

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH  
AT HYDERABAD  
(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF JULY  
TWO THOUSAND AND NINE  
PRESENT

**HON'BLE SRI ANIL R. DAVE, THE CHIEF JUSTICE**  
**and**  
**HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**WRIT PETITION Nos. 6982, 6997, 7001 AND 7004 OF 2009**  
**WRIT PETITION NO : 6982 of 2009**

Between:

M/s Deccan Cements Limited, Deccan Chambers, Somajiguda,  
Hyderabad-500 082, Rep by its General Manager (Legal) & Company  
Secretary, MR.C. Srinivasan

**..... PETITIONER**

AND

- 1 The Assistant Commissioner (CT) LTU, Nalgonda Division,  
Nalgonda.
- 2 The Deputy Commissioner (CT), Nalgonda Division, Nalgonda.
- 3 The Joint Commissioner (CT) Audit, Andhra Pradesh, Hyderabad.
- 4 The State of Andhra Pradesh, Rep by its Secretary (Revenue),  
Secretariat, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to o issue a Writ of Certiorari or any other appropriate order or direction- (a) quashing the order of the 1st Respondent passed in Proceedings No.16190/2003-04, dated 23.10.2008 as illegal, arbitrary, without jurisdiction and contrary to the provisions of the Act; (b) declare that the provisions of Section 33-C of APGST Act and Section 40(2) of VAT Act have no application to refunds arising out of orders passed by Sales Tax Appellate Tribunal or for the amounts paid as pre-deposit for maintaining the appeals; and (c) direct the 3rd Respondent to refund the amount due pursuant to order of Sales Tax Appellate Tribunal in T.A.NO.136 of 2007 dated 29-3-2007 for the assessment year 2003-04 together with interest at 18% per annum from 21-7-2007 till date of payment

**WRIT PETITION NO : 6997 of 2009**

Between:

M/s. Deccan Cements Limited Rep. by its General Manager (Legal) &  
Company Secretary, Deccan Chambers, Somajiguda, Hyderabad - 500  
082.

**..... PETITIONER**

AND

- 1 The Assistant Commissioner (CT) LTU, Nalgonda Division  
Nalgonda.
- 2 The Deputy Commissioner (CT), Nalgonda Division  
Nalgonda.
- 3 The Joint Commissioner (CT) Audit Andhra Pradesh  
Hyderabad.
- 4 The State of Andhra Pradesh Rep. by its Secretary (Revenue)  
Secretariat, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari or any other appropriate order or direction - (a) quashing the order of the 1st Respondent passed in TIN No. 28550115412 of 2005-06 (APVAT Act), dated 23-10-2008 as illegal, arbitrary, without jurisdiction and contrary to the provisions of the Act; (b) declare that the provisions of Section 33-C of APGST Act and Section 40(2) of VAT Act have no application to refunds arising out of orders passed by Sales Tax Appellate Tribunal or for the amounts paid as pre-deposit for maintaining the appeals; and (c) direct the 3rd Respondent to refund the amount due pursuant to order of Sales Tax Appellate Tribunal in T.A.No. 431 of 2006, dated 29-3-2007 for the Assessment year 2005- 06 together with interest at 18% per annum from 21-7-2007 till date of payment

**WRIT PETITION NO : 7001 of 2009**

Between:

M/s Deccan Cements Limited, Deccan Chambers, Somajiguda,  
Hyderabad-500 082, Rep by its General Manager (Legal) & Company  
Secretary, MR.C. Srinivasan

**..... PETITIONER**

AND

- 1 The Assistnat Commissioner (CT) LTU, Nalgonda Division,  
Nalgonda.
- 2 The Deputy Commissioner (CT), Nalgonda Division, Nalgonda.
- 3 The Joint Commissioner (CT) Audit, Andhra Pradesh, Hyderabad.
- 4 The State of Andhra Pradesh, Rep by its Secretary (Revenue),  
Secretariat, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari or any other appropriate order or direction- (a) quashing the order of the 1st Respondent passed in Proceedings No.16190/2004-05, dated 23.10.2008 as illegal, arbitrary,

without jurisdiction and contrary to the provisions of the Act; (b) declare that the provisions of Section 33-C of APGST Act and Section 40(2) of VAT Act have no application to refunds arising out of orders passed by Sales Tax Appellate Tribunal or for the amounts paid as pre-deposit for maintaining the appeals; and (c) direct the 3rd Respondent to refund the amount due pursuant to order of Sales Tax Appellate Tribunal in T.A.NO.137 of 2007 dated 29-3-2007 for the assessment year 2004-05 together with interest at 18% per annum from 21-7-2007 till date of payment

**WRIT PETITION NO : 7004 of 2009**

Between:

M/s Deccan Cements Limited, Deccan Chambers, Somajiguda,  
Hyderabad-500 082, Rep by its General Manager (Legal) & Company  
Secretary, MR.C. Srinivasan

**..... PETITIONER**

AND

- 1 The Assistant Commissioner (CT) LTU, Nalgonda Division,  
Nalgonda.
- 2 The Deputy Commissioner (CT), Nalgonda Division, Nalgonda.
- 3 The Joint Commissioner (CT) Audit, Andhra Pradesh, Hyderabad.
- 4 The State of Andhra Pradesh, Rep by its Secretary (Revenue),  
Secretariat, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari or any other appropriate order or direction- (a) quashing the order of the 1st Respondent passed in Proceedings No.16190/2002-03, dated 23.10.2008 as illegal, arbitrary, without jurisdiction and contrary to the provisions of the Act; (b) declare that the provisions of Section 33-C of APGST Act and Section 40(2) of VAT Act have no application to refunds arising out of orders passed by Sales Tax Appellate Tribunal or for the amounts paid as pre-deposit for maintaining the appeals; and (c) direct the 3rd Respondent to refund the amount due pursuant to order of Sales Tax Appellate Tribunal in T.A.NO.275 of 2007 dated 29-3-2007 for the assessment year 2002-03 together with interest at 18% per annum from 21-7-2007 till date of payment

**Counsel for the Petitioner: Sri S. Dwarakanath (In all cases)**

**Counsel for the Respondents: Sri P. Balaji Varma, Special Staading  
Counsel for Commercial Tax (In all cases)**

**The Court made the following:**

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**COMMON ORDER:** (Per Sri Anil R. Dave, CJ)

As the subject matter involved in all these writ petitions is common, they are heard together. Rule. Service of Rule is waived in each petition by the learned standing counsel Sri P. Balaji Varma, appearing for the respondents. At the request of the learned advocates, all the petitions are finally heard today.

2. The petitioner has approached this Court with a prayer that the amount of refund payable to it has not been paid by the respondents. It is the case of the petitioner that more amount of tax has been paid by it and in the circumstances, the amount paid in excess ought to have been refunded. It is also the case of the petitioner that instead of refunding the amount, respondent No. 1 has passed orders dated 23-10-2008 in respect of each assessment order, whereby the amount payable to it has been withheld.

3. Upon perusal of the impugned orders dated 23-10-2008, we find that respondent No. 1 has exercised powers vested in him under Section 33-C of the Andhra Pradesh General Sales Tax Act, 1957 read with Section 80 of the Andhra Pradesh Value Added Tax, 2005.

4. The learned advocate for the petitioner has submitted that the amount payable to the petitioner in respect of each assessment year has yet not been quantified. The learned advocate has drawn our attention to the judgment delivered by this Court in Writ Petition No. 4977 of 2009, dated

24-07-2009, wherein it has been held that the amount of refund cannot be withheld under the provisions of Section

40 (2) of the Andhra Pradesh Value Added Tax, 2005 unless a case has been made out by the Revenue that the petitioner – assessee would not be in a position to make payment, if the amount of refund is paid to him. In view of the said judgment, according to the learned advocate for the petitioner, the amount of refund must be paid to the petitioner for the reason that no reasons have been recorded in the impugned orders dated 23-10-2008.

5. The learned standing counsel could not dispute the fact that no reason was recorded by respondent No. 1 in any of the impugned orders.

6. We have heard the learned advocates and have also perused the judgment delivered in Writ Petition No. 4977 of 2009 relied upon by the learned advocate for the petitioner.

7. We do not find anything to show that respondent No. 1 has considered relevant facts so as to come to a conclusion that the amount payable by way of refund should be withheld. In the absence of any reason recorded in the impugned order or upon considering the relevant factor which has been referred to in the aforestated judgment, in our opinion, the Revenue could not have withheld the amount payable to the petitioner by way of refund.

8. In the aforestated circumstances, we direct the respondent authorities to determine the amount payable to the petitioner within two weeks from today and pay the amount so determined along with interest therein within four weeks thereafter.

9. In view of the above direction, the petitions stand disposed of as allowed with no order as to costs.

**ANIL R. DAVE, CJ**

**RAMESH RANGANATHAN, J**

31<sup>st</sup> July, 2009

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Note: Furnish copy by Tuesday.

B/O

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