

**THE HONOURABLE SRI JUSTICE J. CHELAMESWAR  
AND  
THE HONOURABLE SRI JUSTICE D. APPA RAO**

**W.P. NO. 15895 of 2006**

**Dated: 03.08.2006**

Between:-

Sri Rajesh Kumar, s/o K.P. Agarwal, aged about 33 years, Proprietor  
M/s Subhash Plywood, Goshamahal, Hyderabad.

...Petitioner.

And

The Deputy Commercial Tax Officer, Mehdiapatnam Circle, Hyderabad  
and 2 others.

...Respondents

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**ORDER** (Per Hon'ble Sri Justice D. Appa Rao)

The petitioner seeks a writ of Mandamus declaring the notice, dated 30.06.2006, issued by the 1<sup>st</sup> respondent for realization of tax arrears relating to the 3<sup>rd</sup> respondent as illegal, arbitrary and without jurisdiction.

The 3<sup>rd</sup> respondent herein is a dealer under A.P.G.S.T. Act and also under A.P V.A.T. Act, and carrying on business in tea powder and is an assessee on the rolls of 2<sup>nd</sup> respondent. It seems that the 3<sup>rd</sup> respondent fell in arrears of payment of tax due for the assessment year 1999-2000 under A.P.G.S.T. Act. On 30.06.2006 the 1<sup>st</sup> respondent issued notice for payment of tax of Rs. 11,52,393/- and penalty of Rs. 34,57,179/- on the ground that he stood surety for the arrears of the amount. By virtue of Rule 28 (8) of the APGST Rules, the liability of the surety is only for one year on the turnover estimated by the assessing authority. Therefore, his liability could have been only for one year viz. up to 31.3.1995. Therefore, he filed the writ petition questioning the said notice.

Heard the learned counsel for both parties and with their consent the writ petition is being disposed of at the stage of admission.

It is seen that the notice in this case has been made with regard to the tax for which he did not stand as surety. The learned counsel for

the petitioner contended that the surety given shall have to be construed as surety against the assessment of tax for a period of one year, as estimated by the dealer himself. The registering authority may require an applicant for registration, to furnish guarantees or surety for proper realization of tax and other dues for a year, as estimated by the assessee.

Section 12 (7) of the APGST Act lays down,

12 (7) : Where it appears necessary to the authority to whom an application is made under sub-section (6) so to do for the proper realization of the tax and other dues payable under this Act, or for the proper custody and use of the forms referred to in this Act, the rules made and the notifications issued thereunder, he may by an order in writing and for reasons to be recorded therein, impose as a condition for the issue of certificate of registration a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order such security as may be specified for all or any of the aforesaid purposes.

Rule 28(8) lays down:-

“The registering authority may require an applicant for registration to furnish within such time as may be specified by such authority security not exceeding an amount equal to tax payable under this Act for a year as estimated by him for the proper realization of the tax and other dues payable under this Act and/or for the proper custody and use of the forms referred to in the Act, the rules made and the notification issued thereunder.”

Form-D which under clause 19 lays down,

“19. The estimated total turnover for the year in which application is submitted.”

Earlier a Division Bench of this Court in W.P. No. 21526 of 2005 and batch construing the effect of Section 12 (7), Rule 28(8) and clause (1) in Form-D opined that if a surety is given by a person on behalf of an assessee, that surety will remain in force against tax payable for a year, as estimated by the assessee.

Following the above said judgment, we allow this writ petition

and quash the impugned notice. No order as to costs.

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CHELAMESWAR, J

J.

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3<sup>rd</sup> July, 2006  
vp

D. APPARAO, J