

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**WEDNESDAY, THE THIRTY FIRST DAY OF JULY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE SRI JUSTICE T.VINOD KUMAR
AND**

THE HONOURABLE SMT JUSTICE P.SREE SUDHA

WRIT PETITION NOS: 1505, 1543, 1544, 1549 AND 4276 OF 2019

W.P.No.1505 of 2019

Between:

M/s.Sri Srinivasa Electronics,, 5-4-423/8/A, Nampally Station Road, Hyderabad - 500 001, represented by its Proprietor, J.Venu Gopala Rao.

.....PETITIONER

AND

1. The Commercial Tax Officer, M.J.Market Circle, Abids Division, Hyderabad.
2. The Commercial Tax Officer, Agapura Circle, Abids Division, Hyderabad.
3. The Appellate Deputy Commissioner (CT), Secunderabad Division, Hyderabad.
4. The State of Telangana, represented by its Principal Secretary, Revenue (CT) Department, Telangana Secretariat, Hyderabad.

.....RESPONDENTS

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 or order or direction particularly one in the nature of Writ of Mandamus setting aside the assessment order passed by the first respondent dated 28.04.2016, for the tax period April, 2008, to June, 2012, read with the appeal order of the third respondent dated 04.12.2018, vide ADC Order No.1523, in seeking to levy tax on the implants to handicapped persons as illegal, arbitrary, and contrary to the provisions of the TVAT Act, 2005.

Contd....2

I.A.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 grant stay of collection of the disputed tax of Rs.10,04,780/- arising in pursuance of the assessment order passed by the first respondent dated 28.04.2016, for the tax period April, 2008, to June, 2012 read with the appeal order of the third respondent dated 04.12.2018, vide ADC Order No.1523.

**Counsel for the Petitioner : SRI S.KRISHNA MURTHY, ADVOCATE FOR
SRI S.SURI BABU**

Counsel for the Respondents : SRI L.VENKATESWARA RAO, SPL SC

W.P.NO:1543 OF 2019

Between:

M/s. Aswanis Surgicals, 5-4-423, Nampally Station Road, Hyderabad - 500 001, represented by its Manager, Govind H. Aswani.

.....PETITIONER

AND

1. The Commercial Tax Officer, M.J.Market Circle, Abids Division, Hyderabad.
2. The Commercial Tax Officer, Agapura Circle, Abids Division, Hyderabad.
3. The Appellate Deputy Commissioner (CT), Secunderabad Division, Hyderabad.
4. The State of Telangana, represented by its Principal Secretary, Revenue (CT) Department, Telangana Secretariat, Hyderabad.

...RESPONDENTS

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 or order or direction particularly one in the nature of Writ of Mandamus setting aside the assessment order passed by the first respondent dated 05.03.2016. for the tax period April, 2008, to June, 2012, read with the appeal order of the third respondent dated 04.12.2018, vide ADC Order No.1524, in seeking to levy tax on the implants to handicapped persons and additional of turnover being a calculation mistake as illegal, arbitrary, and contrary to the provisions of the NAT Act, 2005.

Contd....3

I.A.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 grant stay of collection of the disputed tax of Rs.9,15,570/- arising in pursuance of the assessment order passed by the first respondent dated 05.03.2016, for the tax period April, 2008, to June, 2012 read with the appeal order of the third respondent dated 04.12.2018, vide ADC Order No.1524.

**Counsel for the Petitioner : SRI S.KRISHNA MURTHY, ADVOCATE FOR
SRI S.SURI BABU**

Counsel for the Respondents : SRI L.VENKATESWARA RAO, SPL SC

W.P.NO:1544 OF 2019

Between:

M/s. Meenas Surgicals, 5-4-423/2, Nampally Station Road, Hyderabad - 500 001, represented by its Proprietor, Kanayalal K. Dodwani.

.....PETITIONER

AND

1. The Commercial Tax Officer, M.J.Market Circle, Abids Division, Hyderabad.
2. The Commercial Tax Officer, Sultan Bazar Circle, Abids Division, Hyderabad.
3. The Appellate Deputy Commissioner (CT), Secunderabad Division, Hyderabad.
4. The State of Telangana, represented by its Principal Secretary, Revenue (CT) Department, Telangana Secretariat, Hyderabad.

.....RESPONDENTS

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 or order or direction particularly one in the nature of Writ of Mandamus setting aside the assessment order passed by the first respondent dated 03.06.2016, for the tax period April, 2008, to June, 2012 read with the appeal order of the third respondent dated 04.12.2018, vide ADC Order No.1522, in seeking to levy tax on the implants to handicapped persons and additional of turnover being a calculation mistake as illegal, arbitrary, and contrary to the provisions of the TVAT Act, 2005.

Contd....4

I.A.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 grant stay of collection of the disputed tax of Rs.9,70,284/- arising in pursuance of the assessment order passed by the first respondent dated 03.06.2016, for the tax period April, 2008, to June, 2012 read with the appeal order of the third respondent dated 04.12.2018, vide ADC Order No.1522.

**Counsel for the Petitioner : SRI S.KRISHNA MURTHY, ADVOCATE FOR
SRI S.SURI BABU**

Counsel for the Respondents : SRI L.VENKATESWARA RAO, SPL SC

W.P.NO: 1549 OF 2019

Between:

M/s.The Surgical Trading Co, 5-4-457, Nampally Station Road, Hyderabad - 500 001, represented by its Partner, Sri S.K.Sethi.

.....PETITIONER

AND

1. The Commercial Tax Officer, M.J.Market Circle, Abids Division, Hyderabad.
2. The Deputy Commercial Tax Officer, Narayanaguda Circle, Abids Division, Hyderabad.
3. The Appellate Deputy Commissioner (CT), Secunderabad Division, Hyderabad.
4. The State of Telangana, represented by its Principal Secretary, Revenue (CT) Department, Telangana Secretariat, Hyderabad.

.....RESPONDENTS

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 or order or direction particularly one in the nature of Writ of Mandamus setting aside the assessment order passed by the first respondent dated 05.03.2016, for the tax period 2010-11 to 2011-12 read with the appeal order of the third respondent dated 04.12.2018, vide ADC Order No.1525, in seeking to levy tax on the implants to handicapped persons and not giving credit of Rs.51,146/- paid by the petitioner at the time of filing of the first appeal.

Contd.....5

I.A.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 pending disposal of the writ petition grant stay of collection of the disputed tax of Rs.4,07,718/- arising in pursuance of the assessment order passed by the first respondent dt.05- 03-2016, for the tax period 2010-11 to 2011-12, read with the appeal order of the third respondent dated 04-12-2018, vide ADC order No.1525.

**Counsel for the Petitioner : SRI S.KRISHNA MURTHY, ADVOCATE FOR
SRI S.SURI BABU**

Counsel for the Respondents : SRI L.VENKATESWARA RAO, SPL SC

W.P.NO:4276 OF 2019

Between:

M/s.Ganis Scientific and Surgicals, 4-1-880 and 881, Reddy Hostel Building, Abids, Hyderabad, represented by its Partner, Mr.M.A.M.Rashaad.

.....PETITIONER

AND

1. The Commercial Tax Officer, Narayanaguda -M.J.Maricet Abids Division, Hyderabad.
2. The Appellate Deputy Commissioner (CT), Secunderabad Division, Hyderabad.
3. The State of Telangana, represented by its Principal Secretary, Revenue (CT) Department, Telangana Secretariat, Hyderabad.

.....RESPONDENTS

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 or order or direction particularly one in the nature of Writ of Mandamus setting aside the impugned appeal order of the second respondent dated 04.12.2018, vide ADC Order No.1527, read with the assessment order passed by the first respondent in Form VAT 305 dated 11.05.2016, for the tax period April, 2009, to March, 2011, in seeking to levy tax on the implants to handicapped persons and addition of turnover being a calculation mistake as illegal, arbitrary, and contrary to the provisions of TVAT Act, 2005.

Contd.....6

I.A.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 pending disposal of the Writ Petition grant stay of collection of the disputed tax of Rs.10,75,096/- arising in pursuance of the appeal order of the second respondent dated 04.12.2018, vide ADC Order No.1527, read with the assessment order passed by the first respondent in Form VAT 305 dated 11.05.2016, for the tax period April, 2009, to March, 2011.

**Counsel for the Petitioner : SRI S.KRISHNA MURTHY, ADVOCATE FOR
SRI S.SURI BABU**

Counsel for the Respondents : SRI L.VENKATESWARA RAO, SPL SC

The Court made the following COMMON ORDER

**THE HON'BLE SRI JUSTICE T.VINOD KUMAR
AND
THE HON'BLE SMT JUSTICE P.SREE SUDHA
W.P.Nos.1505, 1543, 1544, 1549 and 4276 of 2019**

COMMON ORDER: *(per Hon'ble Sri Justice T.Vinod Kumar)*

Heard Sri S. Suri Babu, learned counsel appearing for the petitioners in this batch of Writ Petitions and Sri L. Venkateswara Rao, learned Special Standing Counsel appearing for the respondents, and perused the record.

2. Since, the issue involved in all these Writ Petitions is one and the same, they are being disposed of by this common order.
3. The tax period involved in all these Writ Petitions is from 2008 to 2012.
4. To put in brief, the case of the petitioners is that they are all registered dealers under the Andhra Pradesh Value Added Tax Act, 2005 (TVAT Act, 2005 w.e.f. 2.06.2014) (for short 'the Act') dealing in surgical equipments; that in the course of business, the petitioners sell various aids and implements used by handicapped persons; and that the sale of aids and implements for use by the

handicapped persons is exempted from tax under Section 7 of the provisions of the Act read with entry 2 of Schedule I of the Act.

5. It is the further case of petitioners that notwithstanding the clear and unambiguous entry in the Schedule I of the Act, the respondent-assessing authorities are denying the benefit of exemption by adopting a hyper technical approach claiming that benefit of exemption is available only if the goods viz., aids and implements are sold to a person having permanent handicap for his use, thereby placing a narrow interpretation resulting in placing restriction on the scope and applicability of the entry in the Schedule to the Act.

6. It is the further case of petitioners that the restriction or the restricted mode of reading the Entry in Schedule I of the Act, by prefixing of the term 'physically' is unwarranted and uncalled for.

7. Petitioners further contend that most of the sales effected by them relate to wheel chairs (both manual and mechanical) and artificial joints which are used only by the persons who are either disabled or suffering with disability.

8. It is also the further contention of petitioner that the disability or disabled cannot be associated with the permanency of such

disability requiring the use of the aids and implements for such sales to be exempted from tax under Section 7 of the Act.

9. Petitioners further contend that the handicap/disability is not confined only to physical disability and would include all kinds of handicap and any aid or implement which goes to aid or minimize the effect of disability of a handicapped person would be eligible for being considered as covered by entry 2 of schedule I of the Act.

10. In order to support the aforesaid contention that handicap would take in its ambit all kinds of disability as defined under 'The Persons with the Disabilities (Equal, Protection of Rights and Full Participation) Act, 1995', learned counsel for the petitioners has also pressed the legal position of the Supreme Court in *Deaf Employees Welfare Association and another Vs. Union of India and others*¹.

11. *Per contra*, learned Special Standing Counsel appearing on behalf of respondents would emphatically contend that the Entry 2 in Schedule I being an exemption entry, the same needs to be construed strictly; that any temporary impairment cannot be considered as handicap or disability; and that the scope of entry

¹ (2014) 3 SCC 173

would cover only those aids and implements which are intended for use by the persons having handicap / disability which is permanent in nature, thereby making the person who has a disability requiring to use certain aids and implements.

12. Learned Special Standing Counsel would further contend that not all the equipment and goods sold by the petitioners are intended for the use of the handicapped person; and that only traction kits, hand / walking sticks, surgical goods etc. dealt by the petitioners.

13. Learned Special Standing Counsel would further contend that a similar issue had fallen for consideration before the High Court of Andhra Pradesh in the case of *M/s. Srija surgicals Vs. Deputy Commissioner (CT)*², wherein the Division Bench of the Andhra Pradesh High Court had taken a view that Entry 2 of Schedule I of the Andhra Pradesh Value Added Tax Act, 2005 which is in *pari materia* to the entry under consideration, while remanding the matter back to the assessing authority had held that only such of those aids or implements which are exclusively by permanently disabled/handicap person can be granted relief/exemption from tax.

² 2022 SCC OnLine AP 2443

14. We have taken note of the respective contentions urged.

15. Before proceeding to deal with the respective contentions urged on behalf of the petitioners and the respondents, on this Court querying with the learned Special Standing Counsel as to whether the authorities are considering the 'Artificial Joints' as falling under Entry 2 of Schedule I of the Act, the learned Special Standing Counsel fairly stated that since the 'Artificial Joints' are only intended for use by the persons with disability / handicap, the same would be covered under Entry 2 of Schedule – I of the Act and to that extent the respondent assessing authorities erred in denying the benefit to the petitioners.

16. Since, the respondents have now clarified to this Court that 'Artificial Joints' or 'Artificial Limbs' by whatever name they are called, are meant for use by handicapped person as 'aid or implement', the respondent authorities shall extend the benefit of exemption to the petitioners on the turnover relating to such sales.

17. Insofar as the claim of the petitioners with the regard to the goods dealt by them are to be considered as 'aid and implements used by handicapped persons' as covered under Entry 2 of Schedule I of the Act is concerned, it is to be seen that the purport and intent

behind granting exemption from the levy of tax is to minimize/reduce the impact of disability/handicap of the person. Therefore, this Court is of the view that the said entry takes in its ambit only disability of a permanent nature and would not cover situations arising out of temporary impairment which on passage of time would stand restored to normalcy.

18. Further, the use of words 'handicapped person' in conjunction with aids and implements would show that exemption is available only in respect of any goods used by persons having any kind of disability be it physical, visual etc., and is not confined only to medical and surgical goods *i.e.*, for example a Braille Typewriter which cannot be considered as either falling under surgical or medical category of goods is still an implement used by a handicapped person.

19. Though an emotional submission was sought to be placed before the Court that no normal person would like to use a wheelchair, usage of which indicates the said person having disability, by using the same example given by the petitioners, it is to be seen that a wheelchair can also be used by a normal person whose mobility has been reduced due to ageing or suffering with

fracture, which cannot be considered as handicapped or disabled. Thus, the same goods cater to two different users one having a permanent disability, while the other having a temporary disability. Since, the Entry 2 of Schedule I of the Act provides for an exemption from the levy of tax, it has to receive a strict construction so that the object behind the entry is achieved by maintaining an intelligent differentia.

20. Similarly, when we look into the goods sold by the petitioners like traction sets, these are not used by a person who is disabled/handicapped, but are intended to be used in providing succor to those who have suffered temporary impairment which by any stretch of imagination cannot be considered as a person with the disability/handicapped.

21. The High Court of Andhra Pradesh by a detailed analysis had considered the scope of the entry 2 of schedule I of the Act, in the decision rendered in *Sirja Surgicals* (supra) and held that the said entry providing for exemption is applicable only to such of those aids or implements which are exclusively used by permanently disabled/handicapped person can be granted relief/exemption from

tax. We are in respectful agreement with the aforesaid view taken by the Division Bench of the High Court of Andhra Pradesh.

22. In view of the conclusion arrived at by us as above, the Writ Petitions are disposed of setting aside the order of assessment and the appellate order under challenge and the matters are remanded back to the Assessing Authority to deal with the matters afresh, keeping in view the findings arrived at by us hereinabove and pass orders in accordance with law after granting an opportunity of hearing to the petitioners.

23. As a sequel, miscellaneous petitions if any, shall stand closed.

No order as to costs.

SD/- K.SREERAMA MURTHY
ASSISTANT REGISTRAR

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ra
SECTION OFFICER

To

1. The Commercial Tax Officer, Narayanaguda -M.J.Maricet Abids Division, Hyderabad.
2. The Appellate Deputy Commissioner (CT), Secunderabad Division, Hyderabad.
3. The Principal Secretary, Revenue (CT) Department, Telangana Secretariat, State of Telangana at Hyderabad.
4. One CC to Sri S.Krishna Murthy, Advocate [OPUC]
5. One CC to SRI L.VENKATESWARA RAO, SPL One CC to SRI B.JAGAN MADHAV, SC FOR MCPL [OPUC] (OPUC)
6. Two CD Copies

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HIGH COURT

DATED:31/07/2024

COMMON ORDER

WP.Nos.1505, 1543,
1544, 1549 AND 4276 OF 2019



DISPOSING OF THE WRIT PETITIONS
WITHOUT COSTS.

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K
23/9/24