

APHC010427042024



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

[3529]

WEDNESDAY, THE EIGHTH 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: 22135/2024**

**Between:**

1. JWALA ENERGY RESOURCES PRIVATE LIMITED, 304, PRATHIMA APARTMENTS, R.K. BEACH ROAD, KRISHNA NAGAR, MAHARANI PETA, VISAKHAPATNAM-530002 GSTIN 37AADCJ2112L1ZP REPRESENTED BY ITS AUTHORISED SIGNATORY MR. RAJVIR SINGH JUNEJA

**...PETITIONER**

**AND**

1. THE ASSISTANT COMMISSIONERS GST, VISAKHAPATNAM DIVISION, KRUPAM MARKET CIRCLE ANDHRA PRADESH.
2. COMMISSIONER CGST, VISAKHAPATNAM 2ND FLOOR, CENTRAL EXCISE BUILDING, NEW GST BHAVAN, PORT AREA, VISAKHAPATNAM-530035.
3. THE STATE OF ANDHRA PRADESH, REPRESENTED BY ITS PRINCIPAL SECRETARY REVENUE CTII DEPARTMENT, SECRETARIAT, VELAGAPUDI, AMARAVATHI, GUNTUR DISTRICT.

**...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 particularly one in the nature of Writ of Mandamus and declare that the Impugned Order dated 07.06.2024 passed by the Respondent no.1 to the extent of not

refunding the interest amount of Rs.20,50,911/-as unconstitutional, illegal, in violation of principles of natural justice, arbitrary and consequently direct the Respondents to forthwith refund the interest amount of Rs.20,50,911/- and pass

**IA NO: 1 OF 2024**

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 to forthwith refund the interest amount of Rs.20,50,911/- pending the final disposal of the writ petition and pass

**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 receive the counter copies on record by allowing the leave petition in the above writ petition and pass

**IA NO: 2 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 grant leave to the respondent to file the counter affidavit and pass

**Counsel for the Petitioner:**

1.D S SIVADARSHAN

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

1.NAGARAJU NAGURU

2.GP FOR COMMERCIAL TAX

**The Court made the following Order:** (per Hon'ble Sri Justice R. Raghunandan Rao)

The petitioner had imported coal for the purposes of running its power generation unit. As for the purpose of importing coal, the petitioner had paid ocean freight charges to the suppliers of such coal, on C.I.F. basis. The Tax Authorities, relying upon Entry No.10 of Notification No.10 of 2017, had required the petitioner to pay G.S.T., on the freight paid by the petitioner, in these transactions.

2. The said Entry No.10 in Notification No.10 of 2017, came to be set aside, by a judgment of the Hon'ble High Court of Gujarat in the case of ***M/s. Mohit Minerals Pvt. Ltd. Vs. Union of India & another***<sup>1</sup>. The challenge to this order of the Hon'ble High Court of Gujarat ended in a dismissal of the Civil Appeal by the Hon'ble Supreme Court. The judgment of the Hon'ble Supreme Court is reported as ***Union of India & another Vs. M/s. Mohit Minerals Pvt. Ltd.***<sup>2</sup>.

3. The petitioner sought refund of the G.S.T. paid by the petitioner, on the quantum of ocean freight paid, on reverse charge basis, for the period, 2018-2019.

4. The petitioner had also challenged the said levy, by way of W.P.No.4014 of 2021, filed before this Court. Apart from challenging the vires of Entry No.10, the petitioner had also sought a direction to the respondents to

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<sup>1</sup> 2020 (1) TMI 974, 2020 (33) G.S.TL. 321 (Guj.)

<sup>2</sup> 2022 (5) TMI 968, (2022) 10 SCC 700

refund an amount of Rs.68,36,372/-, which was the I.G.S.T. paid on the freight charges. The said Writ Petition is still pending before this Court.

5. As the judgment of the Hon'ble Supreme Court striking down Entry No.10, had been delivered, on 19.05.2022, the petitioner sought refund of the I.G.S.T. amount, along with interest @6% p.a., by way of an application, filed on 07.07.2022. This application was not accepted, on the G.S.T.N. portal, forcing the petitioner to file subsequent applications. Finally, the application, dated 13.01.2023, was acknowledged.

6. Subsequently, the refund application was rejected, by an order, dated 22.08.2023, on the ground that, the application had been filed more than two (02) years from the date of payment of tax and would be barred, under Section 54(14)(2)(h) of the A.P.G.S.T. Act, 2017 (*hereinafter referred to as 'the Act'*). It was also rejected, on the ground that, W.P.No.4014 of 2021, was still pending. Aggrieved by the said order, dated 22.08.2023, the petitioner moved this Court, by way of W.P.No.27026 of 2023. In the course of the hearing of this Writ Petition, the respondents informed this Court that they were ready to sanction refund, provided the petitioner rectified certain deficiencies pointed out, in the deficiency notice given to the petitioner. This Court, had disposed of W.P.No.27026 of 2023, by an order, dated 18.10.2023, directing the respondents to dispose of the application of the petitioner for refund within the time stipulated in the order. Subsequently, the respondents, by an order, dated 07.06.2024, refunded the amount of Rs.68,36,371/-, but

rejected the claim of interest to an amount of Rs.20,50,911/-, on the ground that, the interest was not payable, under Section 54 read with Section 56 of the Act.

7. Aggrieved by the said order, dated 07.06.2024, the petitioner has approached this Court, by way of the present Writ Petition.

8. Heard Sri D. S. Sivadarshan, the learned counsel appearing for the petitioner and Smt. V. Disha Chowdary, the learned Assistant Government Pleader for Commercial Taxes, appearing for the respondents.

9. It is the contention of the petitioner that the refund is not due and payable, on account of Section 54 or Section 56 of the Act. The petitioner also contends that, the amounts paid by the petitioner, ostensibly as G.S.T. on ocean freight, was an illegal extraction of money from the petitioner and that, the amount became due and payable to the petitioner from the date of deposit made by the petitioner. It is further contended that, this amount became due and payable, on account of the judgment of the Hon'ble Supreme Court in the case of **Union of India & another Vs. M/s. Mohit Minerals Pvt. Ltd.** in as much as the said judgment had struck down Entry No.10 of Notification No.10 of 2017 and also the said judgment would be effective from the date on which the Notification itself had been issued. It is further contended that, since the amount is due, on account of the declaration of law, by the Hon'ble Supreme Court, the question of application of Section 54 or Section 56 of the Act, would not arise.

10. The learned counsel appearing for the petitioner, would also rely upon the judgment of this Court, dated 14.08.2025, in W.P.No.17220 of 2024 & batch, for the proposition, that the refund of tax in a case where the levy of tax itself, has been declared as unconstitutional, would not be dependent, on Section 54 or Section 56 of the Act and that, the period of limitation stipulated in these provisions would not be applicable. The learned counsel would also rely upon a judgment of the Hon'ble High Court of Orissa delivered, on 22.01.2026, in W.P.(C) No.11618 of 2024, in the case of **M/s. Paradeep Phosphates Limited Vs. Additional Commissioner & Ors.** and the judgment of the Hon'ble High Court at Bombay, dated 17.10.2025, in W.P.No.3000 of 2023, in the case of **West India Continental Oils Fats Pvt. Ltd. Vs. Union of India & Ors.** These two judgments are cited for the proposition that interest would be payable, from the date of deposit of any amount, as tax, where such tax is struck down subsequently, as unconstitutional.

11. The learned Assistant Government Pleader for Commercial Taxes, appearing for the respondents, on the other hand, would contend that, the application filed by the petitioner, was under Section 54 of the Act, and that, the petitioner, had also taken steps to rectify the defects, in such an application. It is also contended that, since the refund was made, under Section 54 of the Act, no interest would remain due in as much as Section 54 of the Act read with Section 56 of the Act, expressly stipulates that, interest can be levied or collected only, if the refund is not made within the time

stipulated under Section 54 of the Act. It is further contended that, since the refund had been made within the stipulated time, under Section 54 of the Act, the question of interest would not arise.

12. In the case, relating to the judgment of this Court, in W.P.No.17220 of 2024 & batch, the question that arose before this Court was whether the application for refund of G.S.T. paid, on freight charges, relating to ocean freight, would be maintainable, even after the two year period stipulated, in Section 54 of the Act, had been expired. This Court, after noticing and following the judgment of the Hon'ble Supreme Court in the case of **Baburam Vs. C.C. Jacob & Ors.**<sup>3</sup> and the judgment of the Hon'ble High Court of Gujarat in the case of **Comsol Energy Private Limited. Vs. State of Gujarat**<sup>4</sup>, had held that, the provisions of Section 54 of the Act, would not be applicable to cases of refund of tax, where such tax has subsequently been struck down as unconstitutional.

13. In such circumstances, the contention of the revenue that the interest is not payable as refund had been made within the period stipulated, under Section 54 of the Act, would have to be rejected.

14. The Hon'ble High Court at Bombay as well as the Hon'ble High Court of Orissa, had considered the question of whether the interest would have to be paid, from the date of deposit of the tax till the date of refund of such tax, if the tax, has been declared to be unconstitutional. Both the Hon'ble High Courts

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<sup>3</sup> (1999) 3 SCC 362

<sup>4</sup> 2020 SCC Online Guj 3601 = (2021) 55 GSTL 390

concurrent in holding that, interest would have to be paid from the date of deposit of the tax till the date of refund of such tax. While we are in respectful agreement with the said principles laid down in the aforesaid judgments, we would also like to supplement the said view.

15. The principle underlying the grant of interest is to grant compensation for the loss of use of money and this principle applies, in relation to private transactions as well as transactions relating to public authorities. Once such a principle forms the basis for grant of interest, it would be necessary that the interest is paid for the period for which the tax payer has lost use of this money.

16. In the present case, the tax payer, namely the petitioner had paid G.S.T., on freight charges, under protest. The stand of the petitioner was vindicated by the judgment of the Hon'ble Supreme Court in the case of **Union of India & another Vs. M/s. Mohit Minerals Pvt. Ltd.** and the levy itself was declared to be unconstitutional. In such circumstances, it would have to be held that the petitioner had been deprived of the right of use of the money paid, on G.S.T., as freight charges from the date of payment till the date of refund. The petitioner would therefore be entitled to be compensated for the loss of use of such money. It must be held that the petitioner would be entitled to interest from the date of deposit of the tax till the date of refund.

17. The next question that would remain is the rate of interest that has to be awarded. The petitioner has claimed interest @6%. This rate of interest,

appears to be fair and equitable. Apart from that, the said rate of interest is in line with Section 34 of C.P.C., which permits interest to be granted @6%, for the post decretal period.

18. For all the aforesaid reasons, this Writ Petition is allowed, setting aside the order of rejection of the interest, dated 07.06.2024, with a further direction to the respondents to pay the interest to the petitioner @6%, on the sum of Rs.68,36,372/-, calculated from the date of deposit of such amount till 07.06.2024. The said exercise is to be completed within a period of three (03) months from today.

There shall be no order as to costs.

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

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**R. RAGHUNANDAN RAO, J**

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

*Date:08.04.2026  
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 No:22135 of 2024**

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

**08.04.2026**

**KPV**