IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

<u>THE HON'BLE SRI JUSTICE P.SAM KOSHY</u>

<u>AND</u>

<u>THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA</u>

<u>W.P.Nos.4689, 4690, 4691, 4692, 4693 and 4694 of 2008</u>

DATE: 22.07.2026

Between:
M/s.ITC Limited

…Petitioner

AND

Assistant Commissioner of Commercial Taxes,
(LTU & INT), Commercial Tax Department,
Warangal and Others.

…Respondents

<u>COMMON ORDER</u>: *(per Hon'ble Sri Justice P.Sam Koshy)*

Heard Mr. M.V.J.K. Kumar, learned counsel for the petitioner; and Mr. Chaitanya Kiran, learned Assistant Government Pleader representing Mr. Swaroop Oorilla, learned Special Government Pleader for State Tax for the respondents.

2. Since the issue raised in the instant batch of Writ Petitions being same and the arguments advanced on behalf of the parties also being the same, we proceed to decide them by this Common Order.

3. For convenience, the facts in Writ Petition No.4689 of 2008 are discussed hereunder.

4. The instant Writ Petition under Article 226 of the Constitution of India has been filed by the petitioner seeking for an appropriate direction holding the action of respondent No.1 in levying tax on the inter-state stock transfer of goods *vide* Order No.TIN:28410177044, dated 20.02.2008, being exigible to tax under Section 3(a) of the Central Sales Tax Act, 1956 (for short the 'CST Act, 1956') and the demand raised being arbitrary and contrary to law and without jurisdiction and also in violation of principles of natural justice.

5. *Vide* the impugned order, the respondent No.1 demanded a tax liability amounting to Rs.11,59,38,020/- on the inter-state stock transfers of goods from the petitioner.

6. The facts of the case are that the petitioner is a registered dealer in the State of Andhra Pradesh under the Andhra Pradesh Value

Added Tax Act, 2005 (for short 'APVAT Act, 2005') as well as the CST Act, 1956 and deals in various products such as cigarettes, atta, biscuits, confectionaries, paper and paperboards, greeting cards, stationeries etc. The products of the petitioner are standard goods and they are not manufactured as per any specifications received from the customers and are manufactured at various parts of the country. After the goods are manufactured, these products are transferred to the warehouses located at various parts of the country for effective distribution. From the warehouses, sales are made to the customers of the petitioner. Till the time, these goods are apportioned, identified and sold to the customers from the warehouses, the title to these goods remains with the petitioner and after these goods are received at the recipient warehouses, they are properly accounted for in their records and 'Form F' prescribed under the CST Act, 1956 issued from the recipient States and furnished to the sales tax authorities in the dispatching States. As and when sales are effected from the said warehouses, local sales tax / value added tax is paid by the petitioner in respect of such sales.

7. Respondent No.1 issued a show-cause notice dated 27.11.2007 seeking to determine the turnover of the petitioner for the month of April, 2007. In the notice it was alleged that the statement of accounts were audited by respondent No.1 wherein it was found that the stock transfer of goods from the State of Andhra Pradesh to places outside the State of Andhra Pradesh were in pursuance of the purchase orders placed by the wholesale dealers of the petitioner and the movement of goods from the State of Andhra Pradesh was an incident of contract and the very beginning of movement of goods from the State of Andhra Pradesh all the way until delivery, was interstate movement. The said notice also proposed, among other things, to levy central sales tax on certain export transactions. The said show-cause notice did not make reference to any documents and no evidence was annexed to the said show cause notice. The petitioner filed its reply dated 22.12.2007. In the reply, the petitioner requested the respondent No.1 to furnish the details of the 'audit' conducted by respondent No.1, the findings of such audit and also documents based on which the issued show cause notice was issued. The petitioner also explained that the stock transfer of goods from the State of Andhra Pradesh was not in pursuance of any contract of sale and further pointed out that ‘Form F’ in respect of these stock transfers were received from the recipient States and have been furnished to the respondent No.1.

8. Thereafter, respondent No.1 fixed a personal hearing in the matter on 07.01.2008 which was attended by the counsel for the petitioner and the representatives of the petitioner. During the hearing, the counsel for the petitioner pointed out and repeated the request made in the reply that the petitioner was not furnished with the details of the audit and its finding based on which the said show cause notice was issued and the documents based on which the respondent No.1 reached to the conclusion that the stock transfers made by the petitioner were incidents of sales. The petitioner requested that the hearing be adjourned to some other date so that the petitioner could obtain the documents based on which the show cause notice came to be issued and can make the submissions.

9. In the hearing and in the written submissions made by the petitioner on 25.01.2008, it was contended that movement of goods from the State of Andhra Pradesh to the warehouses of the petitioner in the other States were not in pursuance of sales transactions. The petitioner has duly furnished Form F evidencing the fact that these movements are only stock transfers, these goods are received and properly accounted for in the recipient States in the stock maintained by the petitioner and as and when sales were effected from the said warehouses local taxes were paid to the respective State Governments.

10. Though respondent No.1 had not made any attempt to examine each and every transaction, in order to demonstrate that the assumptions based on which the respondent No.1 had issued the show cause notice are factually incorrect, the petitioner voluntarily explained the factual position. The petitioner made references to several stock transfers from the State of Andhra Pradesh to the warehouses outside the State of Andhra Pradesh and proved to the respondent No.1 by documentary evidence that such stock transfers are not in pursuance of any contract of sale. The petitioner also furnished the stock position of the goods involved in the said stock transfers at the recipient warehouse at the beginning of the month; at the time of receipt of these goods as stock transfer and the subsequent stock position including the subsequent sales to demonstrate that the movement of goods to the warehouses happen on a replenishment basis and without any reference to the purchase orders and sales are effected on the basis of 'first-in-first-out' basis. The petitioner filed copies of the stock position at the recipient warehouse at various dates, the stock transfer advices and copies of the invoices under which sales were made to various customers from the recipient warehouses and demonstrated that the movement of goods from the State of Andhra Pradesh to warehouses outside the State of Andhra Pradesh were not in pursuance of any sale transactions.

11. It is this demand of commercial tax liability issued by respondent No.1 which is under challenge in the instant Writ Petition.

12. Learned counsel for the petitioner firstly argued on the factual aspect of the transaction made by the petitioner, stating that the stock transfers made by the petitioner from the State of Andhra Pradesh to warehouses outside the State owned by the petitioner were properly accounted for by way of Form F prescribed under the CST Act, 1956 and have been issued from the recipient States', which was blatantly disregarded and ignored by respondent No.1, passing an order of assessment without producing any document of 'audit' conducted by respondent No.1 even after repeated requests being made by the petitioner.

13. Learned counsel for the petitioner secondly placed reliance on the below listed decisions to solidify his stance of the transaction being ‘stock-transfers’ and not ‘sale’;

a) **Ashok Leyland Limited vs. The State of Tamil Nadu**[1], wherein the Hon'ble Supreme Court has held that after production of Form F, any other enquiry initiated is beyond the jurisdiction of the Revenue.

b) **State of Andhra Pradesh vs. Thungabhadra Industries Limited**[2], wherein it was held that where irrespective of outstanding indents the factories of the assessee within the State of Andhra Pradesh kept dispatching goods to various depots outside the State in truck-loads every few days; the movements of goods from the factory to the depot cannot be said to be in pursuance of any contract of sale and such cases are not interstate sales and no central sales tax was leviable.

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[1](2004) 3 SCC 1
[2](1992) 86 STC 235 (A.P)

c) **State of Tamil Nadu vs. Cement Distributors (P) Ltd**.[3] wherein it was held that in the absence of any categorical finding that the elements of 'sale' are present in any of the stock transferred transactions, the transactions in question are 'not sales' and no central sales tax can be levied in respect of such transactions.

14. On the contrary, the sole argument of the learned Assistant Government Pleader was that based on the statements given by the wholesale dealers of different states who placed orders with the petitioner confirming the 'placing of purchase orders' with the petitioner, the statements submitted expressly state that the 'placing of purchase orders' satisfy the statutory requirement under Section 3(a) of the CST Act, 1956 wherein the movement of goods occasioned between one state to another shall be deemed to be a sale or purchase of goods in the course of interstate trade or commerce. The relevant provision relied upon by the learned Assistant Government Pleader is reproduced below for ready reference:

*"**3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce***

[3](1975) 4 SCC 30

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"

15. Having heard the contentions put forth on either side and on perusal of records, the question of law which arises for consideration is whether the action of respondent No.1 in demanding commercial tax liability for the transactions made by the petitioner under Section 3(a) of the CST Act, 1956 is illegal or not.

16. Upon a close examination at the statements made by the wholesale dealers of the petitioner, we are of the considered view that, the 'purchase orders' by the wholesale dealers were placed / made to the petitioner's branch at Visakhapatnam i.e. M/s. I.T.C. Ltd. Thereafter, the petitioner would dispatch the goods / stocks of the said 'purchase orders' from M/s. I.T.C. Ltd., Bhubaneswar Branch to the wholesale dealers' place of business / warehouse. The payments of this very transaction was made well in advance to the petitioner's branch at Visakhapatnam, which statutorily satisfied the requirement of Section 3(a) of the CST Act, 1956. In addition to this, if in the event the wholesale dealers' received any expired goods in the said 'purchase orders', they would intimate the petitioner's branch at

Visakhapatnam, who would then send their officials to verify and destroy the expired goods in their presence and provide a ‘credit note’ to the extent of the value of the expired goods.

17. We are unable to accede to the submission of the learned counsel for the petitioner that mere production of Form F forecloses further enquiry by the assessing authority. The decision of the Hon’ble Supreme Court in **Ashok Leyland Limited** (supra) indeed holds that the assessing authority cannot brush aside a duly furnished Form F, but it equally does not prevent the assessing authority to examine whether the declaration reflects the true nature of the transaction where material on record — such as the statements of the wholesale dealers in the case on hand discloses that the movement was, in substance, occasioned by a pre-existing sale. Form F raises a presumption in favour of the dealer, but it does not erect an irrebuttable bar. Therefore, the contention of the petitioner that the transfer of the stock from the State of Andhra Pradesh to other States under the guise of Form F of the CST Act, 1956 is in fact a ‘sale’ of goods.

18. Upon lifting of the veil of the transaction it is *ex-facie* evident that the petitioner has been effecting 'sale' of goods from its various warehouses across the country to different States and masking them under the guise of 'transfer of stock' to evade payment of sales and commercial tax. Hence, the demand raised by respondent No.1 is legal and rightly assessed based on the transactions effected by the petitioner.

19. For all the reasons aforesaid, we find no infirmity or illegality, in the view taken by respondent No.1 that the transactions in question constitute sales occasioning the movement of goods from the State of Andhra Pradesh to other States within the meaning of Section 3(a) of the CST Act, 1956, and are therefore exigible to tax thereunder. The stock transfers effected under cover of Form F were, upon a lifting of the veil, found to be sales in substance. Hence, the question of law raised is answered against the petitioner and in favour of the Revenue. The demand raised by respondent No.1 cannot be said to be arbitrary, unjustified, or without the authority of law.

20. In the result, Writ Petition No.4689 of 2008 stands dismissed. As a consequence, the other Writ Petition i.e. Writ Petition Nos.4690, 4691, 4692, 4693 and 4694 of 2008 also stand dismissed. The order impugned in these writ petitions are also upheld.

21. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

P. SAM KOSHY, J

NARSING RAO NANDIKONDA, J

Date: 22.07.2026
GSD