of 2011** has been filed by the appellant to assail the order dated 29.04.2010 passed by the Sales Tax Appellate Tribunal

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1. **the appellant**
2. **the Sales Tax Appellate Tribunal**

dismissing the appeal filed by the appellant against the order dated 29.03.2004 passed by the Deputy Commissioner imposing penalty upon the appellant.

3. The appellant is involved in the business of manufacturing and selling of refined oils and vanaspathi and is operating two units. Unit I is situated at Hyderabad and Unit II is situated at Mahaboobnagar District.

4. For the Assessment Year 2000-01, the appellant disclosed gross turnover of Rs. 85,63,28,607/- and claimed exemption on a turnover of Rs. 84,62,10,492/-. However, when the business premises of the appellant were inspected by the Andhra Pradesh State Authorities on 05.07.2000, it was noticed that the appellant had camouflaged inter-State sales as consignment sales and consignment despatches to agents outside the erstwhile State of Andhra Pradesh. Consequently, to examine the claim of exemption relating to consignment sales, inspection was undertaken by the Joint Commissioner and various teams were deputed to other States to verify the genuineness of the transactions. The enquiry revealed that most of the transactions were bogus and meant for non-existing dealers. In certain cases, even the dealers denied having any business transactions with the appellant.

5. A show cause notice dated 14.02.2002 was issued to the appellant alongwith enquiry reports as exhibits. The appellant filed a reply on 11.03.2002. A revised show cause notice was served upon the appellant on 27.01.2004 disallowing certain consignment turnovers based on further enquiries made by the department.

6. The Deputy Commissioner passed an order dated 12.03.2004 holding that the dealers, as specified by the appellant, were non-existent and in some cases the F Forms produced by them were bogus and fabricated. The Deputy Commissioner, by an order dated 12.03.2004, imposed the following

total tax liability of Rs. 2,33,58,647/-, on a net turnover of Rs. 23,48,74,501/-, in the following manner:

Unit I	Rs. 1,26,20,613/-
Unit II	Rs. 1,07,38,034/-
Total	Rs. 2,33,58,647/-

7. According to the department, as the appellant had submitted false declarations and details on a turnover of Rs. 21,37,53,657/-, a show cause notice dated 16.03.2004 was issued to the appellant proposing penalty. The appellant filed a reply and thereafter an order dated 29.03.2004 was passed imposing a penalty of Rs. 6,43,72,314/- on the appellant under section 9(2) of the Central Sales Tax Act, 1956[3] read with section 7A(2)(i) of the Andhra Pradesh General Sales Tax, 1957[4].

8. The appellant filed two appeals, namely, T.A. No. 340 of 2004 and T.A. No. 611 of 2004, against the assessment order dated 12.03.2004 and the penalty order dated 29.03.2004 before the Sales Tax Appellate Tribunal.

9. A common order dated 29.04.2010 was passed by the Sales Tax Appellate Tribunal confirming the findings of the Deputy Commissioner and the two appeals filed by the appellant were dismissed.

10. The Sales Tax Appellate Tribunal first examined whether the appellant had discharged the burden of proof as required under section 6A of the CST Act and whether the appellant had submitted documents as required under rule 14(3) of the Central Sales Tax (Andhra Pradesh) Rules, 1957[5] to establish that the relationship between the appellant and the dealers in other States was that of a principal and an agent. After examining the provisions of section 6A of the CST Act and rule 14(3) the 1957 AP Rules and the

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3. the CST Act
4. the 1957 AP Sales Tax Act
5. the 1957 AP Rules

documents furnished by the appellant, the Sales Tax Appellate Tribunal noticed that the appellant had not submitted the following documents:

(i) Copies of bills issued by agents to purchasers in other States, corresponding to the requirement stipulated under rule 14(3)(d) of the 1957 AP Rules;

(ii) Attested extract of the ledger maintained by the agent for the principals i.e., the appellant, corresponding to requirement under rule 14(3)(f) of the 1957 AP Rules;

(iii) Copy of authorization sent to the non-resident agent for the sale of goods consigned corresponding to requirement under rule 14(3)(h) of the 1957 Rules; and

(iv) Copy of any written contract or any other document in between the appellant and their agent showing their relationship to be of principal and agent corresponding to requirement under rule 14(3)(c) of the 1957 AP Rules.

11. The Sales Tax Appellate Tribunal also noted that it was mandatory on the part of the appellant to have submitted these documents as provided for under rule 14(3) of the 1957 AP Rules. The Sales Tax Appellate Tribunal also noted that though some documents may have been filed by the appellant, but they were not sufficient to prove the claim of the appellant that the goods were transferred to other States otherwise then by way of sales. The relevant finding of the Sales Tax Appellate Tribunal on this issue is reproduced below:

> "36. ****** **In order to prove this, Rule 14(3) amongst other requirements makes them responsible for filing copies of bills issued by the agents to purchasers in other States, the attested extract of the ledger maintained by their agent in other States and copies of authorization of consignment to non-resident agent for sale of goods consigned.** The provisions under the Rule are

> carefully laid down in order to ensure that no sale of goods takes place without payment of either the Central Sales Tax or the State Sales Tax. **The appellant in the present case has failed to prove the payment of sales tax in the other State and yet wants to claim exemption from Central Sales Tax. More over, the documentary evidence to be submitted by him has been clearly specified in the Rule and the burden is cast upon the appellant to submit the same on his own and this burden has not been discharged by the appellant either before the assessing authority or before us.**"
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> **(emphasis supplied)**

12. The Sales Tax Appellate Tribunal then examined the contention raised by the appellant that opportunity to cross-examine the witnesses should have been provided to the appellant and as that was not done, the principles of natural justice had been violated. This contention of the appellant was rejected for the reason that burden had been cast upon the appellant under section 6A of the CST Act read with rule 14(3) of the 1957 AP Rules to prove that transfer of goods had taken place otherwise then by way of sale, but this burden was not discharged by the appellant. The Sales Tax Appellate Tribunal, in such circumstances, held that even if the investigation carried out by the sales tax authorities was ignored, the appellant had failed to satisfy that the transfer of goods to other States was not by way of sales but as consignment sales to it agents outside the State of Andhra Pradesh. The relevant portion of the order passed by the Sales Tax Appellate Tribunal on this issue is reproduced below:

> "37. ***** **We are of the opinion that since the burden had been cast on the appellant to prove his case as per provisions of Sec.6A of the CST Act, 1956 read with Rule 14(3) of the CST AP Rules it would not be wrong if we ignore the investigations of the sales tax authorities completely, considering them to be unnecessary.**

> If the duty cast upon the appellant for submission of various documents as required under Rule 14(3) had been fully discharged by the appellant and despite that the Department had stated that the appellant's agents in other States are bogus or non-existent, it would have been a different matter. **In other words, even without placing any reliance or on giving any importance to the details of investigation carried out by the department outside the State of Andhra Pradesh, we are convinced that the appellant has failed to prove that the transactions in which he has claimed exemption from Central Sales Tax are indeed agency transactions and that the dealers in other States to whom the appellant has consigned his goods are indeed genuinely appointed agents of his. This could have been established by the appellant only if documentary evidence as envisaged under sub-clauses (d)(f) and (h) of clause (3) of Rule 14 of CST AP Rules, 1957 had been submitted by him before us.**"
>
> **(emphasis supplied)**

13. The Sales Tax Appellate Tribunal then examined whether the turnover of Rs. 81,75,103/- was added twice by the Deputy Commissioner. This contention of the appellant was rejected by the Sales Tax Appellate Tribunal in the following manner:

> "38. ***** **According to them, this requires rectification. However, since these figures are taken from their own Audit Report simply asserting that an error had occurred while computerizing the Audit Report is not enough. The appellant ought to have produced convincing documentary evidence to prove this point.** No such thing was done by the appellant. In fact, after the Chartered Accountant has signed Audit Report it is not upto the appellant to claim rectification of the turnover entered in the same without any documentary proof."
>
> **(emphasis supplied)**

14. The Sales Tax Appellate Tribunal then examined the contention raised by the appellant that the Deputy Commissioner failed to deduct the sales tax returns claimed by the appellant. This contention was rejected in the following manner:

> "39. ***** However, on going through the order of the Deputy Commissioner, we find that no documentary evidence for sales returns was submitted by the appellant before the Deputy Commissioner. No such evidence has even now been submitted by them before use. Under the circumstances, their plea cannot be accepted."

15. The contention advanced on behalf of the appellant relating to levy of higher rate of tax and that the Deputy Commissioner ignored "C" Forms submitted by the appellant, the following findings were recorded by the Sales Tax Appellate Tribunal:

> "40. **The appellant has also submitted that the Deputy Commissioner has levied a higher rate of tax sales tax on a turnover of Rs. 5,19,888/- @ 10% which is quite arbitrary. According to them, they have submitted 'C' Forms, but the Deputy Commissioner has ignored the same. However, no copies of 'C' Forms were submitted before us by the appellant and it was also not explained to us by the appellant at the time of hearing as to which turnover they are referring to. Therefore, this plea of the appellant can also not be accepted.** The appellant has further submitted that the Deputy Commissioner failed to grant set off of tax paid on the purchases of raw material as contemplated under the Act when she converted the consignment agency transactions as interstate sales. We have to state that no calculation along with documentary evidence to this effect has been submitted by the appellant before us. Therefore, we are unable to grant any relief on this point as well. Further, the appellant submitted that the credit of entire payment of tax deposited by them has not been granted. For this point also the appellant has failed to submit any calculation

> or any proof before us. Therefore, we are unable to give any order in favour of the appellant on this point also."
>
> **(emphasis supplied)**

16. The levy of penalty upon the appellant was also justified by the Sales Tax Appellate Tribunal in the following manner:

> "41. With respect of penalty levied on the appellant U/s. 9(2) and 9(2A) of the CST Act, 1956 read with Sec. 7A(2)(i) of the APGST Act, 1957 the appellant's contention is that since there is no specific levy of penalty provided for the CST Act, 1956 the levy of penalty in their case is bad in law. **It is to be stated that Sec. 9(2) and 9(2)(A) of the CST Act, 1956 have empowered the State Sales Tax Authorities to levy penalty U/s. 7(2)(1) of the APGST Act, 1957. Accordingly, this point is also not found in favour of the appellant.** In view of this and in view of the fact that the appeal of the appellant with respect to assessment of the tax deserves to be dismissed as discussed by us above, we do not see any reason to interfere with the order of penalty passed by the Deputy Commissioner."
>
> **(emphasis supplied)**

17. The contention of the appellant that the Deputy Commissioner did not have the jurisdiction to take up assessment was also rejected by the Sales Tax Appellate Tribunal. The relevant finding is reproduced below:

> "42. Lastly, we must also deal with the objection raised by the appellant with respect to the jurisdictional aspect in view of the authorization given by the Commissioner of Commercial Tax U/s. 4A to Deputy Commissioners for taking up assessments vide Circular CCT's Ref.No.A1(3)/1007/98, dt. 3.5.1999, it is clear that the Deputy Commissioner in passing the assessment order as well as the penalty order did not act without jurisdiction. The Section 4A does not contemplate issuance of specific orders in each case as such empowerment of Deputy Commissioner for taking up

> assessment by way of general order in this case is justified. In view of the discussions above, both the appeals of the appellant with respect to the assessment as well as the penalty are hereby dismissed."

18. These two appeals have been filed by the appellant against the said order dated 29.04.2010 passed by the Sales Tax Appellate Tribunal.

19. Shri Tej Prakash Toshniwal, learned counsel for the appellant made the following submissions:

(i) The assessing authority failed to note the distinction between section 3(a) and 3(b) of the CST Act as the stocks transferred to the consignment agents for effecting sale in the respective States falls under section 3(b) of the CST Act and not under section 3(a) of the CST Act. In support of this contention, learned counsel placed reliance upon the judgment of the Supreme Court in **Balbhagas Hulaschand and another** vs. **State of Orissa**[6];

(ii) The Deputy Commissioner was not the assessing authority under the 1957 AP Sales Tax Act and, therefore, the assessment order dated 12.03.2004 passed by the Deputy Commissioner is without jurisdiction and void ab initio. In this connection, reliance has been placed on the decision of the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad in **M/s. Raghunath & Company, Adilabad** vs. **The State of Andhra Pradesh**[7];

(iii) The assessment proceedings for the Assessment Year 2000-01 should have been completed within a period of one year from the end of assessment year as contemplated under section 14(1) of the 1957 AP Sales Tax Act but the

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6. 37 STC 207
7. Tribunal Appeal No. 1481/2001 decided on 15.04.2002

assessment was made on 12.03.2004 after the limitation expired on 31.03.2002;

(iv) Neither the Deputy Commissioner nor the Sales Tax Appellate Tribunal returned the defective "F" Forms to the appellant for rectification;

(v) The Deputy Commissioner committed an error in double addition of the same transaction relating to turnover of Rs. 81,75,103/-; and

(vi) The imposition of penalty upon the appellant is not justified.

20. Shri Manu Sanan, learned counsel appearing for the State of Telangana (respondent no. 1) assisted by Shri Dhananjay Yadav, Shri Akshat Jha and Ms. Devina Sehgal, however, supported the impugned order passed by the Sales Tax Appellate Tribunal and made the following submissions:

(i) The contention of the appellant that the assessment order dated 12.03.2004 passed by the Deputy Commissioner is without jurisdiction is not correct. In the present case, the limitation would be covered by section 14(3)(ii) of the 1957 AP Sales Tax Act and would be six years since returns were submitted subsequent to the date of inspection;

(ii) The Deputy Commissioner was the assessing authority in view of the provisions of section 4A of the 1957 AP Sales Tax Act;

(iii) The contention of the appellant that transfers were by way of consignment sales to agents is not correct as the appellant failed to discharge the burden cast under section 6A of the CST Act and had not submitted the relevant documents as required under rule 14(3) of the 1957 AP Rules;

(iv) The contention of the appellant that there is an error in double addition of the same transaction relating to turnover of Rs. 81,75,103/- is not correct; and

(v) The findings recorded by the Sales Tax Appellate Tribunal are findings of facts and are based on evidence on record and there is no infirmity in the said findings.

21. Ms. Rama Ahluwalia, learned counsel for the State of Maharashtra, Shri Ankit Swami, learned counsel for the State of Karnataka and Shri C. Kranthi Kumar, learned counsel for the State of Tamil Nadu also supported the impugned order and submitted that it does not call for any interference in this appeal.

22. The submissions advanced by the learned counsel for the appellant and the learned counsel for the respondent States have been considered.

23. The first issue that arises for consideration in this appeal is whether the Deputy Commissioner of Commercial Taxes was the competent assessment officer for the Assessment Year 2000-01.

24. Section 4 of the AP Sales Tax Act deals with appointment of Commissioner of Commercial Taxes, Additional Commissioner of Commercial Taxes, Joint Commissioner of Commercial Taxes, Appellate Deputy Commissioners of Commercial Taxes, Deputy Commissioners of Commercial Taxes, Assistant Commissioners of Commercial Taxes, Commercial Tax Officers and Deputy Commercial Tax Officers. The relevant portion of section 4 of the AP Sales Tax Act is reproduced below:

> "**4. Appointment of Commissioner of Commercial Taxes, Additional Commissioner of Commercial Taxes, Joint Commissioner of Commercial Taxes, Appellate Deputy Commissioners of Commercial Taxes, Deputy Commissioners of Commercial Taxes Assistant Commissioners of Commercial Taxes, Commercial Tax Officers and Deputy Commercial Tax Officers.**
>
> The State Government may appoint a Commissioner of Commercial Taxes and as many Additional Commissioners of Commercial Taxes, Joint Commissioners of Commercial Taxes, Appellate Deputy Commissioners of Commercial taxes, Deputy Commissioners of Commercial Taxes, Assistant Commissioners of Commercial Taxes, Commercial Tax officers and Deputy Commercial Tax Officers as they think fit, for the purpose of performing the functions respectively conferred on them by or under this Act. Such officers shall perform the said functions within such area or areas or the whole of the State of Andhra Pradesh as the State Government or any authority or officer empowered by them in this behalf may assign to them."

25. G.O.M. No. 1091 dated 15.06.1957 was issued prescribing the following assessing authorities:

> "(i) Assistant Commercial Tax Officer, (ii) Deputy Commercial Tax Officer, (iii) Assistant Commissioner (Enforcement), Joint Commissioner (Enforcement) and (iv) The Deputy Commissioner (CT) is NOT an assessing authority under the APGST Act, 1957"

26. It is seen that the Deputy Commissioner of Commercial Taxes was not an assessing authority.

27. However, section 4A of the 1957 AP Sales Tax Act deals with powers of subordinate officers to be exercised by higher authorities and is reproduced below:

> "**4A. Powers of subordinate officers to be exercised by higher authorities.**
>
> The powers conferred by this Act and the rules made thereunder on any of the officers appointed under Section 4 of this Act may also be exercised by any of the officers superior to the officers so empowered, subject to any instructions issued by the Commissioner of Commercial Taxes in this regard."

28. A perusal of section 4A of the 1957 AP Sales Tax Act leaves no manner of doubt that the power conferred by the said Act on any of the officers appointed under section 4 may also be exercised by any of the officers superior to the officers so empowered, subject to any instructions issued by the Commissioner of Commercial Taxes in this regard.

29. Thus, even if the initial power to assess was with officers subordinate to the Deputy Commissioner, section 4A empowered the Deputy Commissioner of Commercial Taxes to exercise powers of the officers so empowered subject to any instructions issued by the Commissioner in this regard.

30. The contention of the learned counsel for the appellant is that the Deputy Commissioner of Commercial Taxes could have exercised power only if the Commissioner of Commercial Taxes had issued such instructions.

31. This contention of the learned counsel for the appellant cannot be accepted. A plain reading of section 4A of the 1957 AP Sales Tax Act shows that the powers conferred on any of the officers under section 4 of the Act could also be exercised by any officer superior to the officers so empowered. This power, however, would be subject to any instructions issued by the Commissioner of Commercial Taxes in this regard. This does not mean that the Commissioner of Commercial Taxes has to issue a positive order conferring power of any of the officers specified in section 4 of the Act to any

superior officer. Superior officers can exercise the powers of the officers enumerated in section 4 of the 1957 AP Sales Tax Act by virtue of the provisions of section 4A of the 1957 AP Sales Tax Act.

32. It needs to be noted that section 4A of the 1957 AP Sales Tax Act was inserted by Act No. 9 of 1999 on 06.04.1999. Soon thereafter the Circular dated 03.05.1999 was issued. It also dealt with the provisions of section 4A of the 1957 AP Sales Tax Act. It provides that the new provisions enable the higher authorities to take over such powers and exercise them with proper discretion in the overall interest of revenue as well as the general public. It also provides that the Deputy Commissioner should ensure that powers, wherever necessary, are exercised at such appropriate level as they deem fit. The object of the amendment is to deal effectively with all matters concerning safeguarding of revenue and grievances of taxpayers. The relevant portion of the Circular dated 03.05.1999 is reproduced below:

> "CCT's Ref. No. A(3)/1007/98/ dt. 3.5.1999
>
> **CIRCULAR**
>
> Sub: Amendment to APGST Act – Implementation – Instructions – Regarding.
> Ref: Act No. 9 of 1999 dt. 6.4.1999
>
> *****
>
> **2. Power of lower authorities can also be exercised by higher authorities**
>
> **An amendment is made by introducing a new Section 4-A to APGST Act which enables higher authorities to exercise the powers of lower authorities.** In the present system contain powers like Registration, Assessment, Recovery of Arrears, Attachment of properly etc. are vested only particular levels of officers. This is some times giving scope for helplessness on the part of higher authorities in taking timely action and in protecting the revenues of the State wherever there is laxity on the part of lower authorities. **The new provision**

> **enables the higher authorities to take over such powers and exercise them with proper discretion in the overall interests of revenue as well as the general public.**
>
> **The DCs are requested to ensure that powers wherever necessary are exercised at such appropriate level as they deem fit.** The objective of the above change is to deal effectively with all matters concerning safeguarding of revenue and grievances of the tax payer. However, by no means, this should result is concentration of authority or pushing up the normal level of decision making which will be only counter productive and cause delay."
>
> **(emphasis supplied)**

33. The Deputy Commissioner of Commercial Taxes, therefore, clearly had the power to act as the assessing officer for Assessment Year 2000-01 by virtue of section 4A of the 1957 AP Sales Tax Act.

34. The second issue that needs to be decided is whether the assessment order passed by the Deputy Commissioner of Commercial Taxes is beyond the period of limitation.

35. To appreciate this issue, it would be relevant to reproduce the relevant portion of section 14 of the 1957 AP Sales Tax Act. Sub-section (1) of section 14 and sub-section (3) of section 14 of the 1957 AP Sales Tax Act are reproduced below:

> "**14. Assessment of tax.**
>
> (1) If the assessing authority is satisfied that any return submitted under section 13 is correct and complete, he shall assess the amount of tax payable by the dealer on the basis thereof, but if the return appears to him to be incorrect or incomplete he shall, after giving the dealer a reasonable opportunity of proving the correctness and completeness of the return submitted by him and making such inquiry as he deems necessary, assess

to the best of his judgment, the amount of tax due from the dealer. **An assessment under this section shall be made only within a period of three years from the expiry of the year to which the assessment relates.**

Provided that notwithstanding the amendment made to sub section (1) by the Andhra Pradesh General Sales Tax (Third Amendment) Act, 1995 **the period for assessment under this sub section shall continue to be four years for the years preceding to the year 1992-93.**

Provided further that the period for assessments under this sub-section shall be two years for the assessments relating to the year 1999-2000 and one year for the assessments relating to 2000-2001 and 2001-2002."

*****

(3) **Where any dealer liable to tax under this Act –**

(i) fails to submit return before the date prescribed in that behalf, or

(ii) **produces the accounts, registers and other documents after inspection or**

(iii) submits a return subsequent to the date of inspection, **the assessing authority may, at any time within a period of six years from the expiry of the year to which assessment relates, after issuing a notice** to the dealer and after such enquiry as he considers necessary, assess to the best of his judgment, the amount of tax due from the dealer on his turnover for that year, and may direct the dealer to pay in addition to the tax so assessed penalty as specified in sub section (8).

(emphasis supplied)

36. Section 14 of the 1957 AP Sales Tax Act deals with assessment of tax. It provides that an assessment under this section shall be made within three years from the expiry of the year to which made the assessment. For the Assessment Year 2000-01, the proviso stipulates that the period shall be one year from the expiry of the year to which the assessment relates. It is no doubt true that in the instant case the assessment was made after the expiry of a period of one year but sub-section (3) of section 14 provides that where any dealer liable to tax under the Act produces the accounts, registers and other documents after inspection, the assessing authority may, at any time within the period of six years from the expiry of the year to which the assessment relates assess to the best of his judgment, the amount of tax due from the dealer on his turnover for that year.

37. In the instant case, the appellant produced the accounts registers and other documents after inspection and, therefore, the limitation would be six years from the expiry of 2000-01.

38. It is, therefore, not possible to accept the contention of the learned counsel for the appellant that the assessment was made after the expiry of the period of limitation contemplated under section 14 of the 1957 AP Sales Tax Act.

39. The third issue that arises for consideration is whether the goods were transferred by the appellant on consignment basis to its agents or the transfers were inter-State sales.

40. The contention of the appellant is that transfers were made by way of consignment sales to agents outside the State of Andhra Pradesh and, therefore, would not be inter-State sales under section 3 of the CST Act.

41. To appreciate this issue, it would be appropriate to examine sections 3, 6 and 6A of the CST Act and the relevant portions of these sections are reproduced below:

> "**3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.-** A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-
>
> (a) occasions the movement of goods from one State to another; or
>
> (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.
>
> *****
>
> **6. Liability to tax on inter-State sales.–**
>
> **(1) Subject to the other provisions contained in this Act, every dealer shall**, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, **be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified**:
>
> Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5, is a sale in the course of export of those goods out of the territory of India.
>
> **6A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale. –** (1) **Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement**

> **of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority**, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, **a declaration, duly filled and signed by the principal officer of the other place of business**, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods **and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale**.
>
> (2) **If the assessing authority is satisfied** after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section(1) are true, **he may**, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, **make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale**.
>
> *****"
>
> **(emphasis supplied)**

42. The provisions of sections 3 and 6A of the CST Act were examined at length by the Supreme Court in **Hyderabad Engineering Industries** vs. **State of Andhra Pradesh**[8] and the relevant portions of the judgment are reproduced below:

> "20. **For a sale to be in the course of inter-State trade or commerce under Section 3(a), two conditions must be fulfilled. There must be sale of goods. Such sale should occasion the movement of the goods from one State to another. A sale would be deemed to have occasioned the movement of the goods from one State to another**

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8. (2011) 4 SCC 705

within the meaning of clause (a) of Section 3 of the Act when the movement of those goods is the result of a covenant or incidence of the contract of sale, even though the property in the goods passes in either State. With a view to find out whether a particular transaction is an inter-State sale or not, it is essential to see whether there was movement of the goods from one State to another as a result of prior contract of sale or purchase.

21. Section 6-A of the Central Act provides that if any dealer claims that he is not liable to pay tax under the Central Act in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal and not by reason of sale, then the burden of proving that the movement of goods was so occasioned shall be on the dealer. It also provides the mode of discharge of that burden of proof.

22. **What follows from a conjoint reading of these provisions is that every dealer is liable to pay tax under the Central Act on the sale of goods effected by him in the course of inter-State trade or commerce during the year of assessment.** Where the department takes advantage of the presumption under Section 3(a) and/or to show that there has been a sale or purchase of goods in the course of inter-State trade or commerce and if the assessee disputes that there has been a sale or purchase of goods in the course of inter-State trade or commerce, then **the assessee can rebut the presumption by filing declaration in form 'F' under Section 6A of the Central Act to prove that the movement of goods was occasioned not by reason of sale but otherwise than by way of sale. When the department does not take advantage of the presumption under Section 3(a) of the Central Act, but shows a positive case of inter-State sale in the course of inter-State trade or commerce to make it liable to tax under Section 6, the declaration in Form 'F' under section 6A would be of no avail.**"

(emphasis supplied)

43. The Sales Tax Appellate Tribunal has placed reliance upon section 6A of the CST Act and has held that the appellant failed to discharge the burden cast upon it to show that the movement of goods from one State to another was occasioned by reason of transfer of such goods to its agents and not by reason of sale. In this connection, the Sales Tax Appellate Tribunal has referred to rule 14(3) of the 1957 AP Rules and recorded a categorical finding that the documents required under rule 14(3) of the 1957 AP Rules were not produced by the appellant either before the assessing authority or before the Sales Tax Appellate Tribunal.

44. Learned counsel for the appellant could not controvert the said findings recorded by the Sales Tax Appellate Tribunal as the appellant had not submitted that these documents.

45. In absence of the relevant documents having being submitted by the appellant to substantiate that the transfer was not by way of sale, it has to be taken that inter-State sale had taken place.

46. It is, therefore, not possible to accept the contention of the learned counsel for the appellant that the transfer of goods from the State of Andhra Pradesh to other States was by way of consignment sales to the agents. The Sales Tax Appellate Tribunal committed no illegality in holding that the transfer of goods by the appellant from the State of Andhra Pradesh to other States was inter-State sales.

47. Learned counsel for the appellant also submitted that the appellant was not granted an opportunity to cross-examine the persons who had conducted searches in other States to verify the genuineness of the transactions.

48. This submission has been dealt with by the Sales Tax Appellate Tribunal. It has observed that even if the inspection reports were ignored,

the appellant had not discharged the burden contemplated under section 6A of the CST Act by filing the documents required under rule 14(3) of the 1957 AP Rules. The Sales Tax Appellate Tribunal concluded that since the appellant had not filed the documents, the transactions would have to be taken as inter-State sales.

49. The contention of learned counsel for the appellant whether the turnover of Rs. 81,75,103/- was added twice has been considered and rejected by the Sales Tax Appellate Tribunal for the reason that no documentary evidence had been submitted by the appellant to prove this point.

50. The contention advanced by the learned counsel for the appellant that sale returns were submitted by the appellant before the Deputy Commissioner was also rejected as even before the Sales Tax Appellate Tribunal the appellant could substantiate that the sales returns were submitted.

51. The contention advanced by learned counsel for the appellant that penalty could not have been imposed upon the appellant for the reason that levy of penalty is not provided for in the CST Act cannot be accepted. Sub-section (2A) of section 9 of the CST Act provides that in matters of penalties, the general sales tax law of each State shall apply in relation to the assessment as if the tax under the CST Act were a tax under such sales tax law. Section 7A(2)(i) of the 1957 AP Sales Tax Act provides for levy of penalty. Penalty was, therefore, correctly imposed upon the appellant. It needs to be noted that the appeal filed by the appellant before the Sales Tax Appellate Tribunal against the assessment order was dismissed.

52. In such circumstances, the inevitable conclusion that follows is that there is no merit in these two appeals. CST Appeal No. 01 of 2011 and CST

Appeal No. 02 of 2011 will, therefore, have to be dismissed and are dismissed.

(Order pronounced on **12.05.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Shreya