

High Court of Andhra Pradesh

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* Case Type

* Case Number

* Year

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Total Number of Cases : 1

Sr No	Case Type/Case Number/Case Year	Petitioner Name Versus Respondent Name	View
1	WP/25379/2007	M/s.Balaji Agencies, Kapulapalem, Rep. by its Versus The Special Chief Secretary to Government,	View

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
AND
HON'BLE MS JUSTICE J. UMA DEVI**

Writ Petition No.25379 of 2007

ORDER: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

The petitioners seek a mandamus declaring the Section 17(3) of the A.P. VAT Act, 2005 to the extent “every dealer whose taxable turnover in the preceding three months exceeds Rs.10,00,000/-“ and Section 49(2) the relevant portion of denial of input tax credit is illegal, arbitrary and discrimination and clarify the same and consequently set aside the impugned order dated 31.07.2007 in G.I.No.1640/2007-08 passed by the 2nd respondent and consequently declare that the petitioner is entitled to claim the input tax credit.

2. The petitioner's case is thus:

a) The petitioner who is a wholesale distributor of soft drinks and it is a registered turnover tax dealer (TOT) on the roles of 2nd respondent under A.P. VAT Act, 2005 vide GRNK DA/04/0/1640 w.e.f 01.04.2006.

b) It filed an application Form VAT-100 on 18.05.2007 seeking registration as VAT dealer. The petitioner has been filing returns under turnover tax dealer from 01.04.2005 onwards. The petitioner filed returns reporting turnovers for 1st quarter ending 30.06.2006 for Rs.13,14,724; 2nd quarter ending 30.09.2006 for Rs.11,77,404/-; 3rd quarter ending 31.12.2006 for Rs.7,80,169/- and 4th quarter ending 31.03.2007 for Rs.10,75,121/-. The total turnover reported for the year from 01.04.2006 to 31.03.2007 was

Rs.43,47,418/-. So, he filed application on 18.05.2007 to register as VAT dealer since his turnover exceeded Rs.40,00,000/-.

c) While so, the 2nd respondent issued show cause notice stating that as per Section 17(3) r/w Rule 5(1)(b) of A.P. VAT Act, 2005, the dealers shall apply for VAT registration on or before 15.07.2006 i.e., 15th of the month subsequent to the month in which liability for VAT registration arose, but the dealer failed to do so and filed VAT-100 application on 18.05.2007 and therefore, the petitioner is liable to pay tax @ 12.5% from 01.08.2006 instead of 1% as turnover tax dealer. In the notice seven (7) days time was given for filing objections. The petitioner filed reply on 16.07.2007. However, without considering the same, the 2nd respondent has passed the Assessment Order dated 31.07.2007 imposing tax @ 12.5% as treating the petitioner as VAT dealer instead of imposing @ 1% tax treating as turnover tax dealer. The respondent has also denied the input tax credit to the petitioner despite the fact that the petitioner made purchases from local registered dealers and produced invoices issued by his sellers. The 2nd respondent has no jurisdiction to levy tax @ 12.5% on the turnover tax dealer. The petitioner is liable to pay tax @ 1% only. After filing of quarterly returns for 30.06.2006 reporting turnover of Rs.13,14,724/- by the petitioner, the 2nd respondent has not issued any notice directing the petitioner to apply for VAT registration as its turnover exceeded to Rs.10 Lakhs and thus the 2nd respondent has not followed Rule 11 of A.P. VAT Act.

Hence, the writ petition.

3) Heard Sri Kunuku Durga Prasad, learned counsel for the petitioner and learned Government Pleader for Commercial Taxes representing respondent No.2.

4) The main contention of the petitioner is that the provision in Section 17 (3) to the extent “Every dealer whose taxable turnover in the preceding three months exceeds Rs.10 lakhs” is discriminatory and so also Section 49(2) denying input tax credit for failure to register as VAT dealer is also illegal and arbitrary.

5) Learned Government Pleader opposing the writ petition stating that the petitioner failed to apply for VAT dealership registration within the time prescribed under the law and therefore, the 2nd respondent correctly assessed him to pay tax @ 12.5% treating him as VAT dealer and denied him the input tax credit because he was only a TOT dealer at that time and there is no illegality in the order impugned. He further argued that the petitioner could not point out any arbitrariness or illegality in the provisions and he could not substantiate how the Section 17(3) and Section 49(2) are illegal or ultravires to Constitution.

6) We gave our anxious consideration into the above respective arguments.

a) Admittedly, the petitioner is a TOT dealer and his quarter wise turnover is as follows:

QUARTER	TURNOVER
Quarter Ending 30.06.2006	Rs.13,14,724/-
Quarter Ending 30.09.2006	Rs.11,77,404/-
Quarter Ending 31.12.2006	Rs.7,80,169/-
Quarter Ending 31.03.2007	Rs.10,75,121/-

b) The relevant provision for registrations is under Section 17. The original Section 17(3) as it stood prior to the amendment under the Act 4 of 2009 dated 03.03.2009 was as follows:

“17. (1) Every dealer other than a casual trader shall be liable to be registered in accordance with the provisions of the Act.

(2) xxx...

(3) Every dealer whose taxable turnover in the preceding three months exceeds Rs.10,00,000/- (Rupees ten lakhs only) or in the twelve preceding months exceeds Rs.40,00,000/- (Rupees forty lakhs only) shall be liable to be registered as VAT dealer.

Since the turnover of the petitioner for the 1st quarter ending 30.06.2006 was Rs.13,14,724/- which exceeded Rs.10 lakhs, the petitioner had an opportunity to apply for registration as VAT dealer. As per Rule (5) of A.P. VAT Act, the petitioner was required to make an application by the 15th of the month subsequent to the month in which the liability to register for VAT arose, meaning thereby, he should have applied before 15.07.2006 for VAT registration since the turnover for the 1st quarter ending 30.06.2006 exceeded Rs.10 lakhs. He did not avail that opportunity but waited for completion of 12 months period. The total turnover for 12 months period from 01.04.2006 to 31.03.2007 was Rs.43,47,418/-.

c) As per the second leg of Section 17(3), he has to apply for VAT registration since the total turnover for 12 preceded months exceeded Rs.40 lakhs. As per Rule-5 (b), he has to apply for VAT registration before 15.04.2007. However, he applied for VAT registration only on 18.05.2007 i.e., long after the expiry of stipulated period. Therefore, the 2nd respondent rightly rejected his claim and passed the impugned

order directing the petitioner to pay VAT @ 12.5% and also treating him as VAT dealer. In this regard, it should be noted that as per Section 4(1), every dealer registered **or liable to be registered** as VAT dealer (emphasis supplied) shall be liable to pay tax on every sale of goods in the State at the rate specified in the schedules. In the instant case, since the petitioner was liable to be registered as a VAT dealer, the 2nd respondent rightly levied the tax @ 12.5%. The petitioner cannot plead any illegality or irregularity in the order impugned. So also the petitioner cannot challenge the provision under Section 17(3) and Section 49(2) of A.P. VAT Act.

7. We find no merits in the petitioner's case and accordingly, the writ petition is dismissed. No costs.

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

U. DURGA PRASAD RAO, J

J. UMA DEVI, J

22nd June, 2021
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THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
AND
HON'BLE MS. JUSTICE J. UMA DEVI

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