

APHC010201652025



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

**[3529]**

WEDNESDAY, THE TWENTY NINETH DAY OF APRIL  
TWO THOUSAND AND TWENTY SIX

**PRESENT**

**THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO**

**THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR**

**WRIT PETITION NO: 10314/2025**

**Between:**

1. TATA POWER RENEWABLE ENERGIES LIMITED,, (FORMERLY, TATA POWER SOLAR SYSTEMS LIMITED) A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956. HAVING ADDRESS AT D. NO. 12/4593 KOTA STREET, PRODDATUR, YSR DISTRICT, ANDHRA PRADESH - 516360. REP BY ITS AUTHORIZED SIGNATORY MR. SURESH GOENKA

**...PETITIONER**

**AND**

1. UNION OF INDIA, REP BY ITS REVENUE SECRETARY, MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI.

2. STATE OF ANDHRA PRADESH, THROUGH ITS PRINCIPAL SECRETARY, REVENUE DEPARTMENT (COMMERCIAL TAX) A.P. SECRETARIAT, VELAGAPUDI, GUNTUR DISTRICT, ANDHRA PRADESH.

3. THE DEPUTY COMMISSIONER ST, SPECIAL CIRCLE KADAPA DIVISION, 1/499, OPP YSR GUEST HOUSE, SMITH ROAD, NEAR ZILLA PARISHAD, KADAPA 516 001, YSR DISTRICT, ANDHRA PRADESH.

**...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 in the nature of Writ of Mandamus or any other Writ, declaring the actions of the Respondent No.3 in passing the Impugned Assessment Order in Form DRC-07 bearing DIN3706032567381 dated 06.03.2025 (at Annexure A) as being illegal, arbitrary, and violative of applicable law and Article 14 of the Constitution of India and consequently set aside the same and pass such

**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 the operation of the Impugned Assessment Order No. ZD370325008138J in Form DRC-07 bearing DIN3706032567381 dated 06.03.2025 (at Annexure A) including the proceedings initiated / intended to be initiated thereunder and pass such

**Counsel for the Petitioner:**

1.DODDALA PRUDHVI TEJA

**Counsel for the Respondent(S):**

1.GP FOR COMMERCIAL TAX

**Date of Reserved : 22.04.2026**

**Date of Pronouncement : 29.04.2026**

**Date of Upload : 29.04.2026**

**The Court made the following Order:**

*(per Hon'ble Sri Justice R. Raghunandan Rao)*

Heard Sri Kumar Visalaksh, learned counsel appearing on behalf of the Sri Doddala Prudhvi Teja, learned counsel appearing for the petitioner and the learned Government Pleader for Commercial Taxes, appearing for the respondents.

2. The petitioner is in the business of supply of Solar Power Generating Systems and Solar Power-based Devices. In this process, the petitioner also offers services of design, installation, testing, commissioning and maintenance of such systems and devices.

3. The petitioner, who is registered under the GST Act, had been filing its returns and paying tax. Entry 234, in Notification No.1/2017-Central Tax (Rate), dated 28.06.2017, read with Services Rate Notification No.11/2017-Central Tax (Rate), dated 28.06.2017, fixed rate of 2.5% under CGST and 2.5% under SGST, in relation to supply of goods involved in solar power generating systems and a separate rate of 18% for supply of services, in this regard, in entry 38 of Notification No. 11/2017. This entry, in Notification No. 1/2017, was further amended by Notification No.24/2018 which added an explanation to the said entry. The said explanation reads as follows:

Schedule 1-2.5%

S.No.	Chapter/Heading/Sub-Description of Goods	Description of Goods

234	84,85 or 94	<p>Following renewable energy devices &amp; parts for their manufacture .....</p> <p>(b) Solar power based devices</p> <p>Explanation: <b><u>If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service</u></b> specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], <b><u>the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.</u></b></p>
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4. At the same time, another explanation was added in entry No.38, of the Services Notification, which was dealing with services relating to solar power generating system. The said explanation reads as follows:

Sr.No	Chapter, Section of Heading	Description of Service	Rate(%)	Condition
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38	9954 or 9983 or 9987	<p>Service by way of construction or engineering or installation or other technical services, provided in relation of setting up of following,-</p> <p>...</p> <p>(c) Solar power generating system</p> <p>Explanation - This entry shall be read in conjunction with serial number 201A of Schedule II of the notification No. 1/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 673(E) dated 28th June, 2017.</p>		
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5. The petitioner took the stand that these amendments to the said entries effectively levied GST @ 5% on 70% of the value of supply and 18% on 30% of the value of supply resulting in an effective rate of 8.9%. It would also be necessary, to note that, that a circular had also been issued by the Central Board of Indirect Taxes and Customs (CBIC) bearing Circular No.163/19/2021-GST, dated 06.10.2021, making the aforesaid explanation applicable with effect from 01.01.2019. The petitioner on the basis of such notifications had been paying taxes of 5% on 70% of the supply price and 18% on 30% of the supply price. The returns filed by the petitioner, on this basis, for the tax period 2020-2021, were not disputed till a show cause notice, dated 30.11.2024, was issued by the 3<sup>rd</sup> respondent. In this show

cause notice, various issues were raised. However, all the issues, except one issue, had been resolved and are not the subject matter of the present writ petition. The issue which is the subject matter of this Writ Petition, is the rate at which tax is to be collected.

6. The 3<sup>rd</sup> respondent proposed tax on supply of solar power generating systems at 18% and issued a notice, under Section 74 of the CGST Act, on the ground that there has been evasion of tax. The petitioner replied, to this show cause notice, on 24.12.2024 and 24.01.2025. The 3<sup>rd</sup> respondent rejected the objections raised by the petitioner, in these two representations, and passed an order of assessment, under Section 74 and 74(9) of the CGST Act on 06.03.2025, raising the tax demand of Rs.9,19,14,507/- as well as an equivalent amount as penalty along with interest. The petitioner being aggrieved by this order, has approached this Court, by way of the present Writ Petition.

7. The petitioner in its objections, filed before the 3<sup>rd</sup> respondent had contended that the petitioner had been supplying solar power generating systems, as a composite contract and as such, the petitioner would be entitled to the benefit of the aforesaid entries which levied effective rate of 8.9%. The petitioner also took the contention that the assessment proceedings were barred by limitation as section 74 of the CGST Act, which gives extended limitation to the third respondent, could not have been invoked. The petitioner

contended that none of the ingredients of section 74, had been made out in the show cause notice.

8. The 3<sup>rd</sup> respondent, while considering these objections, held that the petitioner had raised bills separately for goods supplied at different rates with different rates of taxes and that separate invoices were raised for services, due to which the formula of 70:30 set out in entry 234 and entry 38 mentioned above would not be applicable. The third respondent, on the ground that separate invoices were issued for supply of goods and separate invoices were issued for erection and installation, held that the supply cannot be treated as a single contract of supply of goods and services.

9. Apart from this, the third respondent also held that the effective rate of 8.9% could not have been applied for goods which have been supplied and covered under different HSN codes, which were liable to be taxed at the rate of 18%. The present writ petition challenges this order of assessment.

10. The learned counsel for the petitioner, would contend that the impugned order is without jurisdiction and beyond limitation. Apart from this, the petitioner would also contend that the 70:30% mechanism brought in by the above notifications was applicable in the present case. The petitioner also relied upon the judgment of a Division Bench of this Court, in the case of **Sterling and Wilson Pvt. Ltd. vs. Joint Commissioner & Ors.**, in W.P.No.20096 of 2020, wherein it was held that supply of solar power generating systems is a composite supply. In paragraph No.23, of the affidavit

filed in support of the writ petition, the petitioner had taken a specific ground that the supply of goods and services, in the course of installing solar power generating systems, was under one contract and that the petitioner, in the alternative, would also contend that the notifications clearly stipulate a specific rate of tax by virtue of a deeming fiction, and the issue of whether the goods supplied could have been taxed at higher rates would not arise in view of the explicit provisions of the notifications.

11. The 3<sup>rd</sup> respondent has filed a counter-affidavit and an additional counter-affidavit. In the counter-affidavit, the third respondent, except reiterating that the petitioner had issued separate invoices for the supply of goods and separate invoices for the supply of services, has not disputed the contention of the petitioner that all these supplies were made in pursuance of contracts executed between the petitioner and its customers. The additional counter affidavit, also does not contain any averments on this issue.

**Consideration of the Court:**

12. The supply of solar power generating systems, and the tax payable on such supply has been considered by a Division Bench of this Court in **Sterling and Wilson Pvt. Ltd. vs. Joint Commissioner & Ors.** In that case, the issue before the Court was whether such supply of solar power generating systems would result in the installation of an immovable property or would only be a composite supply of services and goods. The Division

Bench, after going into the facts of the case, had held that such supply of solar power generating systems was a composite supply of goods and services.

13. In the present case, this Court does not require to go into those facts as the petitioner is accepting tax liability set out in Entry 234 of Notification No. 1/2017 C.T (R), dated 28.06.2017 and Entry No.38 in Service rate Notification No.11/2017-C.T (R), dated 28.06.2017. A conjoint reading of both these notifications, and the explanations appended to the relevant entries would show that the consideration received for supply of solar power generating systems, even under erection, procurement, and commissioning contracts, would have to be taxed by applying the 70:30 mechanism, wherein 70% of the supply price would be taxed at 5% while 30% of the supply price would be taxed at 18%.

14. The 3<sup>rd</sup> respondent sought to make out a case of separate supply of goods and service due to which the petitioner would not be entitled to the benefit of these notifications. This view is incorrect, for the reasons that follow.

15. The original entry, No. 234, in Notification No. 1, levied GST at the rate of 5% on the supply of Solar Power Generating Systems and its parts. This would mean that any goods, which are supplied as a part of such Solar Generating Systems, would attract GST at the rate of 5%, even if they fall under different heads. Similarly, the services, supplied, as a part of the installation, maintenance etc., of Solar Power Generating Systems, would

attract GST at the rate of 18%. Prior to the introduction of the explanation, the registered person would have to pay GST at the rate of 5% on the supply of goods and 18% on the supply of services. For this purpose, the value of supply of goods and the value of supply of services, would have to be disclosed separately and different rates of tax would have to be paid. The registered person, in **Sterling and Wilson Pvt. Ltd. vs. Joint Commissioner & Ors.**, in W.P.No.20096 of 2020, had contended that in such a situation, the registered person would be entitled to the benefit of paying GST, on the entire supply, at the rate of 5%, by treating the supply of goods and services as a composite supply, wherein the registered person would pay GST at the rate of 5%, fixed for the supply of goods, which was the predominant part of the supply. This contention was accepted by a Division Bench of this court, in the above judgment.

16. By virtue of the inclusion of the explanations, in entry 234 and entry 38 of the two notifications, a legal fiction has been created, that in the supply of Solar Power generating Systems, the value of supply of goods is 70% and the value of services is 30%. The explanation, incorporated in Entry 234, stipulates that the 70:30 mechanism would be applicable if the goods mentioned in Entry 234 are supplied along with other goods, which could be taxed and supply of services, which are taxable under Entry 38 of Notification No. 11 of 2017. That part of the explanation is being extracted:

**“If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service....”**

17. In view of these provisions, any supply of a Solar Power Generating System, or its parts as one supply or as separate parts would not make any difference, to the rate of tax. The view of the 3<sup>rd</sup> respondent to the contrary is incorrect and has to be rejected.

18. In the present case, even if the view of the third respondent, is to be taken into account, there has been a separate supply of goods in relation to Solar Power Generating Systems and systems, falling under Entry 234 of Notification No. 1 of 2017, and there has been a separate supply of services, falling under Entry No. 38 of Notification No. 11 of 2017, it is not clear as to how the 3<sup>rd</sup> respondent can claim that the petitioner would not be entitled to pay tax, under these entries. Except stating that separate invoices were issued, the third respondent has not explained how issuance of separate invoices would take the case of the petitioner out of these two entries. Further, the petitioner has specifically contended that these supplies were made under contracts executed with the purchaser. In such circumstances, mere issuance of separate invoices, cannot mean that there is no overall contract and that the supply price can be taxed at whichever rate, the third respondent seeks to levy. Another issue that would come up is that, even if the third respondent was right, an exercise of ascertaining the value of the goods which had been supplied and the rate of tax payable on such goods should have been carried

out. There is no such clarity or exercise, undertaken by the third respondent. Similarly, another exercise in relation to the value of services would have to be conducted. Instead of doing the same, the third respondent simply levied tax at the rate of 18% on the entire supply. It is not clear as to how such a rate of tax could have been applied on the entire turnover, especially when the third respondent had taken the view that there was a separate supply of goods and a separate supply of services.

15. The impugned order appears to be an attempt by the third respondent to simply raise revenue for the state without applying his mind to the facts. In any event, the view of the 3<sup>rd</sup> respondent is incorrect and it would have to be held that the petitioner was required to pay GST, as per the 70:30 mechanism, set out in the explanation to the entries in the above notifications.

16. For the aforesaid reasons, the order of assessment passed by the 3<sup>rd</sup> respondent on 06.03.2025 is set aside. In view of the decision on merits, this Court is not going into the question of whether the impugned order of assessment was within limitation or not.

17. Accordingly, this Writ Petition is allowed, and the impugned Assessment Order in Form DRC-07 bearing DIN3706032567381, dated 06.03.2025, is set aside to the extent of the levy of differential rate of tax, on the supply of goods and services of solar power generating systems and solar

power based devices, and the 3<sup>rd</sup> respondent is further directed to pass necessary consequential orders. There shall be no order as to costs.

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

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**R. RAGHUNANDAN RAO, J**

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**T.C.D. SEKHAR, J**

RJS

**THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**  
**&**  
**THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR**

**WRIT PETITION No: 10314 of 2025**

(per Hon'ble Sri Justice R.Raghunandan Rao)

**29.04.2026**

**RJS**

