IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA

WRIT PETITION Nos.5729, 5733 of 2009;

WRIT PETITION Nos.5590, 5598, 13463, 13466 of 2013;

WRIT PETITION Nos.22916, 22918 of 2015;

WRIT PETITION Nos.6958, 12763, 17497, 23941 of 2016;

WRIT PETITION Nos.15672 of 2017;

WRIT PETITION Nos.16015, 24736, 37931, 42903 of 2018;

WRIT PETITION Nos.7503 of 2020

AND

WRIT PETITION Nos.10198 and 20127 of 2021

DATE: 24.08.2026

WRIT PETITION No.12763 of 2016

Between:
M/s.Tata Consultancy Services.

…Petitioner

AND

The Asst. Commissioner (CT) VMU-1,
Hyderabad (Rural) Division, Hyderabad and 5 Others.

…Respondents

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

Heard Mr. V. Lakshmikumaran assisted by Mr. Narendra Dave, Mr. Chanda Sumanth and Ms. Anushka Rastogi, representing M/s. Lakshmikumaran & Sridharan for the Petitioner; Mr. Swaroop Oorilla, learned Special Government Pleader for State Tax for respondent Nos.1 to 4 in Writ Petition Nos.5729 of 2013, and Mr. A. Rama Krishna Reddy, learned counsel for respondent Nos.5 and 6 in Writ Petition Nos.5729 of 2013.

2. Since the issue involved in the instant Writ Petitions is one and the same and the parties also being the same, they are heard together and are decided by this Common Order.

3. For convenience, the facts in Writ Petition No.12763 of 2016 are discussed hereunder.

4. The present Writ Petition under Article 226 of the Constitution of India has been filed by the petitioner challenging the legality and the validity of the Assessment Order A.O.No.11436, dated 18.03.2016, read with Revised Assessment Order A.O.No.12530, dated 22.03.2016, passed by the respondent no.1 levying VAT under the Telangana Value Added Tax Act, 2005 (for short 'TGVAT Act, 2005’) of Rs.52,39,44,119/- on the service turnover of Rs.11,50,52,48,700/- for the assessment years 2010-11 to 2012-13 on the consideration received towards provision of various services like Business Process Outsourcing Services, Information Technology Software Services, Digital Signature Certification services, Maintenance and support services, rendered by the petitioner herein, on which ‘Service Tax’ is paid at rates as applicable during the relevant period under various taxable service categories. The petitioner also challenged the demand as without jurisdiction, violative of Articles 14 and 19(1)(g) and also 265 of the Constitution of India and the impugned order having been served on him on 22.03.2016.

5. *Vide* the impugned order, the respondent No.1 has demanded a tax liability amounting to Rs.52,39,44,119/- on the turnover of the petitioner of Rs.11,50,52,48,700/- @ 4% or 5% as applicable during the relevant period for the assessment years from 2010-11 to 2012-13.

6. The facts of the case are that the petitioner is an Information Technology company, *inter alia*, engaged in the business of software development and provision of various services in the nature of

Business Process Outsourcing (‘BPO’), issue of Digital Signature Certificate (‘DSC’), data migration, training, software support etc. The petitioner is also a licensed certifying authority authorised to issue legally valid Digital Certificates as per the Indian Information Technology Act, 2000. The petitioner entered into agreements with the customers who require Custom made / customized software. In case of development of custom-made software, the petitioner’s consulting engineers develop the software from scratch as per the requirements of the customers. In case of customised software, the petitioner’s engineers develop codes for customisation or enhancement of the software owned by the customer. Generally, the following activities are involved in development of custom made / customized software:

a) Holding discussions with customer / client to understand requirements.

b) Conducting ‘Gap Analysis’ and preparing ‘system requirement specification (SRS) document.

c) Holding discussions with customer / client to finalize the document.

d) Designing and developing the customized software.

e) Providing implementation support from the software system.

f) Conducting acceptance testing for the customized software.

g) Providing training to users in respect of customized software.

h) Providing warranty support in respect of customized software.

7. In pursuance of the authorisation dated 02.11.2015, issued by the Deputy Commissioner (CT), Hyderabad Rural Division, Hyderabad, to take up assessment, respondent No.1 issued notice of assessment VAT 305A, dated 04.11.2015, proposing to levy VAT of Rs.52,55,06,080/- on the service turnover of Rs.11, 50,52,48,700/- @ 4% or 5% as applicable during the relevant period. Thereafter which, the respondent No.1 passed a revised Assessment Order dated 22.03.2016 taking into consideration the adjustment of input tax credit of Rs.11,06,480/- for the period March, 2010 and demanding VAT of Rs.52,39,44,119 for the assessment years 2010-11 to 2012-13. The assessment order dated 18.03.2016 and the revised assessment order dated 22.03.2016 were served on the petitioner on 22.03.2016, on the following allegations:

a) That the petitioner has collected an amount of Rs.1150,52,48,700/- towards consultancy charges from their customers at different stages of developing the software and claimed exemption without furnishing any evidence to show that the turnover does not represent sale of software;

b) That software in any form (customized or otherwise) is considered as goods as per Entry 2 of the IV schedule of the TGVAT Act, 2005;

c) That even in case of maintenance, the actual service delivered is development of software programme and the transaction is sale of software and not ‘consultancy’ or ‘maintenance’.

8. Learned senior counsel for the petitioner submitted that in the entire contract there is no clause to suggest that the petitioner has delivered customised software on media. The above services do not involve any sale of either customised or standard software. That these are mere services and the petitioner discharged service tax @ 12.36% or 10.30% as applicable during the relevant period in dispute on this transaction under taxable category of ‘Support Services of Business or Commerce’ in terms of Section 65(104c) under Chapter V of Finance Act, 1994. It is submitted that the revenue is shared between the petitioner and its customers at a predetermined ratio in terms of revenue generated.

9. Learned Senior Counsel for the petitioner further submitted that the petitioner entered into agreements with the customers who require custom made / customized software. In case of development of custom-made software, the petitioner's consulting engineers develop the software from scratch as per the requirements of the customers. In case of customised software, the petitioner's engineers develop codes for customisation or enhancement of the software owned by the customer. The maintenance and technical support are extended to the customers in respect of already deployed software on the customers systems which is being used by the customers. The scope of work in case of maintenance involves a variety of activities like support services to customer to ensure the system is up and running, product support, bug fixing, procedural questions, recovery and back up information, general consultancy on problems reported, customer helpdesk, minor enhancements to suit the specific requirements. All these cases do not involve sale of software, whether on media or otherwise. The scope of work includes the maintenance services provided through:

a) Telephone assistance;

b) Commencement of diagnostic assistance through remote access to software;

c) Error Correction through Error Correction Procedure; and

d) On-site services as may be appropriate.

10. Learned Senior Counsel for the petitioner also contended on the issue of issuance of Digital Signature Certificates is purely a service and hence, no VAT is paid on the same. The Invoice clearly states Class 3 Digital Certificate issued - 11 Nos., Class 2 Digital Certificates issued - 248 Nos. and New Class 3 Certificates - 9 Nos. and that it is clearly evident that the transaction of issuance of digital certificate is only a service which does not involve any sale.

11. *Au Contraire*, learned Special Government Pleader for State Tax argued and backed the VAT amount demand of the Department on the following grounds:

1. That the software and the media cannot be split up. What the buyer purchases and pays for is not the disc or the CD. In the case of books or music or films the buyer is purchasing the intellectual property and not the media i.e. the paper or cassette or disc or CD.

2. That the difference in the transactions related to non-customized software or customized software is only one that non-customized software transactions is made off the shelf and anyone willing to pay for it has access to the same. The customized software, on the other hand, is made for a particular customer and is sold to the same customer. This does not make it any less in terms of being ‘goods’ than the non-customized software.

3. That the customized software has all the attributes of branded software which are necessary to make it goods in the same sense as non-customized software is goods.

4. That the Digital Signature Certificate service is a electronic key with embedded software to check the details of certificate holder.

5. That the intellectual property when it is put on a media becomes goods.

12. Having heard the contentions put forth on either side and on perusal of records, the questions that arise for consideration is that whether or not VAT by the respondent no.1 can be levied on the following:

i) Custom made software in which the intellectual property from inception vests with the client and which is developed by remotely connecting to customers system and the software is delivered electronically or through CD media?

ii) On issuance of Digital Signature Services?

13. At the outset, the terms of the contract do not indicate sale of any software and makes it very clear that the agreement is a service contract. Therefore, the agreement between the petitioner and its clients is for development of software and not for transfer of any goods or title in software. The parties to the agreement have expressly agreed that all products, software, its maintenance, associated copyright and other intellectual property rights which emerge out of the work done by the petitioner under the agreement shall be the sole and exclusive property of the customers. Thus, the petitioner does not own any property which can be said to be transferred to customers for consideration and in the absence of the element of “transfer” there cannot be any sales tax.

14. Upon a thorough perusal of the agreement signed between the petitioner and its customers / clients, it is evident that the petitioner along with M/s. Tata Teleservices Ltd. provides for rendition of services to M/s. Tata Teleservices Ltd. under which the client has outsourced functions of its IT department to the petitioner. The services provided by petitioner under this contract are utilized by the client for generation and printing of monthly customer bills, activation and deactivation of connections and generation of various MIS reports. Under this contract the hardware, standard and customized software are owned by the client and maintained by the petitioner for support of uninterrupted services to the client. The hardware and software are always under the effective control and possession of the client. The relevant portions of the agreement between M/s. Tata Teleservices Ltd., M/s.Tata Teleservices Ltd. (Maharashtra) and Tata Consultancy Services Limited is produced below for ready reference:

> *"THIS AGREEMENT made and entered into at New Delhi this the 13 day of September, Two Thousand and Five*
>
> *BY AND BETWEEN*
>
> *TATA TELESERVICES LIMITED, a Company incorporated under the Companies Act, 1956, having its Registered Office at 10th Floor, Jeevan Bharati, 124, Connaught Circus, New Delhi 110 001 and Its Corporate Office at Paville House, Veer Savarkar Marg. Prabhadevi, Mumbai 400 025 (hereinafter individually referred to as "TTSL"*

which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns);

TATA TELESERVICES (MAHARASHTRA) LIMITED, a Company incorporated under the Companies Act 1956, having Its Registered Office at Ispat House, B. G. Kher Marg, Worli, Mumbai 400 018 (hereinafter individually referred to as "TTML" which expression shall mean and include unless repugnant to the context its successors and assigns);

(TTSL and TTML hereinafter collectively referred to as the "Customer" as deemed hereunder, of One Part

AND

TATA CONSULTANCY SERVICES LIMITED, a Company Incorporated under the Companies Act, 1956, and having its Corporate Office at 11th Floor, Air India Bullding, Nariman Point, Mumbal 400 021 (hereinafter referred to as "the Contractor" or "TCSL" which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) of the Other Part; (Hereinafter both the Contractor and the Customer shall collectively be referred to as 'Parties' and individually as 'Party').

WHEREAS

A. The Customer is in the business of providing telecommunicationsservice and other value-added services pursuant to the licenses granted by Department of Telecommunication (DoT), Government of India, to provide Unified Access telecommunication service in the telecom circles of Andhra Pradesh, TamilNadu, Chennai, Karnataka, Gujarat, Delhi, Haryana, Punjab, Kerala, UP (East) UP. (West), Himachal Pradesh, Bihar, Orissa, Rajasthan, Kolkata, West Bengal and Madhya Pradesh (TTSL Circles) and Mumbai and Maharashtra, which includes Goa (TTML Circles);

B. The Customer with a view to improve its focus on its core business and to optimize its Information Systems and Information Technology (IT) investments has decided to appoint the Contractor as its strategic IT partner for providing end to end IT services and solutions as contemplated herein and accordingly the Customer has fully explained to the Contractor its requirements for end to end outsourcing services to enable the Customer to provide the telecommunication service in its respective circles in accordance with the terms and conditions of the licenses granted to the Customer.

AGREEMENT TO SET FORTH THE TERMS AND CONDITIONS AS HEREUNDER

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED, CONFIRMED, RECORDED AND DECLARED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. DEFINITIONS:

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"Deliverables" shall mean and include Services and all other items to be supplied by the Contractor to the Customer under this Contract and more fully set forth in Attachment 1 (IT Oursourcing Framework version 1.0).

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"Services" shall mean end-to-end IT support which includes project management, consultation, training, installation, maintenance, specifications for site preparation, operations support and other services to be provided to the Customer under this Agreement and as detailed in the clause 2.1.

xxx

<u>2.0 SCOPE</u>

2.1 This Agreement establishes the firms and conditions applicable to the provision of Services by the Contractor in accordance with the scope of work as set forth in the Attachment 1 (IT Outsourcing Framework version 1.0) hereunder, pursuant to which the Services contemplated herein are provided by the Contractor and avajled by the Customer during the Term (clause 4.0).

2.2 The Contractor shall manage, maintain and enhance all the IT activities and take over the existing IT manpower from the Customer as contemplated in Attachment 5 (IT Manpower of TTSL & TTML being Transferred to TCSL). The indicative Inclusions and exclusions in the scope of work shall be as per section 2 of Attachment 3 (IT Outsourcing Commercials version 1.1). Any deviation to the agreed scope of work (such as new IN deployment etc) shall be in accordance with change management procedures as per section 11.8 of the Attachment.

3.0 RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES

3.1 <u>The Contractor shall be free to use all existing IT assets of the Customer in all locations with effect from the Commencement Date. Management of all existing IT assets and payment of any annual maintenance charges in respect thereof (except for desktops, laptops and associated software viz: MS Office, Anti-Virus, MS Project, Windows Operating System, and printers used by the employees of the Customer</u>, in which case the annual maintenance charges will be paid by the Customer) shall be the responsibility of the Contractor with effect from the Commencement Date. In this connection, the Customer will take steps to assign its existing arrangement with vendors as may be required by the Contractor. However, all Insurance premia present as well as future with respect to the all-existing IT assets shall be the responsibility of the Customer.

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3.4 Procurement of new desktops, laptops, printers, CD writers, scanners, fax machines, compact disks, USB drives, etc; for the Contractor with effect from the Commencement Date in all Customer locations and associated annual maintenance charges in respect thereof shall be the responsibility of the Contractor. The Contractor shall also be responsible to provide Services to administer and monitor such assets in all Customer locations.

11.0 INTELLECTUAL PROPERTY RIGHTS

11.1 It is expressly agreed and clarified that, except as specifically agreed in this Agreement, each Party shall retain all right, title and Interest in their respective trademarks and logos and that nothing contained in this Agreement, nor the use of the trademark / logos on the publicity, advertising, promotional or other material in relation to the Services shall be construed as giving to any Party any right, title or interest of any nature whatsoever to any of the other Party's trademarks and / or logos.

11.2 In the absence of prior written agreement between the Parties, all Intellectual Properly created by the Contractor or any employee, of the Contractor in the course of performing the Services shall vest in Contractor.

11.3 The Contractor shall not use the Custom Developed Systems and all Customer specific business methodologies and confidential information of the Customer for providing services to any competitor (competitor here means and includes all telecommunication service providers) of the Customer in Ind.

11.4 Where such Intellectual Property created in accordance with clause 11.2 includes software, designs, documentation or other property subject to copyright, the Contractor hereby grants to the Customer a perpetual, non-exclusive and paid up right and license to *use such Intellectual Property in India In connection with the utilization of the Services provided hereunder.*

11.5 The Contractor acknowledges and agrees that all Intellectual Property of the Customer and its licensors in respect of all material or information made available by the Customer to the Contractor in connection with or for the purposes of the Services shall remain vested in the Customer or its licensors.

21.0 OTHER GENERAL PROVISIONS

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21.4 Exclusivity - The Contractor shall be free to do similar business either for itself or for any other party or offer similar services to any third parties without in any way affecting the Services agreed to be offered by it under this Agreement and without clashing the interest of the Customer with any other telecom service providers. The Customer shall be free to avail similar Service from any third parties."

15. It is also worth referring to the Service Agreement of ERP Implementation, which was signed between Tata Projects Limited and Tata Consultancy Services Limited, wherein the scope of the services under the agreement was enshrined and agreed upon by the parties. The relevant portions are reproduced below for reference:

SERVICE AGREEMENT- ERP Implementation

This Agreement ('Agreement') made on this 13 day of February 2009 by and between Tata Projects Limited having its Head Office (HO) at 'Mithona Towers -1', H. No. 1-7-80-87, opposite Wesley Jr. College, PrenderghastRoad, near Paradise Circle, Secunderabad 500003, Andhra Pradesh (hereinafter referred to as 'TPL', which term shall include its successors, assigns and legal representatives) in the First *part and Tata Consultancy Services Limited, a Company incorporated under the Companies Act, 1956, having its Corporate office at TCS House, 21 DS Marg, Raveline Street, Fort, Mumbai-1and having its branch office at No:1, Software units Layout, Madhapur, Hyderabad-81, Andhra Pradesh (hereinafter referred to as 'TCS' which term shall, unless excluded by or repugnant to the context and meaning thereof, bedeemed to include its successors and permitted assigns) in the Second part.*

Note: Both TPL and TCS are referred individually as 'Party' and jointly as 'Parties'.

WHEREAS, TPL is in the business of EPC (Engineering, Procurement and Construction) Projects execution and requires an Implementation partner for ERP solution and has appointed TCS vide Letter of Intent (LOI) No. TPL/ERP/08-02 dated 10-06-'08, accepting TCS revised proposal dated 29-04-'08 for the purpose of providing the Solutions and services related thereto, hereinafter collectively referred to as "Services' and more fully described in Schedule - A hereto.

WHEREAS, TPL and TCS had exchanged various correspondences as referred in the above LOI which is mutually agreed and all such correspondences shall form part of this Agreement. In the event of there being any conflict in any of the mutually agreed terms and conditions contained in this Agreement and the said proposal and correspondences, the terms of this Agreement shall prevail.

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Terms & their Meanings

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***Product** refers to the Oracle e-Business suite R12 version*

xxx

> ***Project** means the broad outline of the scope of services and implementations which TCS shall undertake under this Agreement as per the agreed Scope of Services, as in Schedule - A attached.*

16. We now refer to Section 65 (104c) under Chapter V of Finance Act, 1994 which defines "support services of business or commerce" as services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing. The definition of 'business support services' is extracted hereunder for ready reference:

> *"**Section 65 (104c) "support services of business or commerce"** means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing."*

> *Explanation. - For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;"*

The above definition clarifies that business entities outsource a number of services for use in business or commerce and that the purpose behind introduction of Business Support Service is to tax all such outsourced services. Hence, the services which are duly executed by the petitioner do not involve any sale of either customized or non-customized software. No software is delivered on media to the customer under this agreement. These are mere services and the petitioner discharged service tax @ 12.36% or 10.30% as applicable during the relevant period on this transaction under taxable category of 'Support Services of Business or Commerce' in terms of Section 65(104c) under Chapter V of Finance Act, 1994.

17. Circular No.334/4/2006-TRU, dated 28-2-2006, issued by the department of Revenue, Government of India at the time of introduction of 'business support services' clearly lays down that outsourced projects of infrastructural support by corporate entities should be taxed. The relevant paragraph of the said Circular is reproduced below:

> *"**3.13. Business Support Services**: Business entities outsource a number of services for use in business or commerce. These services include transaction processing, routine administration or accountancy, customer relationship management and tele-marketing. There are also business entities which provide infrastructural support such as providing instant offices along with secretarial assistance known as "Business Centre Services". **It is proposed to tax all such outsourced services**. If these services are provided on behalf of a person, they are already taxed under Business Auxiliary Service. **Definition of support services of business or commerce gives indicative list of outsourced services**."*

18. It is further observed that the software which is developed is useful only to the particular customer for whom the development is carried out on 'work for hire' basis and it cannot be sold to any other person. Rather as and when the development is carried out, the buyer acquires ownership right over the customized software and it cannot refuse to pay for the activity of customization. Therefore, the activity of development of customized / custom made software by the petitioner for its clients / customers is a pure service contract and the petitioner does not possess any ownership right over the customized software, and merely if a contract includes development of customization of software, it does not automatically mean that there is a transfer of title.

19. The High Court of Andhra Pradesh in the case of **Tata Consultancy Services vs. State of Andhra Pradesh**[1] categorically held that "unbranded software" shall not be deemed to be as goods. The relevant portion of the said judgment is reproduced below for reader reference:

> *"34. As our discussion is confined to branded software, as it is called here, of which American equivalent is "computer software off the shelf", **we do not consider it appropriate to embark upon discussion on the question of the nature of "unbranded software" which is also termed as software "tailor-made to the customer's particulars requirements".***
>
> *xxx*
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> *38. Insofar as the computer software is concerned, we have already mentioned above two categories of software, viz., (i) the branded software and (ii) unbranded software. Whereas the first type of software falls within the meaning of "goods", **the second type of software, viz., unbranded software cannot be treated as "goods".** Therefore, it would not only be inappropriate but also incorrect to state that intellectual property does not fall within the ambit of "goods". In our view a correct statement would be that all intellectual properties may not be "goods" and therefore branded software with which we are concerned here cannot be said to fall outside the purview of "goods" merely because it is intellectual property; **so far***

[1] (1997) 105 STC 421

> ***as "unbranded software" is concerned, it is undoubtedly intellectual property but it may perhaps be outside the ambit of "goods".*** *However, we consider it unnecessary to discuss its various aspects and express any opinion in that regard. We are, therefore, unable to accept the contention that merely because software is "intellectual property" is cannot be treated as "goods" as being too broad a statement."*

20. The Hon'ble Supreme Court in the case of **Tata Consultancy Services v. State of A.P.**[2] conclusively held that even **"unbranded software" may be "goods"** when marketed or sold in the market. The relevant portion of the said judgment is again reproduced below for reader reference:

> *"**29.** Mr Sorabjee submitted that the High Court correctly held that unbranded software was "undoubtedly intellectual property". Mr Sorabjee submitted that the High Court fell in error in making a distinction between branded and unbranded software and erred in holding that branded software was "goods". We are in agreement with Mr Sorabjee when he contends that there is no distinction between branded and unbranded software. However, we find no error in the High Court holding that branded software is goods. In both cases, the software is capable of being abstracted, consumed and use. In both cases the software can be transmitted, transferred, delivered, stored, possessed, etc.* ***Thus, even unbranded software, when it is marketed/sold, may be goods.*** *We, however, are not dealing with this aspect and express no opinion thereon because in case of unbranded*

[2](2005) 1 SCC 308

software other questions like situs of contract of sale and/or whether the contract is a service contract may arise."

21. Having regard to the aforesaid discussion and the terms of the agreements extracted hereinabove, we are of the considered opinion that the transactions in question, both in relation to development of custom-made / customized software and in relation to issuance of Digital Signature Certificates, do not constitute a "sale" so as to attract levy of Value Added Tax under the TGVAT Act, 2005. Insofar as the first question is concerned, it is evident from a plain reading of the agreements that the petitioner does not, at any point, acquire ownership or title over the software developed by it. The intellectual property either vests in the customer from inception, as seen in the agreement with M/s. Tata Teleservices Limited and M/s. Tata Teleservices (Maharashtra) Limited, or where it vests momentarily in the petitioner during the course of rendering the services, the same is only for the purpose of granting the customer a perpetual, non-exclusive, paid-up licence to use such intellectual property, and does not partake the character of a transfer of goods for consideration. The software developed is tailor-made and specific to the requirement of a particular customer on a "work for hire" basis and is incapable of being marketed or sold to any other person. Consequently, it cannot be equated with “unbranded software” that is marketed or sold in the open market, which alone was held to be exigible to tax as “goods” in the case of **Tata Consultancy Services v. State of A.P.** (supra). In the absence of the essential ingredient of “transfer” of property in goods, the transaction cannot be subjected to sales tax / VAT and remains squarely a service contract, taxable, if at all, under the relevant taxable service category under the Finance Act, 1994, which the petitioner has admittedly discharged. Insofar as the second question relating to Digital Signature Certificates is concerned, we find merit in the contention of the learned Senior Counsel for the petitioner that the issuance of such certificates is purely in the nature of a service rendered by the petitioner in its capacity as a licensed Certifying Authority under the Information Technology Act, 2000, and does not involve any element of sale of goods.

22. In view of the aforesaid reasoning, we hold that respondent No.1 was not justified in treating the service turnover of the petitioner as representing sale of software or sale of any other goods, and the levy of VAT of Rs.52,39,44,119/- on the turnover of

Rs.11,50,52,48,700/- for the assessment years 2010-11 to 2012-13 is wholly unsustainable both in law and on facts. The impugned Assessment Order A.O.No.11436, dated 18.03.2016, read with the Revised Assessment Order A.O.No.12530, dated 22.03.2016, passed by respondent No.1, is accordingly set aside / quashed.

23. Writ Petition No.12763 of 2016 accordingly stands allowed. As a consequence of the lead case getting allowed, the other Writ Petitions also stand allowed on similar lines.

24. 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: 24.08.2026
GSD