



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

[3529]

WEDNESDAY, THE FOURTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 11150/2019

Between:

1.M/S. FYSOLATE TECHNOLOGIES,, VIJAYAWADA, REPRESENTED
BY ITS AUTHORIZED SIGNATORY, I.N. KUMAR, S/O.
VENKATESWARLU, AGED ABOUT 55 YEARS, CHIEF FINANCIAL
OFFICER, KRISHNA DISTRICT, ANDHRA PRADESH.

...PETITIONER

AND

1.STATE OF ANDHRA PRADESH, REP BY ITS PRINCIPAL
SECRETARY, REVENUE(CT) DEPARTMENT, VELAGAPUDI,
AMARAVATHI, GUNTUR DISTRICT, ANDHRA PRADESH.

2.THE ADDITIONAL COMMISSIONER OF CT LEGAL, , OFFICE OF THE
COMMISSIONER OF COMMERCIAL TAXES, ANDHRA PRADESH.
H.NO.5-59, BANDAR ROAD, SPRING VALLEY APARTMENTS, RAJIV
BHARGAV COLONY RD, EDUPUGALLU, VIJAYAWADA-521151.

3.THE ASSISTANT COMMISSIONER OF STATE TAX, FORMERLY
COMMERCIAL TAX OFFICER BENZ CIRCLE, NO. II DIVISION,
VIJAYAWADA , KRISHNA DISTRICT.

4.THE DEPUTY COMMISSIONER OF CT, VIJAYAWADA II DIVISION,
VIJAYAWADA , KRISHNA DISTRICT.

5.GOONDLA VENKATESWARLU, S/O. NOT KNOWN, PRESENTLY
WORKING AS ADDL. COMMISSIONER OF CT (LEGAL), OFFICE OF
THE COMMISSIONER OF COMMERCIAL TAXES, ANDHRA

PRADESH. H.NO.5-59, BANDAR ROAD, SPRING VALLEY APARTMENTS, RAJIV BHARGAV COLONY RD, EDUPUGALLU, VIJAYAWADA-521151.

...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 an appropriate writ, order or direction particularly in the nature of Writ of Certiorari by calling for the entire connected records relating to the impugned order dated 28-06-2019 in CCT's Ref. No. L-11(1)/299/2019 vide Annexure-P I issued by the Additional Commissioner of CT (Legal), Andhra Pradesh, Edupugallu by holding that levy of tax on the goods sold in the course of export and already acknowledged and appropriated by the foreign buyer M/s. P L Thomas and Co., INC, New Jersey, USA under the provisions of CST Act 1956 as illegal, arbitrary, capricious, without jurisdiction, without authority of law as also violative of articles 286 and 265 with sequel effect on articles 19 (1)(g) of the Constitution of India.

IA NO: 1 OF 2019

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 suspend the operation of the impugned proceedings of the 2nd respondent dated 28-06-2019 in CCT's Ref. No. L-11(1)/299/2019 as also stay the consequential proceedings of the 3rd respondent dated 03-08-2019 pending disposal of the writ petition and grant

Counsel for the Petitioner:

1. M V J K KUMAR

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX (AP)

Date of Reserved : 28.01.2026

Date of Pronouncement : 04.02.2026

Date of Upload : 04.02.2026

The Court made the following Order:

Heard Sri Dr. M.V.K. Murthy, learned counsel appearing on behalf of Sri M.V.J.K. Kumar, learned counsel for the petitioner and the learned Government Pleader for Commercial Tax appearing for the respondents.

2. The petitioner is a manufacturer and seller of herbal extracts and plant products. The petitioner also exports the product manufactured in its unit at Duvvada, in Visakhapatnam SEZ. The assessment of the petitioner for the year 2013-14 had been completed by the 3rd respondent, by his Order dated 06.07.2015. In this assessment order, the 3rd respondent accepted the claim of the petitioner for exemption on a turnover of Rs.120,58,52,518/-, on the ground that these were export sales. Thereafter, the 2nd respondent initiated revision proceedings which resulted in an Order of revision, dated 28.06.2019. By virtue of this order a turnover of Rs.123,49,01,931/- was sought to be taxed.

3. The 2nd respondent sought to bring the entire turnover to tax on the following grounds:-

- I. The purchase orders given by the foreign buyers had not been produced and only the bills of lading and sale invoices issued by the foreign buyers were being produced. These documents would have to be rejected as the documents filed by the petitioner only prove that the sales made by the petitioner are export sales and are not in the course of export. The 2nd respondent relying upon

the Judgments of the Hon'ble Supreme Court of India, in the case of *Ben Gorm Nilgiri Plantations Company, Coonoor & Ors Vs. Sales Tax Officer, Special Circle, Ernakulam & Ors*¹ as well as in the case of *Burmah Shell Oil Storage and Distributing Company of India Vs. Commercial Tax Officer*².

- II. The 2nd respondent took the view that the sale invoice, airway bills and proof of remittance of foreign exchange would only show that the sales are export sales and they are not sales in the course of exports outside the territories of India within the meaning of Section 5(1) of the Central Sales Tax Act, 1956 [for short "the CST Act"] and as such, all the sales would have to be treated as inter-state sales which are taxable under the provisions of the CST Act.

4. The contents of the impugned order of revision would show that the 2nd respondent accepted the fact that the turnover of the petitioner, which is sought to be taxed, relates to goods which had been sent outside of India. However, the 2nd respondent continued to hold that even if the goods had been sent out of India and the sale consideration for such goods had been received, by the petitioner, in foreign exchange, the same would not amount to a sale in the course of export, as defined in Section 5 of the CST Act, and would not be exempt from tax.

5. Section 5 of the CST Act reads as follows:-

¹ 15 STC 753

² 11 STC 764 (SC)

“Section- 5:- When is a sale or purchase of goods said to take place in the course of import or export.

(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of good shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

1[(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.]”

6. This provision is brought in by virtue of the Article 286 (2) of the Constitution of India, which reads as follows:-

286. Restrictions as to imposition of tax on the sale or purchase of goods

1. No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place.-

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

2. Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

3.

7. The 2nd respondent appears to have understood the words “in the course of export” to mean that the sale of goods carried out by the petitioner would not meet the requirement in Section 5(1), on the basis of the dictum laid down by the Hon’ble Supreme Court in the case of **Ben Gorm Nilgiri**

Plantations Co. v. Sales Tax Officer³. In this case, a manufacturer of processed tea, had sold its tea, by way of public auction, to an agent or an intermediary of foreign buyers. The issue that came up for consideration, before the Hon'ble Supreme Court, was whether such sales would come within the ambit of sales described in Section 5(1) of the CST Act. This was answered, by the Hon'ble Supreme Court, in the following manner:

“4. Is the sale by auction to the agent of intermediary of the foreign buyer, in the course of export within the meaning of Article 286(1) of the Constitution? If the sale is in the course of export out of the territory of India any State law which imposes or authorises the imposition of a tax on such sale is, because of Article 286(1)(b), invalid. Before the Constitution was amended by the Constitution (Sixth Amendment) Act, 1956, there was no legislative guidance as to what were transactions of sale in the course of export out of the territory of India. But by the Constitution (Sixth Amendment) Act, clause (2) of Article 286 was substituted for the original clause, and thereby the Parliament was authorised to formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1). The Parliament has under the Central Sales Tax Act (74 of 1956) enacted by Section 5 that a sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India”. This was legislative recognition of what was said by this Court in the State of Travancore-Cochin v. The Bombay Company Ltd. [(1952) 2 SCC 142 : (1952) SCR 1112] and State of Travancore-Cochin v. Shanmugha Vilas Cashew Nut Factory [(1953) 1 SCC 826 : (1954) SCR 53] about the true connotation of the expression “in the course of the export of the goods out of the territory of India” in Article 286(1)(b). A transaction of sale which occasions export or which is effected by a transfer of documents of title after the goods have crossed the customs frontiers, is therefore, exempt from sales tax levied under any State legislation.

5. The appellants set out in their respective petitions the manner in which sales tax of tea chests were conducted at Fort Cochin and in certain petitions affidavits in reply even were not filed by the State of Kerala. In the remaining petitions in which affidavits in reply were filed it was contended that the export of goods was made by the purchasers who had taken delivery of the goods from the manufacturers in Travancore-Cochin and in pursuance of the export licences obtained by the purchasers goods were exported, but such subsequent export by the purchasers did not affect the character of the sales by the manufacturers to the purchasers. It is true that there is no finding by the Sales Tax Authorities that the respective purchasers at the auctions were agents of

³ 1964 SCC OnLine SC 149: (1964) 7 SCR 706: (1964) 2 SCJ 693: AIR 1964 SC 1752

foreign buyers, but the Advocate appearing on behalf of the State argued the case before the High Court on the footing that the bids were offered at the auctions by the agents or intermediaries of foreign buyers, and the Court proceeded to dispose of the case before it on that footing.

7. To constitute a sale in the course of export of goods out of the territory of India, common intention of the parties to the transaction to export the goods followed by actual export of the goods, to a foreign destination is necessary. But intention to export and actual exportation are not sufficient to constitute a sale in the course of export, for a sale by export “involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and resultant export form parts of a single transaction”. *State of Travancore Cochin v. The Bombay Company Ltd.* [(1952) 2 SCC 142 : (1952) SCR 1112] A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted, without a breach of the contract or the compulsion arising from the nature of the transaction. In this sense to constitute a sale in the course of export it may be said that there must be an intention on the part of both the buyer and the seller to export, there must be an obligation to export, and there must be an actual export. The obligation may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export. A transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale for export, but is not necessarily to be regarded as one in the course of export, unless the sale occasions export. And to occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately proceeding it. Without such a bond, a transaction of sale cannot be called a sale in the course of export of goods out of the territory of India. There are a variety of transactions in which the sale of a commodity is followed by export thereof. At one end are transactions in which there is a sale of goods in India and the purchaser immediate or remote exports the goods out of India for foreign consumption. For instance, the foreign purchaser either by himself or through his agent purchases goods within the territory of India and exports the goods and even if the seller has the knowledge that the goods are intended by the purchaser to be exported, such a transaction is not in the course of export for the seller does not export the goods, and it is not his concern as to how the purchaser deals with the goods. Such a transaction without more cannot be regarded as one in the course of export because etymologically “in the course of export” contemplates an integral relation or bond between the sale and the export. At the other end is a transaction under a contract of sale with a foreign buyer under which the goods may under the contract be delivered by the seller to a common carrier for transporting them to the purchaser. Such a sale would indisputably be one for export, whether the contract and delivery to the common carrier are effected directly or through agents. But in between lie a variety of transactions in which the question whether the sale is one for export or is one in the course of export i.e., it is a transaction which has occasioned the export, may have to be determined on a correct appraisal of all the facts. No single test

can be laid as decisive for determining that question. Each case must depend upon its facts. But that is not to say that the distinction between transactions which may be called sales for export and sales in the course of export is not real. In general where the sale is effected by the seller, and he is not connected with the export which actually takes place, it is a sale for export. Where the export is the result of sale, the export being inextricably linked up with the sale so that the bond cannot be dissociated without a breach of the obligation arising by statute, contract or mutual understanding between the parties arising from the nature of the transaction, the sale is in the course of export."

8. The relevant part of the above dictum, at the cost of repetition, is:

"Each case must depend upon its facts. But that is not to say that the distinction between transactions which may be called sales for export and sales in the course of export is not real. In general where the sale is effected by the seller, and he is not connected with the export which actually takes place, it is a sale for export. Where the export is the result of sale, the export being inextricably linked up with the sale so that the bond cannot be dissociated without a breach of the obligation arising by statute, contract or mutual understanding between the parties arising from the nature of the transaction, the sale is in the course of export."

9. In the present case, the 2nd respondent holds that the goods moved out of India, as a result of the sales to the foreign buyers and that the petitioner received the sale consideration, in foreign currency. It is not clear as to whether the 2nd respondent has deliberately misunderstood these provisions or he genuinely did not understand the meaning of the term "in the course of export" in Section 5(1) of the CST Act. It is unfortunate that an officer who has been in the department and was holding the post of an Additional Commissioner of Commercial Taxes could come up with an order of this nature.

10. In any event, this was an unnecessary burden cast on this Court, to correct a palpably illegal order. In the circumstances, this Writ Petition is allowed, setting aside the impugned Order of revision, dated 28.06.2019, of the 2nd respondent with costs of Rs.10,000/- to be paid to the petitioner.

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

R. RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

Date: 04.02.2026
BSM

THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

AND

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

WRIT PETITION No.11150 of 2019

04-02-2026

BSM