HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI

W.P.Nos.253 of 2021 & 17913 OF 2025

W.P.No.253 of 2021

Between:
SMT G SWARAJYA LAKSHMI …. Petitioner

Versus

COMMERCIAL TAX OFFICER & OTHERS …. Respondents

DATE OF JUDGMENT PRONOUNCED: 03.09.2026

THE HON'BLE SRI JUSTICE NINALA JAYASURYA
&
THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be Marked to Law Reporters/Journals. Yes/No

3. Whether Their ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

NAINALA JAYASURYA, J

T.C.D.SEKHAR, J

*THE HON'BLE SRI JUSTICE NINALA JAYASURYA

&

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

+ W.P.Nos.253 OF 2021 & 17913 OF 2025

%Date : 03.09.2026

+W.P.NO.253 OF 2021
SMT G SWARAJYA LAKSHMI. --- Petitioner

and

$ COMMERCIAL TAX OFFICER & OTHERS --- Respondents

! Counsel for the Petitioners : Mr.Chukka Kranthi Kiran

^ Counsel for Respondents : G.P. for Commercial Tax

< GIST : --

> HEAD NOTE : --

? Cases referred :

2024 SCC OnLine SC 28
2015 SCC OnLine Del 9442
2017 SCC OnLine Hyd 64
(2006) 3 VST 95 (S.C.)

APHC010003582021

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3543]**
(Special Original Jurisdiction)

THURSDAY, THE 3rd DAY OF SEPTEMBER 2026

PRESENT

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

THE HON'BLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION Nos: 253 of 2021 and 17913 of 2025

W.P.No.253 of 2021

Between:

SMT G SWARAJYA LAKSHMI, DOOR No.8-16-1, BALAJI NAGAR, THOTAPALEM, VIZIANAGARAM.

...PETITIONER

AND

1. COMMERCIAL TAX OFFICER, M.G.ROAD, WEST CIRCLE, VIZIANAGARAM DIVISION.
2. STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, REVENUE (CT-II) DEPARTMENT, SECRETARIAT, VELAGAPUDI, AMARAVATI, GUNTUR DISTRICT.
3. AP STATE ROAD TRANSPORT CORPORATION, REP. BY ITS DEPOT MANAGER, VIZIANAGARAM.

...RESPONDENT(S):

Counsel for the Petitioner:

Mr. CHUKKA KRANTHI KIRAN

Counsel for the Respondent(S):

GP FOR COMMERCIAL TAX

The Court made the following common order: *(Per Hon'ble NJS, J)*

The issue involved in these writ petitions is 'Whether the transactions in respect of private buses operated by the petitioners under Hire Agreement with the Andhra Pradesh State Road Transport Corporation (for short 'APSRTC') is liable for Tax under Section 4 (8) of the Andhra Pradesh Value Added Tax Act, 2005 (for short 'the Act')'? and therefore disposed of by this common order.

2. The brief facts of W.P.No.253 of 2021 are as follows:

Petitioner entered into different agreements with 3rd respondent-APSRTC during the period from 2014-15 to 2016-17 to run buses on specified routes at hire charges of Rs.11.40 ps., per kilo meter. On the basis of Report received from the Regional Vigilance & Enforcement Office and on authorization of Deputy Commissioner, 1st respondent issued Show Cause Notice dated 25.06.2018 *inter alia* alleging that petitioner suppressed hire charges received from the 3rd respondent and is liable to tax @ 14.5% as per Section 4(8) of the Act. Opportunity of personal hearing was afforded on 23.03.2020 and petitioner filed written submissions *inter alia* contending that the transactions does not involve a transfer of right to use goods etc., that the assessment is barred by limitation and the allegations of suppression are baseless. Objections of the petitioner were rejected *vide* Order dated 16.11.2020 and an amount of

Rs.96,17,394/- was levied towards tax for the period from 2014-15 to 2016-17. Hence, the said writ petition.

3. The brief facts of W.P.No.17913 of 2025 are as follows:

Petitioner entered into an Agreement dated 10.10.2011 with the APSRTC. As per the said agreement, it agreed to pay the petitioner / owner of the bus, an agreed rate of Rs.12.24 ps., per operated kilo meter towards hire charges. Pursuant to report of Regional Vigilance & Enforcement Office, Tirupati, 2nd respondent / Commercial Tax Officer, Madanapalle Circle issued Show Cause Notice to the petitioner proposing to levy tax of Rs.9,65,855/- under Section 4 (8) of the Act and called for objections. Subsequently, on 28.11.2011, he passed an Order of Assessment confirming the said amount. Petitioner preferred an appeal before the Appellate Deputy Commissioner (CT), Tirupati, and by an Order dated 20.02.2021, the assessment order was set aside and the matter remanded to the original authority / C.T.O. Directions to supply material received from the Vigilance and Enforcement Department and proper opportunity to the opponent / petitioner were issued. Subsequently, 1st respondent after issuing Show Cause Notice, levied a tax of Rs.9,65,855/- for the year 2010-11 *vide* Proceedings dated 05.02.2024. Aggrieved by the same, petitioner filed writ petition on the premise that 1st respondent passed orders without following directions of the appellate authority and in view of violation of principles of natural justice, the same is maintainable.

4. Heard Mr.Shaik Jilani Basha and Mr.Kranthi Kiran, learned counsel for the respective writ petitioners. Also heard Mr.R.Kalyan Chakravarthy, learned Government Pleader for Commercial Tax. Perused the material on record.

5. Drawing the attention of this Court, learned counsel for the petitioners made more or less identical submissions. Referring to the sample agreements filed along with the material papers, they broadly contended that the owner of the bus / petitioners shall keep the same comprehensively insured duly mentioning “APSRTC” as “hirer” of the vehicle against the column “owner” to cover all risks and the proposal shall be signed by both the owner and hirer. It is discernible from the agreements in question that owner shall be liable for all claims that may arise due to statutory violations out of the operations, claims due to accidents payable under the provisions of the Motor Vehicles Act and APSRTC shall under no circumstances, be made liable or responsible to pay compensation in respect of accidents. Even payment of agreed rate, per operated kilo meter towards hire charges etc., they submit that the same would clearly establish that the buses are under actual control of the owners / petitioners, thus there is no transfer of right to use the bus for the exclusive use and operation of APSRTC. Placing reliance on the following decisions, the learned counsel submits that the issue is squarely covered and seeks to allow the writ petitions.

1. **M/s.NAC Infrastructure Equipment Ltd., v. Assistant Commissioner (CT)-III** (W.P.Nos.27359 and 27360 of 2008, dt.15.12.2025)
2. **K.P.Mozika v. Oil and Natural Gas Corporation Ltd., and Others**[1]
3. **Hari Durga Travels v. Commissioner of Trade and Taxes, Delhi**[2]
4. **Transocean Offshore, International Ventures Limited v. Union of India and Others**[3]

6. On the other hand, learned Government Pleader made submissions to impress upon the Court that the proceedings of the tax authorities are valid, legal and contentions contra are not tenable. He made submissions to distinguish the decisions referred to above.

7. It is his contention that as the petitioners have to operate their buses exclusively for the purpose of APSRTC under the terms of the Agreement, it amounts to a 'deemed sale' and the transactions falls within the purview of Section 4 (8) of the Act. Further the writ petitions are not maintainable as the petitioners have efficacious remedy under the Act, that there are no merits and therefore, no relief as prayed for, may be granted.

8. This Court has considered the submissions made and perused the material on record.

9. At the outset, it may be appropriate to mention that there is no dispute with regard to execution of the agreements between the petitioners and the APSRTC. The main controversy is by virtue of the said agreements and the transactions in relation thereto, whether petitioners

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[1] 2024 SCC OnLine SC 28
[2] 2015 SCC OnLine Del 9442
[3] 2017 SCC OnLine Hyd 64

would be liable to pay tax under Section 4 (8) of the Act, which is extracted hereunder for ready reference:

> Section 4(8) in The Andhra Pradesh Value Added Tax Act, 2005
>
> (8)Every VAT dealer who transfers the right to use goods taxable under the Act for any purpose, whatsoever, whether or not for a specified period, to any lessee or licensee for cash, deferred payment or other valuable consideration, in the course of his business shall, on the total amount realized or realizable by him by way of payment in cash or otherwise on such transfer of right to use such goods from the lessee or licensee pay a tax for such goods at the rates specified in the Schedules.

10. It may be relevant to mention here that apart from conditions / clauses to which reference was made by the learned counsel for the petitioners as noted above, conditions in the agreements contemplate that owner shall ensure payment of wages to the drivers engaged by them, they shall ensure recovery of the contribution towards ESI from the wages of the drivers engaged by them and remit to the ESI authorities along with the employer contribution. Further, change of vehicle or model shall be done with prior approval of Regional Manager of APSRTC etc., that any change in the ownership has to be carried out with the prior approval of APSRTC. It is also agreed that it is the right of APSRTC to fix up the timings en-route and owner shall ply the vehicles as per the schedule of timings furnished by the Corporation.

11. Clause 3 (i) stipulates that owner shall make available vehicle (bus) on all days except two days in a calendar month for maintenance of the vehicle. A conjoint reading of the conditions / clauses in the agreement supports the case of the petitioners that the physical control over the

vehicles / buses remains exclusively with them. In other words, buses are operated and maintained by the petitioners and control of the same was not transferred to APSRTC, at any point of time. Petitioners, in effect, not only retained full responsibility for plying the buses by manning the same. In such circumstances, transactions pursuant to the agreements entered with the APSRTC would not fall within the purview of Section 4 (8) of the Act. They cannot be treated as a deemed sale.

12. In **M/s.NAC Infrastructure Equipment Ltd.,** a learned Division Bench of the High Court for the State of Telangana, was dealing with questions, similar to those raised in the present writ petitions. On the basis of inspection of Commercial Tax Department (Enforcement Wing), alleging that the petitioner company dealt with the high value equipments like excavators, cranes, wheel loaders and transit mixers etc., and petitioner received amounts for making available the facilities to its customers, notices were issued by treating the transactions exigible tax under Section 4 (8) of the Act. Objections were filed *inter alia* to the effect that supply of equipment is only for a specific purpose, that the same are operated by technicians and operators employed by the petitioner, maintenance of the same was also undertaken by it and that ownership / right of the equipments are never transferred and remained with the petitioner. Assessing Authority rejected the objections and passed an order. Learned Division Bench while considering the matter with reference to Circular dated 29.02.2008 issued by the Ministry of Finance

Department, more particularly Clause 4.4 of the said Circular and terms of sample agreement, opined that in the execution of work undertaken by the petitioner neither the possession nor control of the goods is being transferred to the user of the goods. The relevant portion of the order for ready reference is extracted hereunder:

> “10. The Ministry of Finance Department of revenue *vide* Circular dated 29.02.2008 introduced certain changes relating to service tax and *vide* the said Circular some articles of the service were specifically included in the list of taxable service under the service regime. Clause 4.4 of the said Circular dealt with the Supply of Tangible Goods. In the said clause, it was held that where the transfer of the right to use any goods is leviable to sales tax/VAT as deemed sale of goods. Transfer of right to use involves transfer of both possession and control of the goods to the user of the goods. For ready reference, Clause 4.4 of the Circular dated 29.02.2008 is reproduced herein:
>
> > *“4.4 SUPPLY OF TANGIBLE GOODS FOR USE:*
> >
> > *4.4.1 Transfer of the right to use any goods is leviable to sales tax / VAT as deemed sale of goods [Article 366 (29A)(d) of the Constitution of India]. Transfer of right to use involves transfer of both possession and control of the goods to the user of the goods.*
> >
> > *4.4.2 Excavators, wheel loaders, dump trucks, crawler carriers, compaction equipment, cranes, etc., offshore construction vessels & barges, geo-technical vessels, tug and barge flotillas, rigs and high value machineries are supplied for use, with no legal right of possession and effective control. Transaction of allowing another person to use the goods, without giving legal right of possession and effective control, not being treated as sale of goods, is treated as service.*
> >
> > *4.4.3 Proposal is to levy service tax on such services provided in relation to supply of tangible goods, including machinery, equipment and appliances, for use, with no legal right of possession or effective control. Supply of tangible goods for use and leviable to VAT / sales tax as deemed sale of goods, is not covered under the scope of the proposed service. Whether a transaction involves transfer of possession and control is a question of facts and is to be decided based on the terms of the contract and other material facts. This could be ascertainable from the fact whether or not VAT is payable or paid.”*
>
> 11. One of the primary proceedings which needs to be appreciated at this juncture is that the said Circular categorically in the aforesaid clause more particularly in 4.4.1 clarified that transfer of right to use involves transfer of both possession and control of the goods, to the user of the goods. In this context we need to look into the nature of transactions and the conditions adopted to the contract / agreement entered into between the petitioners and their customers. Sample agreements are already on record and the terms and conditions have already been referred to in the earlier paragraphs of this order. The aforesaid terms and conditions clearly spell out that these goods have been given on rent to the customers by the petitioners and the charges collected are also on hourly basis and for a fixed period during the day beyond the fixed period of time if the vehicles are used they will have to be paid extra charges. Similarly, the conditions also reflected that the equipment would be operated by the technicians and operators of the petitioner’s themselves. Even if more technicians and operators were required by the customers, those were also to be provided on extra charges by the petitioner. The maintenance of these equipments were also to be borne by the petitioner and not by the customers. The customer did not had the liberty of either shifting the equipment to any of the projects of the customers nor did the customers have the liberty of further transferring it to anybody else. Likewise, the customer also did not had the liberty of using those equipment for any other purpose than that was agreed upon. The aforesaid conditions *prima facie* forces this Bench

to reach to the conclusion that in the case of execution of work undertaken by the petitioner neither the possession nor the control of the goods is being transferred to the user of the goods. In other words, both the possession and control of the goods stood retained by the petitioner. Clause 4.4.2 of the aforesaid Circular further clarifies this aspect in very categorical terms holding that such right to use of the goods cannot be treated as sale of goods but has to be treated as service."

13. Placing reliance on the decision of Hon'ble Supreme Court in **K.P.Mozika** (referred to supra), the Division Bench held that transactions of the petitioner-Company squarely falls within the ambit of 'service' and not 'deemed sale' as is envisaged under Section 4 (8) of the Act and quashed assessment orders.

14. In **Hari Durga Travels's case** (referred to supra), a Division Bench of High Court of Delhi had an occasion to deal with a case wherein, the appellant entered into an agreement with Delhi Transport Corporation for providing buses on terms and conditions mutually settled. Examining the matter with reference to terms and conditions of the agreement, Division Bench formulated a question as to "whether the agreement between the appellant and Delhi Transport Corporation giving on hire two Delux Buses for being plied as per the requirements of the latter on the routes and as per schedule specified its transfer of right to use of goods so as to be liable to VAT under Section 2 (zc)(vi) of Delhi Value Added Tax Act. Analyzing the matter in detail in the light of Article 366 (29A) of the Constitution of India and the earlier legal precedents including **Bharat Sanchar Nigam Ltd. v. Union of India**[4], the Division Bench answered the question in favour of the appellant. The relevant portion of the order at Para Nos.34 and 36 reads as follows:

[4] (2006) 3 VST 95 (S.C.)

34. In our considered opinion, the Tribunal has fallen into error by declining to apply the ratio of International Travel House Ltd. [2009] 25 VST 653 (Delhi); (2009) 8 AD 13 (Delhi) and by concluding that the contract in question has resulted in transfer of the effective control and possession of the two vehicles (goods for purposes at hand) unto DTC. On the contrary, the various terms of the contract, summarized above, make it vividly clear that the possession has always remained with the owner. Undoubtedly, it is the obligation of the registered owner to make the vehicles available, with their respective drivers, for being deployed on routes, and as per schedule, specified by DTC. The owner cannot withdraw the buses unilaterally nor send them for repairs and nor can alienate their ownership in favour of a third party, except by incurring penalties. The goods are specified, the right to deploy them is conferred on the third party, but the custody of the goods is retained by the owner who remains responsible for keeping them fit for use in terms of the contractual obligations. The registration certificate and the permits continue to be in the control and possession of the owner. It remains responsible for maintenance, repairs, etc., and also keeps the other party indemnified against any claim for loss or damage on account of operations. The rights conferred on DTC by such contract, therefore, do not result in the goods (vehicles) being "delivered" to DTC at any stage.

35.…….

36. Thus, the contract in question does not pass the muster of article 366(29A)(d) as held in the case of Bharat Sanchar Nigam Ltd. [2006] 3 VST 95 (S.C.); [2006] 145 STC 91 (S.C.); [2006] 282 ITR 273 (S.C.); (2006) 6 RC 276; (2006) 3 SCC 1 so as to be treated as transfer of a right to use the goods or a deemed sale.

15. In **Transocean Offshore's case** (referred to above)**,** a learned Division Bench of the erstwhile Common High Court dealt with a matter wherein an Order of Assessment was passed against the petitioner levying tax @ 14.5% under Section 4 (8) of Andhra Pradesh Value Added Tax Act on the ground that there was a transfer of the right to use.

16. In the facts of the said case, the petitioner entered into a contract for charter hire of 'jack up rigs' with ONGC, which contemplates deployment of jack up drilling rigs along with requisite personnel for operating the drilling unit and for carrying out offshore drilling operations for a term of three years on 'charter hire' basis. One of the questions formulated by the Division Bench is as to whether under the agreements in question, there was a transfer of the right to use in terms of Section 4 (8) of the Andhra Pradesh Value Added Tax Act, 2005. After scanning through the relevant terms of the agreement, it observed that the entire control with regard to

manning, operating and navigating was retained by the petitioner and opined that once the same is clear, it follows as a corollary that there was no transfer of the right to use.

17. At this stage, it may be relevant to refer to decision of the Hon'ble Supreme Court in **Bharat Sanchar Nigam Ltd.**(referred to supra)**.** In the said case, Revenue sought to subject transactions involving telephone services to Sales Tax on the reasoning that it was covered under Article 366(29-A) (d). It was held at Para No.75 as follows:

> **"**75**.** In our opinion, the essence of the right under Article 366(29-A)(*d*) is that it relates to user of goods. It may be that the actual delivery of the goods is not necessary for effecting the transfer of the right to use the goods but the goods must be available at the time of transfer, must be deliverable and delivered at some stage. It is assumed, at the time of execution of any agreement to transfer the right to use, that the goods are available and deliverable. If the goods, or what is claimed to be goods by the respondents, are not deliverable at all by the service providers to the subscribers, the question of the right to use those goods, would not arise."

18. In a separate, but concurring judgment, Dr.Justice A.R.Lakshmanan, opined that to constitute a transaction for the transfer of the right to use of goods, the transaction must have the following attributes:

> "(a) There must be goods available for delivery;
>
> (b) There must be a consensus ad idem as to the identity of the goods;
>
> (c) The transferee should have a legal right to use the goods – consequently all legal consequences of such use including any permissions or licences required therefore should be available to the transferee;
>
> (d) For the period during which the transferee has such legal right, it has to be the exclusion to the transferor – this is the necessary concomitant of the plain language of the statute – viz., a 'transfer of the right to use' and not merely a licence to use the goods;
>
> (e) Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others.(emphasis supplied) (See: Para 97)"

19. Applying the above stated parameters and citing a catena of decisions, the Hon’ble Supreme Court in **K.P.Mozika’s case** dealt with group of appeals concerning the liability to pay tax in respect of contracts to provide different categories of motor vehicles such as trucks, trailers, tankers, buses, scrapping winch chassis and cranes to the Oil and Natural Gas Corporation Limited and Indian Oil Corporation Limited.

20. In Para No.2, the Hon’ble Supreme Court, formulated the questions in the following terms.

> “2……Broadly, the question is whether, by hiring these motor vehicles / cranes, there is a transfer of the right to use any goods. If there is a transfer of the right to use the goods, it will amount to a sale in terms of clause (29A)(d) of Article 266 of the Constitution of India. In short, if the transactions do not fall in the definition of “sale” in clause (29A)(d), the same may not attract tax under the Sales Tax Act or the VAT Act. As a result, there will be other questions about whether the transactions will amount to service, thereby attracting liability to pay service tax.”

21. Noting the controversy involved in the matter at Para No.26 and the five tests laid down by Dr.A.R.Lakshman, J, in the case of **Bharat Sanchar Nigam Ltd**., the Apex Court held that “in every case where the owner of the goods permits another person to use goods, the transactions need not be of the transfer of the right to use the goods. It can be simply a license to use goods which may not amount to transfer of right to use”. (See Para No.33). 20. While allowing the appeals in favour of assesses, at Para No.42, the Hon’ble Supreme Court held as follows:

> “42. Essentially, the transfer of the right to use will involve not only possession, which may be granted at some stage (after execution of the contract), but also the control of the goods by the user. When the substantial control remains with the contractor and is not handed over to the user, there is no transfer of the right to use the vehicles, cranes, tankers, etc. Whenever there is no such control on the goods vested in the person to whom the supply is made, the transaction will be of rendering service within the meaning of section 65 (105) (zzzj) of the Finance Act after the said provision came into force.”

22. In the light of the expression of the Hon'ble Supreme Court, more particularly, the five tests as laid down in Bharat Sanchar Nigam Ltd., and on a plain reading of the terms and conditions of the agreements in question, the transactions are not exigible to tax as there is no transfer of right to use goods. Therefore, the impugned assessment orders are without jurisdiction, and unsustainable.

23. It may also be pertinent to mention that even as per the Notification No.25/2012-Service Tax dated 20.06.2012, which was given effect to from 01.07.2012 and applicable to petitioner in W.P.No.253 of 2021, services by way of giving on hire to a State Transport undertaking, a motor vehicle meant to carry more than 12 passengers is exempted from the whole of the service tax leviable thereon under Section 66(B) of the Finance Tax Act.

24. In the aforementioned factual and legal position, the Assessment Orders passed against the petitioners are hereby quashed and accordingly, the writ petitions are allowed. No costs.

As a sequel, all the pending miscellaneous applications, if any, shall stand closed.

JUSTICE NINALA JAYASURYA

JUSTICE T.C.D.SEKHAR

Date: 03.09.2026
Note: L.R.Copy be marked.
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THE HON’BLE SRI JUSTICE NINALA JAYASURYA

THE HON’BLE SRI JUSTICE T.C.D.SEKHAR

W.P.Nos.253 of 2021 & 17913 of 2025

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