

APHC010037092025



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

[3529]

WEDNESDAY, THE THIRD DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 4420/2025

Between:

1.M/S. VIKRAM SOLAR LIMITED,, ALL MANZIL, OPPOSITE TO
GOVERNMENT JUNIOR COLLEGE, SANJEEV NAGAR, TADIPATRI,
ANANTAPUR, ANDHRA PRADESH - 515411, REP. BY ITS SENIOR
GENERAL MANAGER - ACCOUNTS AND TAXATION, MR. NAVIN
KARIWAL

...PETITIONER

AND

1.THE COMMISSIONER OF CENTRAL TAX, GST
COMMISSIONERATE, TIRUPATI, 9/86-A, AMARAVATHI NAGAR,
WEST CHURCH COMPOUND. TIRUPATI, ANDHRA PRADESH -
517502.

2.THE ADDITIONAL COMMISSIONER OF CENTRAL TAX, GST
COMMISSIONERATE, TIRUPATI, 9/86-A, AMARAVATHI
NAGAR, TIRUPATI, ANDHRA PRADESH - 517502.

3.THE ASSISTANT COMMISSIONER OF CENTRAL TAX, TIRUPATI
AUDIT CIRCLE, GUNTUR CENTRAL GST AUDIT
COMMISSIONERATE 9/86-A, AMARAVATHI NAGAR, TIRUPATI,
ANDHRA PRADESH - 517502.

4.DIRECTORATE GENERAL OF GST INTELLIGENCE, MUMBAI ZONAL
UNIT, N. T. C. HOUSE, III FLOOR, 15, N. M. ROAD, BALLARD

ESTATE, MUMBAI -400001

5.CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE,
GOVERNMENT OF INDIA, REPRESENTED BY SECRETARY,
NORTH BLOCK, NEW DELHI.

6.UNION OF INDIA, THROUGH PRINCIPAL SECRETARY TO THE
GOVERNMENT, MINISTRY OF FINANCE, DEPARTMENT OF
REVENUE, UDYOG BHAVAN, NORTH BLOCK, NEW DELHI - 110
001.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or direction particularly one in the nature WRIT OF MANDAMUS a) Setting aside the impugned order dated 27.11.2024 issued by Respondent No. 2

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay recovery of amounts confirmed vide the impugned order dated 27.11.2024 passed by Respondent No.2

Counsel for the Petitioner:

1.LAKSHMI KUMARAN SRIDHARAN

Counsel for the Respondent(S):

1.SANTHI CHANDRA (Sr. Standing Counsel for CBIC)

2.GP FOR COMMERCIAL TAX

3.Y N VIVEKANANDA

The Court made the following order:
(per Hon'ble Sri Justice R. Raghunandan Rao)

Heard Sri V. Sridharan, the learned Senior Counsel appearing for the petitioner, Smt. Santhi Chandra, learned Standing Counsel for CBIC, the learned Government Pleader for Commercial Taxes and Sri Y.N. Vivekananda, learned counsel appearing for the respondents.

2. The petitioner is involved in the business of executing contracts for the purpose of supply of Solar Power Generating Systems and operation and maintenance of such services. It is a registered person under the GST Act. The petitioner had suffered an order of assessment, dated 27.11.2024, for the period April 2018 to March, 2020. The contention of the petitioner, has been that the petitioner has been involved in execution of works contracts relating to movable property and such contracts should be treated as composite supply of goods and services exigible to tax @ 5%. This is on the ground that the petitioner is supplying solar modules and parts of solar power generating plants which are to be taxed at 5% in view of the notification, dated 28.06.2017, which specified tax @ 2.5% CGST and 2.5% SGST for supply of renewable energy devices and parts including Solar Power Generating System.

3. The 3rd respondent-Assessing Authority rejected the contention of the petitioner and held that the petitioner was involved in execution of works contracts involving immovable property which would have to be taxed @18%. The dispute centered around the question of whether solar power generating

system installed by the petitioner are movable property or immovable property.

4. The petitioner being aggrieved by the said order of assessment, has approached this Court, by way of the present Writ Petition.

5. Sri V. Sridharan, the learned Senior Counsel appearing for the petitioner while contending that the works contracts executed by the petitioner would be relating to only movable property has made an additional submission that the said issue may not remain for consideration by this Court in view of the subsequent notifications issued by the central Government. He contends that by Notification No.24/2018, dated 31.12.2018, the Central Government had added an explanation to entry No.234 of Schedule -I. In this explanation, it was stated that goods relating to the entries in Sl.No.234, including Solar Power Generating Systems, supplied, by any supplier, along with other supplies of goods or services would be taxed by assuming 70% of the gross consideration to be towards supply of goods and the remaining 30% of the gross consideration to be treated as value of taxable service. The learned Senior Counsel would contend that in such circumstances, 70% of the gross consideration received by the petitioner would have to be treated as supply of goods taxable @5% and the remaining 30% of the gross consideration to be treated as supply of services taxable at 18%. He would contend that this would average out to 8.9% of the entire gross consideration.

6. The learned Senior Counsel would draw the attention of this Court to the observation of the 3rd respondent, in the impugned order, at

para-11.2, that the petitioner had self-assessed his tax liability @ 8.9% of the gross consideration and had paid the deficit tax, in the month of March, 2019, through credit and debit notes, while interest had not been paid. The learned Senior Counsel would also submit that subsequently the petitioner had paid the short-fall in interest also.

7. The learned Senior Counsel would contend that in such circumstances, nothing further survives in the Writ Petition inasmuch as the petitioner had bought peace with the GST Department by applying the beneficial provisions of the aforesaid notifications to reduce his tax liability to 8.9% of the gross consideration.

8. Sri Y.N. Vivekananda, the learned Standing Counsel appearing for the respondents would draw the attention of this Court to paragraph Nos. 16 and 17 of the order of the 3rd respondent which had stated that such payment was not sufficient inasmuch as the petitioner had not given the detailed break up of supplies along with required documents. The learned Standing Counsel would also reiterate the contention of the 3rd respondent that such concessional rate of tax is permissible only when there is supply of good and not where there is a supply of services alone. Further, the concessional rate would not be available unless the goods supplied are solar power based devices or solar power generating system in the course of E.P.C services. The learned standing counsel would also contend that nothing further can be considered in this regard, without dealing with the finding of the 3rd

respondent, that the transaction in question is a works contract relating to immovable property which would be exigible to tax at the rate of 18%.

9. The aforesaid contention of the learned Standing Counsel cannot be accepted for various reasons. Entry No.234 of Schedule-I in Notification No.1/2017, dated 28.06.2017, states that fixation of 2.5% CGST and 2.5% SGST as the applicable rate in relation to the supply of solarpower based devices and solar power generating systems including their parts. The explanation to this entry which was inserted w.e.f. 01.01.2019 further stipulates that if any of these goods are supplied along with taxable services, the gross consideration should be split into 70% attributable to supply of goods and 30% attributable to supply of the order of assessment clearly deals with erection and commencement of a solar powergenerating system. In such a situation, the provision of entry No.234 of Schedule-I in Notification No.1/2017 would be clearly applicable to the present case, irrespective of the fact whether the contract is a works contract relating to immovable property or a composite supply of goods and services.

10. The question whether the appropriate amount of tax and interest has been paid or not, is a question of fact, which can always be verified by the 3rd respondent or any proper officer.

11. In that view of the matter, this Writ Petition is allowed setting aside the order of assessment, dated 27.11.2024, passed by the 3rd respondent and the assessment is remanded back to the 3rd respondent to complete assessment in terms of this order by applying a uniform rate of

8.9%, on the gross consideration, as the tax which can be levied on the petitioner for the relevant period. Needless to say, the assessment is remanded in respect of all items which had been considered in the assessment order. The question of whether the works contracts related to movable property or immovable property is left open inasmuch as this writ petition is being disposed of on the basis of the aforesaid notifications.

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

R. RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

RJS

**THE HON'ABLE SRI JUSTICE R RAGHUNANDAN RAO
AND
THE HON'BLE SRI JUSTICE T.C.D. SEKHAR**

WRIT PETITION No: 4420 of 2025

(per Hon'ble Sri Justice R Raghunandan Rao)

03.12.2025

RJS

