

APHC010243552023



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

[3529]

TUESDAY, THE THIRTY FIRST DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION Nos: 12903 & 10536 of 2023

WRIT PETITION NO: 12903/2023

Between:

1.SARAOGI UDYOG PVT.LTD.,, (A COMPANY REGISTERED UNDER COMPANIES ACT, 1956) REPRESENTED BY COMPANY SECRETARY, MR. MUKESH KUMAR PANDEY 30/15/166, 3RD. FLOOR, HIRAWAT CENTRE, DABAGARDENS, VISAKHAPATNAM, ANDHRA PRADESH - 530020

...PETITIONER

AND

1.THE UNION OF INDIA, THROUGH ITS SECRETARY DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, NORTH BLOCK NEW DELHI

2.THE ADDITIONAL COMMISSIONER OF CENTRAL TAX, OFFICE OF THE PRINCIPAL COMMISSIONER OF CENTRAL TAX VISAKHAPATNAM CENTRAL GST COMMISSIONERATE G.S.T. BHAVAN, PORT AREA VISAKHAPATNAM -530035.

3.THE JOINT COMMISSIONER OF CENTRAL TAX, OFFICE OF THE PRINCIPAL COMMISSIONER OF CENTRAL TAX VISAKHAPATNAM CENTRAL GST COMMISSIONERATE G.S.T. BHAVAN, PORT AREA VISAKHAPATNAM -530035.

4.THE ASSISTANT COMMISSIONER OF CENTRAL TAX, OFFICE OF THE PRINCIPAL COMMISSIONER OF CENTRAL TAX VISAKHAPATNAM CENTRAL GST COMMISSIONERATE G.S.T.

BHAVAN, PORT AREA VISAKHAPATNAM -530035.

...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 more particularly one in the nature of WRIT OF MANDAMUS declaring a. that quashed the impugned order dated 21.02.2023 passed by the Respondent No. 2 confirming demand of GST of Rs. 1,60,86,151/- on ocean freight in respect of the impugned show cause notice dated 28.02.2021 and also summary of order in Form GST DRC-07 dated 03.03.2023 issued by the Respondent /No. 4, as it is against the judgment/order dated 24.08.2022 of Hon'ble Delhi High Court in the Petitioner's own case, illegal, without jurisdiction and without authority of law, contrary to the provisions of CGST Act, 2017 and unsustainable in law. b. that quashed the impugned show cause notice dated 28.02.2022 issued by the Respondent No. 3 under section 74(1) of the CGST Act, 2017 demanding GST of Rs. 2,58,96,018/- is illegal, without jurisdiction and without authority of law, contrary to the provisions of CGST Act, 2017 and unsustainable in law. c) and to pass

IA NO: 1 OF 2023

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 Order in Original dated 21.02.2023 passed by the Respondent No.2 during the pendency of the writ petition and to pass

WRIT PETITION NO: 10536/2023

Between:

1.AGARWAL COAL CORPORATION PVT. LTD., (A COMPANY REGISTERED UNDER COMPANIES ACT, 1956) REPTD.BY ITS BRANCH MANAGER, SRI. BHUPENDRA NATH TIWARI, D. NO. 31/33/63, 1ST. FLOOR, OPP NEELLAMAVEPACHETTU, VISAKHAPATNAM, ANDHRA PRADESH - 530020

...PETITIONER

AND

1.UNION OF INDIA, THROUGH ITS SECRETARY DEPARTMENT OF

REVENUE, MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI

2. DEPUTY COMMISSIONER OF CENTRAL TAX VISAKHAPATNAM
CENTRAL GST DIVISION, VISAKHAPATNAM COMMISSIONERATE
D.NO. 45-47-21, 2ND FLOOR, SRIYA COMPLEX NEAR NARSIMHA
NAGAR RYTHU BAZAR, KAILASAPURAM, NH-5 VISAKHAPATNAM -
530024.
3. ASSISTANT COMMISSIONER OF CENTRAL TAX, VIZAG AUDIT
CIRCLE VISAKHAPATNAM GST AUDIT CIRCLE G.S.T. BHAVAN,
PORT AREA VISAKHAPATNAM -530024.

...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 more particularly one in the nature of WRIT OF MANDAMUS declaring a. that quashed the impugned order dated 31.01.2023 passed by the Respondent No. 2 confirming demand of GST of Rs. 68,39,721/- on ocean freight in respect of the impugned show cause notice dated 12.07.2021 read with rectified show cause notice dated 30.08.2021, as it is against the judgment/order dated 24.08.2022 of Delhi High Court in the Petitioner's own case, illegal, without jurisdiction and without authority of law, contrary to the provisions of CGST Act, 2017 and unsustainable in law, b. that quashed the impugned rectified show cause notice dated 30.08.2021 issued by the Respondent No. 3 under section 161 of the CGST Act, 2017 demanding GST of Rs. 96,63,219 is illegal, beyond the scope of provisions of section 161 of the CGST Act, 2017 and against the principle of natural justice as enshrined in third proviso of said section 161, c. that the show cause notice under section 74(1) of the CGST Act, 2017 cannot be beyond the scope and higher the amount of intimation sent under section 74(5) of the CGST Act, 2017 read with Rule 142(1A) on GST DRC-01A of the CGST Rules, 2017, a) and to pass

IA NO: 1 OF 2023

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 Order in Original dated 31.01.2023 passed by the Respondent No. 2 during the pendency of the writ petition and to pass

IA NO: 2 OF 2023

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 direct the Respondents from taking any coercive measure against the petitioner during the pendency of the writ petition and to pass

Counsel for the Petitioner:

1.C SANJEEVA RAO

Counsel for the Respondent(S):

1.DEPUTY SOLICITOR GENERAL OF INDIA

2.P S P SURESH KUMAR

The Court made the following Common Order:

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

Since the issues raised in both these Writ Petitions are one and the same, they are being disposed of, by way of this common order.

2. The petitioner in W.P.No.12903 of 2023, is in the business of importing and selling coal to local customers. In the process of such import, the petitioner had purchased coal, on C.I.F. basis as well as on F.O.B. basis. The petitioner was served with a show-cause notice, dated 28.02.2022, for the period, July, 2017 to March, 2021, calling upon the petitioner to show cause why G.S.T., on a reverse charge mechanism basis, should not be collected from the petitioner, in relation to the ocean freight charges, which had been incurred either on C.I.F. basis or on F.O.B. basis. After, hearing the petitioner, the 2nd respondent had passed an order of assessment, dated 21.02.2023, confirming the show-cause notice and raised a demand against the petitioner. In this order of assessment, the 2nd respondent, dropped the proposal, in relation to freight, paid on C.I.F. basis and levied tax, on R.C.M. basis, on freight, in relation to F.O.B. contracts.

3. The petitioner in W.P.No.10536 of 2023 is also involved in the import of coal, which is subsequently sold to local customers. In the process of such import, this petitioner also purchased coal on C.I.F. basis as well as on F.O.B. basis. This petitioner received a show-cause notice, dated 30.08.2021, for the period, 2017-2018 & 2018-2019, calling upon the petitioner to show cause why G.S.T., on a reverse charge mechanism basis, should not be collected

from the petitioner, in relation to the ocean freight charges, which had been incurred either on C.I.F. basis or on F.O.B. basis. After, hearing the petitioner, the 2nd respondent had passed an order of assessment, dated 31.01.2023, confirming the show-cause notice and raised a demand against the petitioner. In this order of assessment, the 2nd respondent, dropped the show-cause notice, in relation to freight, paid on C.I.F. basis and levied tax, on R.C.M. basis, on freight, in relation to F.O.B. contracts.

4. These petitioners have approached this Court, by way of these Writ Petitions, being aggrieved by the aforesaid orders of assessment.

5. The contention of the petitioners is that, the orders in both these cases came to be passed, on the basis of two Notifications, bearing Notification No.08/2017 & Notification No.10/2017, under which freight paid, in the course of import, came to be taxed. The petitioners would further submit that, these two Notifications came to be quashed by the Hon'ble High Court of Gujarat in the case of ***M/s. Mohit Minerals Pvt. Ltd. Vs. Union of India & another***¹ and the same was confirmed by the Hon'ble Supreme Court in the Appeal filed against the said judgment in the case of ***Union of India & another Vs. M/s. Mohit Minerals Pvt. Ltd.***². The petitioners would also contend that, in such circumstances and in view of the judgment of the Hon'ble Supreme Court mentioned above, G.S.T. cannot be collected on freight paid, under the C.I.F. basis or F.O.B. basis.

¹ 2020 (1) TMI 974, 2020 (33) G.S.TL. 321 (Guj.)

² 2022 (5) TMI 968, (2022) 10 SCC 700

6. The respondents, on the other hand, have filed counter-affidavits, contending that, the judgment of the Hon'ble Supreme Court is restricted to freight, paid on C.I.F. basis and the question of whether freight, paid on F.O.B. basis can be subjected to tax, is left open.

7. Though the contention of the learned Standing Counsel, appearing for the respondents is correct, the fact remains that this Court, in its judgment, dated 05.02.2025, in W.P.No.1268 of 2021 & batch, had held in paragraph – 27, as follows:

“27. The aforesaid observations of the Hon'ble Supreme Court, are a reiteration of the principle that taxation of supply of services, even after the said cost of services had already been taxed, would not arise. We are alive to the fact that the observations of the Hon'ble Supreme Court were made only in the context of a C.I.F. contract. However, the basic principle that there cannot be double taxation of the same transaction, is a universal principle, which would apply to both C.I.F. contracts and F.O.B. contracts.”

8. In that view of the matter these Writ Petitions are allowed, setting aside the orders of assessment, dated 21.02.2023 & 31.01.2023, in relation to the issue of exigibility of G.S.T. on freight paid by the petitioners, in the course of importing coal. There shall be no order as to costs.

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

R. RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

Date:31.03.2026
KPV

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THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

AND

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

WRIT PETITION Nos.12903 & 10536 of 2023

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

31.03.2026

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