

(2014) 12 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 7561, 8285, 8287, 8288, 8317, 8448 and 19501 of 2014

Navayuga Engineering Co. Ltd.

APPELLANT

Vs

The Assistant Commissioner (CT)

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Andhra Pradesh Value Added Tax Act, 2005 — Section 15(1), 16, 16(1), 2(36), 20
Central Sales Tax Act, 1956 — Section 3
Companies Act, 1956 — Section 2(17), 210(3)(b), 210(4), 211, 211(1)
Constitution of India, 1950 — Article 226, 265, 366(29A)(b)

Citation : (2015) 83 VST 129

Hon'ble Judges : Ramesh Ranganathan, J; M. Satyanarayana Murthy, J

Bench : Division Bench

Advocate : S. Ravi, Learned Senior Counsel for Ginpalli Subba Rao, Advocate for the Appellant; P. Balaji Varma, Learned Special Standing Counsel, Advocate for the Respondent

Judgement

Ramesh Ranganathan, J.—While W.P. Nos. 7561, 8285, 8287, 8288, 8317 and 8448 of 2014 are filed questioning the order of the revisional authority-Deputy Commissioner (CT) dated 31.01.2014, under Section 32(2) of the AP VAT Act, 2005, revising the assessment orders, for the assessment years 2011-12, 2010-11, 2009-10, 2006-07, 2007-08 and 2008-09 respectively, the order under challenge in W.P. No. 19501 of 2014 is the assessment order passed by the assessing authority dated 31.05.2014 levying tax on the petitioner for Rs. 9,62,91,291/- for the assessment year 2012-13.

2. The petitioner, a company incorporated under the Companies Act, executes works contracts and is an assessee on the rolls of the Assistant Commissioner (CT), LTU, Visakhapatnam. Pursuant to the agreement entered into between the Government of Andhra Pradesh ("GoAP" for short) and M/s. Krishnapatnam Port Company Limited ("KPCL" for short) on 17.09.2014, for building a deep water sea port at Krishnapatnam on build, operate, share, and transfer basis with a

concession period of 50 years, KPCL awarded the works contract, for construction of the port, to the petitioner (hereinafter referred to as "NECL"); under Clause 3.16, the GoAP undertook to forego revenue streams from the project as per the Andhra Pradesh Infrastructure Development Enabling Act, 2001, (hereinafter called the "2001 Act"), among others, regarding exemption of sales tax on all inputs required for project construction.

3. It is the petitioner's case that the materials required, directly or otherwise, for construction of the project are considered as inputs, and tax payable thereon is exempt; the GoAP, exercising powers conferred under Section 15(1) of the AP VAT Act, 2005 ("the Act" for short), issued G.O. Ms. No. 609 dated 29.05.2006 refunding the tax paid on purchases by the port developer, its contractors and sub-contractors; they were informed that the turnover, regarding the port contract, was exempt from tax; they did not, therefore, disclose the turnover relating to port construction in their returns; the assessing authority issued show-cause notice dated 26.05.2014 proposing to levy tax on the turnover for the assessment year 2012-13, alleging that correct amounts had not been declared in the VAT returns; for the financial year 2012-13, they were due Rs. 10,24,87,886/- as arrears of tax for the turnover relating to the execution of works contracts, out of which Rs. 8,37,97,100/- related exclusively to the construction of the Krishnapatnam port for KPCL; they had, subsequently disclosed the turnover relating to the execution of works at Krishnapatnam; they were also asked to show-cause why the works under progress should not be assessed under Rule 17(1)(e) of the A.P. Vat Rules, 2005 ("Rules" for short); they had filed their objections to the show-cause notice, whereby tax was proposed to be levied on the turnover relating to the works undertaken for KPCL; they had contended that, as per the terms of the agreement dated 17.09.2004, GoAP had agreed to forego revenue receipts from the project; not only as per the contractual terms, but also as per the doctrine of promissory estoppel, the State cannot levy tax on the deemed sales involved in the execution of contracts relating to the works awarded by KPCL; the agreement dated 17.09.2004 is an agreement between the State of Andhra Pradesh and KPCL; once the State has declared that all inputs required for project construction are exempt from sales tax, the commercial tax department, which is merely a wing of the State Government, cannot take a different stand and levy tax thereon; they also submitted their objections, contending that the turnover relating to the work under progress had to be determined as per Rule 17(1)(d); they also objected to any amount being added, either towards profit or administrative expenses, to the value declared as per Rule 17(1)(d); they relied on an earlier order of the Sales Tax Appellate Tribunal ("STAT" for short) in T.A. No. 110 of 2012 dated 23.04.2012 in their own case for the assessment year 2006-07; the STAT had held therein that, when the works were not completed, addition of gross profit was incorrect, and tax could only be levied after ascertaining the value of the goods; the earlier assessment orders were passed by the assessing authority, and the tax due was arrived at on the basis of the value of the materials

incorporated in the works, adding transport charges, seigniorage charges, loading and unloading charges, and gross profit at 32% of the purchase value after allowing input tax credit at 90% on the purchases made from the AP VAT dealers; to arrive at the value of material at the time of its incorporation, when the work is not completed in the relative assessment period, the assessment is required to be finalized only by following the procedure laid down under Rule 17(1)(d); they have been executing works contract under the composite scheme; they have been paying tax on the turnover, derived as per Rule 17(1)(d), for the works in progress which extend beyond the tax period; tax has been paid, for the completed works, deriving the turnover as per Rule 17(1)(e), relying on the phrase "finalization of accounts relating to particular work"; a similar issue came up before the Authority for Advance Ruling which, by its order dated 16.08.2012, clarified that the element of profit, pertaining to a particular work, should be arrived at every year at the time of finalization of accounts; the additional turnover, if any, should be reported in the month in which the accounts are finalized; and the differential tax payable should be paid; they had filed a review petition, before the Authority for Advance Ruling, on 12.06.2013 under Section 67(2) of the Act; they had also requested the authorities to defer the revision/reassessment proceedings till disposal of the review petition pending before the Advanced Ruling authority; they had also filed a rectification petition before the authority; they are entitled for the benefit of composition under Rule 17(2) of the Rules for the works executed for KPCL, and cannot be subjected to tax under Rule 17(1)(g); and, in the light of the order of the STAT in T.A. No. 110 of 2012 dated 23.04.2012, exercise of the power of revision under Section 32(2) of the Act is barred.

4. In the counter-affidavit filed by the Deputy Commissioner (CT), Visakhapatnam, it is stated that, as the agreement dated 17.09.2004 was entered into between the State of A.P. and KPCL, the Writ Petition is liable to be dismissed for non-joinder of the State of A.P. or the Secretary, Transport, Roads and Buildings; the petitioner cannot challenge the orders passed by the revisional authority placing reliance on a contractual clause in an agreement; a liability created by a statute has to be dealt with only in terms of the remedies provided therein; the petitioner availed the benefit of refund, on the total inputs used in the Krishnapatnam Port, to a tune of Rs. 73 crores; under Section 4(7) of the Act the petitioner, having executed works contract, is liable to pay tax on the value of the goods at the time of incorporation; the petitioner did not pay any tax on the value of the goods incorporated in the works contracts for the periods 2006-07 to 2012-13; they neither filed any return nor did they pay tax within the time prescribed under Section 20; they did not also discharge the burden, as stipulated under Section 16 of the Act, to prove that they are not liable to pay tax under the Act; mere attempted compliance of the conditions stipulated in G.O. Ms. No. 609 would not suffice, and the mandatory requirements of the said G.O. must be complied with; the petitioner cannot place reliance on the revised concession agreement as they are not a party thereto; as there is no power

under the Act to grant exemption, the petitioner cannot claim that exemption should be granted placing reliance on a clause in a contract; the doctrine of estoppel has no application as a clause in agreement cannot be enforced if it is contrary to a statute; in the present case, the said clause is contrary to the A.P. VAT Act which does not provide for exemption; while NECL received consideration, for execution of the contract works for the financial years 2006-07 to 2012-13, they did not disclose the said turnover in the respective tax periods nor did they disclose the turnover at the time of finalization of assessment before the assessing authority, though they had reported the said turnover to the Income Tax department in the respective years; they filed a letter before the Assistant Commissioner for the first time on 18.10.2013, and intimated the undisclosed turnover of Rs. 2120.44 crores as the escaped turnover for the seven financial years 2006-07 to 2012-13; after the petitioner disclosed the suppressed turnover of Rs. 2120.44 crores, the revisional authority had issued revised revision show cause notice dated 27.11.2013; thereafter the impugned orders were passed; discreet enquiries were made by the Government regarding execution of various contract works in the State; at this juncture, and on the apprehension that non-disclosure of a huge turnover may result in action being taken against them, NECL had on 18.10.2013 reported the turnover of Rs. 2120.44 crores as the escaped turnover which is exempt from tax under the Act; the petitioner had willfully suppressed this turnover; Rule 17(1)(d) is applicable only when the accounts are not finalized at the time of provisional assessment; in the present case as accounts have been finalized, NECL is liable to pay tax only in terms of Rule 17(1)(e); the review application filed by NECL before the Advance Ruling Authority is not maintainable; the petitioner is guilty of suppression of material facts, and have attempted to mislead the Court; and they have failed to avail the alternative remedy of appeal under the Act.

5. In the affidavit filed in reply thereto, it is stated that, though the petitioner is not a party to the agreement, it would have a debilitating affect on their finances; the petitioner is a mere works contractor and KPCL is its employer; whatever benefit is made available to KPCL is automatically passed on to works contractor (NECL) as it has executed the works on behalf of the employer; NECL is aggrieved by the shifting stance of the government departments to breach the commitment to KPCL, resulting in NECL being driven to great financial misery; the doctrine of promissory estoppel is applicable; if exemption is available to KPCL, then there is no liability on NECL as it is the works contractor of KPCL; the revisional authority should not have revised the assessment as it is barred under the proviso to Section 32 of the Act; mere existence of an alternative remedy would not disentitle NECL from invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution, where the impugned orders are without jurisdiction or in violation of natural justice or where there is an error of law apparent on the face of the record or where the statute is unconstitutional; and the impugned orders are liable to be set aside.

6. Elaborate submissions were made by Sri S. Ravi, Learned Senior Counsel

appearing on behalf of NECL and Sri P. Balaji Verma, Learned Special Standing Counsel for Commercial Taxes. Written submissions have also been filed by Sri G. Subba Rao, Learned Counsel for the petitioner and Sri P. Balaji Verma, Learned Special Standing Counsel for Commercial Taxes. It is convenient to examine the rival submissions under different heads.

I. IS NECL LIABLE TO PAY TAX ON THE TURNOVER RELATING TO THE WORKS CONTRACT EXECUTED FOR KPCL?

7. Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioners, would submit that KPCL has submitted written arguments explaining why there is no VAT liability in respect of the construction of the port, and consequently why they had no obligation to deduct taxes; KPCL has, inter alia, relied upon the concession agreement entered into between the GoAP and themselves; the petitioner, in these Writ Petitions, adopts the arguments and submissions of KPCL in so far as the liability to tax on the execution of the Works Contract is concerned; if KPCL were to succeed, the demand for tax, on the very same Works Contract, in the hands of the petitioner would also be illegal and incorrect, and would stand vacated; apart from the issue of the consequence and effect of a statutory contract, entered into in terms of the Andhra Pradesh Infrastructure Development Enabling Act, 2001, there are certain other related issues; if this Court were to hold that, after the introduction of the A.P. VAT Act, there cannot be any tax exemption, but only refund of tax, then the following consequences would ensue; in para 6 of its memorandum of written submissions, KPCL has stated that the following amounts have been remitted to the Government as TDS, after having been deducted from the payments due to the petitioner:--

these amounts would have to be given credit to, against the tax demands on the petitioner for the respective years, and these amounts would have to be refunded to the petitioner in accordance with G.O. Ms. No. 609 dated 29.05.2006; subject to the decision of this Court, on the question of taxability or otherwise of the port construction activities, the petitioner would be eligible to claim refund, on the taxes withheld by KPCL, for the assessment year 2010-11 of Rs. 7,39,03,600/-, and Rs. 6,72,95,180/- for the assessment year 2011-12, after credit is given to the petitioner in respect thereof (as mentioned in paragraph 8 of the written submissions of KPCL); further tax, if any to be deducted by KPCL, would have to be given credit to the petitioner; and the revision orders, and the assessment order, would require these modifications.

8. On the other hand Sri P. Balaji Verma, Learned Special Standing Counsel for Commercial Taxes, would submit that a liability created under a statute can be dealt with only in terms of the remedies prescribed thereunder; the petitioner, a registered dealer executing works contracts, is liable to pay tax, under Section 4(7)(a) of the Act, on the value of the goods at the time of incorporation; Section 20(1) and (2) requires the petitioner to submit returns, along with proof of payment of the tax due, within the time prescribed; a duty is cast on the petitioner, under Section 16(1) of the Act, to prove that any sale or purchase

effected by them is not liable to tax; in the exercise of its powers, under Section 15(1) of the Act, the GoAP issued G.O. Ms. No. 609 dated 29.05.2006 directing refund of the tax paid by NECL under Section 4(7)(a) of the Act; in para 5 of their writ affidavit, NECL admitted that they did not disclose the turnover, relating to the port construction, in their returns; in para 6 of the writ affidavit they stated that their auditors, while reviewing the revenue from all projects, noticed that the revenues relating to KPCL were not disclosed in their returns; by their letter dated 07.10.2013, addressed to the assessing authority, NECL disclosed the turnover relating to the works executed for KPCL; at para 6 of the affidavit filed in each of the writ petitions, while referring to the letter dated 07.10.2013, they had mentioned only one year, whereas in the said letter they had referred to the seven year period from 2006-07 to 2012-13, and a total turnover of Rs. 21,20,44,25,290/-; they did not file any returns; they did not disclose the turnover of the works contracts executed for KPCL; they are disentitled from claiming benefits, under G.O. Ms. No. 609, as they have not complied with the provisions of the statute; they have not followed the procedure for obtaining relief under the AP VAT Act; as G.O. Ms. No. 609 expired on 01.04.2010, NECL is not entitled to claim benefits in terms thereof; a person, who claims exemption or concession, must establish that he is entitled thereto; if any exemption is available on compliance of certain conditions, these conditions must be complied with; no concession would be available on failure to comply with those conditions; regulatory or statutory requirements are prescribed to ensure orderly conduct of the business, and must be complied with; mere attempt at compliance will not suffice, and actual compliance is mandatory; the petitioner has neither complied with the statutory requirements nor with the procedural requirements of G.O. Ms. No. 609; they are not entitled to any relief from payment of tax as mandated under Section 4(7)(a) of the AP VAT Act; Clause 2.3, 13.2 and 13.3 of the revised concession agreement make Clause 3.16 thereof subservient to the provisions of the new tax law i.e., the AP VAT Act; NECL, having invoked G.O. Ms. No. 609 dated 29.05.2006 and obtaining benefits thereunder, cannot now turn around and contend that the benefits they are entitled to is in terms of Clause 3.16 of the revised concession agreement, and not G.O. Ms. No. 609; the doctrine of promissory estoppel cannot be invoked by them against the GoAP; and NECL had obtained Rs. 73 crores refund, of the tax paid on the purchase of goods incorporated in the Krishnapatnam Port works, in terms of Notification-I under G.O. Ms. No. 609. Learned Special Standing Counsel would rely on State of Punjab and Others Vs. Punjab Fibres Ltd. and Others, .

9. The Deputy Commissioner (CT) issued show cause notice dated 08.07.2013 proposing to revise the assessment order passed by the Assistant Commissioner (CT), LTU, Visakhapatnam, and to subject NECL to tax under Rule 17(1)(e) of the Rules, by arriving at the value of the goods at the time of its incorporation in the works. The General Manager of NECL submitted letter dated 18.10.2013 informing the Deputy Commissioner (CT) that they had failed to report the

turnover, relating to execution of the works contract of KPCL, for the years 2006-07 to 2012-2013, of Rs. 21,20,44,25,290/-; thereafter a note was received from the Assistant Commissioner (CT) that NECL did not disclose certain turnover relating to the execution of works contracts for KPCL; as the turnover was suppressed, the Deputy Commissioner sought to revise the assessment order proposing to subject the escaped turnover to tax.

10. A revised revisional show cause notice dated 27.11.2013 was issued calling upon NECL to file material evidence, and their objections to the proposal to subject them to tax on the suppressed turnover relating to the execution of the works contract; and, thereafter, the revisional order dated 31.01.2014 was passed wherein the Deputy Commissioner (CT) held that KPCL had entered into an agreement with GoAP for construction and provision of facilities such as navigation channels, harbour basins, break waters, aids to navigation, dock berths jetties, internal roads etc., for the development of the Krishnapatnam Port; during the personal hearing, NECL had produced copies of Form 250, a copy of the agreement between KPCL and GoAP, and a copy of the certificate of the Chartered Accountant; from the records, produced by them, it was seen that, in terms of the revised concession agreement, GoAP had agreed to grant KPCL exemption from sales tax on all inputs required for project construction (Clause 3.16(a)(i)); the material, required directly or otherwise for construction of the project, was considered as inputs and the sales tax payable on such inputs was exempt; the tax paid on purchases was refunded in terms of G.O. Ms. No. 609 dated 29.05.2006; NECL was also given refund, as per the said G.O., on the inputs purchased by them; NECL had availed the benefit, and had obtained refund, making an application therefor; the doctrine of promissory estoppel would apply only if there is a specific promise made by one party based on which action is taken by the other; the said doctrine cannot be pressed in aid to compel the Government or the public authority to carry out a representation or promise which is contrary to law; a clear and positive foundation must be laid by the assessee, that they had altered their position relying on the assurances given by the Government; no promise was given by the State regarding their liability to pay tax on the transfer of property involved in the execution of the works contract; NECL had also not stated that, acting upon the promise, they had altered their position to their detriment; a bald plea cannot form the foundation for invoking the doctrine of promissory estoppel; the turnover, reported by the assessee, was the turnover which escaped in the earlier assessment; this was brought to tax during the revision; and there was a clear intention, on the part of the assessee, to avoid the burden of taxation by suppressing facts.

11. In his order dated 31.05.2014, for the assessment period 2012-13, the assessing authority also rejected the petitioner's contention for exemption from payment of tax, on inputs used in the construction of the Krishnapatnam Port Project, holding that, despite repeated reminders, NECL had neither produced a copy of the agreement for verification nor any evidence to prove that, for construction of the project, the material required directly or otherwise for

construction of the project were required to be considered as inputs, and the sales tax payable on such inputs was exempt.

12. In its order, in W.P. No. 34680 of 2013, this Court has held that, on the AP VAT Act coming into force, KPCL was no longer entitled to claim exemption from tax, as no such power to grant exemption is available to the Government under the Act; the only benefit which KPCL was entitled to under the Act, was for refund of the tax under Section 15(1) of the Act, that too on a notification being issued by the Government in this regard; and the doctrine of promissory estoppel or legitimate expectation could not be invoked to implement a contractual provision which is contrary to law. The claim of NECL for exemption from tax, for the works executed by them for KPCL, does not merit acceptance as a similar relief claimed by KPCL has been negated by this Court in W.P. No. 34680 of 2013.

13. Rule 18 of the AP VAT Rules relates to deduction of tax at source. Rule 18(1) (bc) stipulates that, in case of works other than those falling under sub-Rule (bb), the VAT dealer is required to obtain Form 501 with unique ID from the Assistant Commissioner/Commercial Tax Officer concerned, and supply the same to the contractee; the contractee is required to complete Form 501, supplied by the contractor, indicating the TIN of the contractor, the amount of tax deducted at source, and details of the related contract, and to supply the same to the contractor within three months from the date of each payment. Rule 18(1)(bd) stipulates that the contractor shall submit Form VAT 501, duly certified by the contractee together with Form VAT 200, by the 20th of the month, following the month in which the payment was received. Rule 18(2) stipulates that any amount or any sum deducted, in accordance with Section 22(3) of the Act and paid to the State Government, shall be treated as a payment of tax on behalf of the dealer executing the works contract, and credit shall be given to the said dealer, for the period for which the amount was so deducted, on production of the certificate furnished by the contractee under Rule 18.

14. It is evident from Rule 18(2) that the TDS amount, deducted by KPCL and paid to the Government, is required to be treated as payment of tax made on behalf of NECL; and NECL is entitled to be given credit, for the tax deducted at source from their bills, on production by them of a certificate furnished by KPCL in this regard. While KPCL has, for certain tax periods, deducted tax at source and has paid the deducted tax in its entirety to the Government, for certain other periods it has only paid a part of the tax deducted at source to the Government, and for certain other periods it has not paid a single rupee to the Government, though it had deducted TDS from the running account bills of NECL. During the course of hearing Sri S. Ravi, Learned Senior Counsel appearing on behalf of NECL, stated across the bar that NECL had sought for, and was granted, refund of the tax deducted at source by KPCL and paid to the Government during the period when G.O. Ms. No. 609 dated 29.05.2006 was in force.

15. It would be wholly inappropriate for this Court to take upon itself the task of

examining whether, and to what extent, the balance TDS amount, deducted by KPCL from the running account bills of NECL, is required to be paid to the Government; or the amount which NECL is entitled as refund, and for being given credit to. Suffice it to hold that, in case NECL produces the certificates furnished to them by KPCL in terms of Rule 18, they shall be given credit for the sum referred to in the said certificate (representing the tax deducted at source by KPCL and paid to the Government). It is only the balance amount of tax due, after giving credit as aforesaid, which the respondents can recover from NECL. The liability of KPCL, for the works executed for them by NECL, is only to deduct tax at source, and pay the deducted sum to the Government; and for NECL to pay tax on the value of the goods incorporated in the works. KPCL and NECL cannot both be directed to pay tax on the very same transactions. The respondents shall grant NECL reasonable time to produce the TDS certificates from KPCL. In case NECL fails to submit the TDS certificates, within such stipulated period, it is open to the respondents thereafter to recover the said amounts, along with other tax dues, from them in accordance with law.

II. CAN THE POWER OF REVISION BE EXERCISED WHEN THE ORDER OF THE STAT HAS ATTAINED FINALITY?

16. Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioners, would submit that the primary issue in these Writ Petitions is in relation to determination of the turnover for levy of tax under Section 4(7)(a) of the Act; the method of computing the turnover is specified in Rule 17(1)(d) and (e) of the Rules; this Court is not being called upon, in these Writ Petitions to decide the appropriate basis for computing the turnover; by its order in T.A. No. 110 of 2012 dated 23.04.2012 the Sales Tax Appellate Tribunal ("STAT" for short) (in the petitioner's own case for the assessment period 01.04.2008 to 31.03.2009), had taken the view that the element of profit, on the transfer of goods incidental to the execution of works contracts, is to be reckoned in the year in which the execution of work is completed; the view of the STAT was that, in all years anterior thereto, the turnover must be determined in terms of Rule 17(1)(d) of the Rules; this is eminently a justifiable view; the revenue was called upon to state whether any revision was preferred against the order of the STAT in T.A. No. 110 of 2012 dated 23.04.2012; at any rate the revenue has not contended that the said order of the STAT is upset; suffice it to state that there is a material difference between Rule 6(3) of the APGST Rules, and Rules 17(1)(d) and (e); what is the correct interpretation to be placed on these rules is not the subject matter of enquiry in these Writ Petitions; and the petitioner's limited submission is that, under the proviso to Section 32(2) of the Act, the power of the revisionary authority is excluded, and there is a bar for the exercise of the revisionary jurisdiction.

17. On the other hand Sri P. Balaji Verma, Learned Special Standing Counsel, would submit that the assessment order, adding a profit element for arriving at the value of the goods, at the time of its incorporation, is in accordance with the

law; in *Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others*, , the Supreme Court held that it is the incorporation value that constitutes the measure for levy of tax; the incorporation value of the goods is not its acquisition value alone, but is the acquisition value plus the profit of the contractor; in *State of Andhra Pradesh v. Seven Hills Constructions, Penumantra, West Godavari* (2012) Vol. 54 APSTJ 1, a Full Bench of this Court held that the value of the goods under Rule 6(3)(i) of the APGST Rules (even where there is no reference to the profit element), would not only include the cost of acquisition, but also the profit relatable to the value of such goods; the levy is only on the value of the goods at the incorporation stage, and the profit claimed is embedded into it; if profit is separated from the value of the incorporated goods, and is shown separately as the sole element in a separate return later, the said sum cannot be subjected to tax as it acquires a different color i.e., it would become the profit of the contractor, but not the value of the goods; this is not the legislative intent; the construction sought to be placed by NECL, on Rule 17(1)(d) and (e), is untenable and absurd; the VAT regime is a self assessment regime whereunder every return filed by the dealer, if not interfered with, becomes final and assumes the status of assessment; there is no concept of provisional returns; every return, from the point of view of the dealer, must be complete; the turnover, relating to the value of the incorporated goods, must be declared which would include profit; Rule 17(1)(e) provides for deduction of profit on labour and services, as profit on labour charges and services is not liable to tax; this shows that the rule contemplates inclusion of the profit element at the stage of incorporation itself; and the impugned order which has been passed, applying the law declared by the Supreme Court and the Full Bench of this Court, is valid even if it is in deviation of the order of the STAT as alleged by the petitioner.

A. PROVISIO TO SECTION 32 OF THE A.P. VAT ACT: ITS SCOPE:

18. Section 32(1) of the A.P. VAT Act enables the Commissioner to, suo moto, call for and examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to it under the provisions of the Act, including sub-section (2), and, if such order or proceeding recorded is prejudicial to the interests of revenue, he may make such enquiry or cause such enquiry to be made and, subject to the provisions of the Act, initiate proceedings to revise, modify or set aside such order or proceeding and to pass such order in reference thereto as he thinks fit. Under Section 32(2) the powers, of the nature referred to in sub-section (1), can also be exercised by the Additional Commissioner, the Joint Commissioner, the Deputy Commissioner and the Assistant Commissioner, in the case of orders passed or proceedings recorded by the authorities, officers or persons subordinate to them.

19. The proviso to Section 32 of the A.P. VAT Act is similar to Section 20(2-A) of the APGST Act, the scope of which fell for consideration in several judgments of this Court. It is useful to read Section 20(2A) of the APGST Act in juxta-position

with the proviso to Section 32 of the AP VAT Act as it originally stood, and the proviso to Section 32 of the AP VAT Act after it was substituted by Act 21 of 2011 with effect from 15.09.2011.

20. Section 20(2-A) of the APGST Act and the proviso to Section 32 of the AP VAT Act, prior to its amendment by Act 21 of 2011 with effect from 15.09.2011, disabled the revisional authority from exercising the power of revision in respect of any issue or question which (i) was the subject matter of an appeal before the STAT; and (ii) was decided in appeal by the STAT. The effect of the amendment, by Act 21 of 2011, is that there is no longer any bar on the exercise of the revisional jurisdiction when the issue or question is the subject matter of an appeal before the STAT. The bar is now limited only in respect of an issue or question decided in appeal by the STAT.

21. On the scope of Section 20(2-A) of the APGST Act, a Full Bench of this Court, in *Indo-National Limited v Commissioner of Commercial Taxes* (2004) 136 STC 586 (AP), held that, if the question or issue is of a fact, the same may be confined to that particular order but, if the issue or question related to a point of law, the intention of the Legislature was that the assessee should not be vexed on such a question again and again and the bar, under Section 20(2-A) of the APGST Act, would apply. The Full Bench judgment in *Indo National Ltd. (2004) 136 STC 586 (AP)* was followed in the Division Bench judgments of this Court in *Vorion Chemicals and Distillers Ltd., v. Commissioner of Commercial Taxes* (2008) 47 APSTJ 87; *M/s. S.L.S. Power Limited, Nellore v. Joint Commissioner, Commercial Taxes* Judgment in W.P. No. 8174 of 2009 dated 29.04.2009; *Amulya Publications, Vijayawada v. Commissioner* Judgment in W.P. No. 15069 of 2009 dated 08.10.2009; and *Seven Hills Constructions* (2012) Vol. 54 APSTJ 1. As Section 20(2-A) of the APGST Act is in pari-materia with the proviso to Section 32 of the A.P. VAT Act before its amendment by Act 21 of 2011 with effect from 15.09.2011 and, except for a part thereof, is identical to the proviso to Section 32 of the A.P. VAT Act after its amendment, the law declared by the Full bench of this Court in *Indo National Ltd. (2004) 136 STC 586 (AP)*, on the interpretation placed on Section 20(2-A) of the APGST Act, would also apply to the proviso to Section 32 of the Act, both before and after its amendment by Act 21 of 2011.

B. EXERCISE OF APPELLATE JURISDICTION BY THE STAT: ITS DECISION ON A QUESTION OF LAW IS BINDING ON THE OFFICERS OF THE COMMERCIAL TAX DEPARTMENT:

22. The order passed by the Appellate Deputy Commissioner or the revisional authority can be subjected to appeal before the STAT under Section 33 of the Act. An appeal is "the removal of a cause from an inferior to a superior judge or court for re-examination or review". *Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others*, ; *Chappan v. Moldin Kutti* 1899 (22) ILR (Mad) 68). The removal of a cause is for the purpose of testing the soundness of the decision of the inferior court. The words "appellate jurisdiction" mean "the power of a superior court to review the decision of an inferior court". *Tirupati*

Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others, ; Wharton's Law Lexicon). An appeal is an application by a party to an appellate court asking it to set aside or revise a decision of a subordinate court. Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others, ; and AIR 1932 165 (Privy Council).

23. An appeal gives the right of entering the superior court and invoking its aid and interposition to redress the error of the court below. There are two important postulates of constituting the appellate jurisdiction: (i) the existence of the relation of a superior and an inferior court; and (ii) the power in the former to review decisions of the latter. An appeal removes a cause, entirely subjecting the facts as well as the law, to a review and a retrial. Its purpose is to test the soundness of the decision and proceedings of the inferior court or tribunal. The essential criterion of the appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted, and does not create that cause. In reference to judicial tribunals, an appellate jurisdiction necessarily implies that the subject-matter has already been instituted and acted upon, by some other court/tribunal, whose judgment or proceedings are sought to be revised. The superior forum has the jurisdiction to reverse, confirm, annul or modify the order of the forum appealed against and, in the event of a remand, the lower forum is required to rehear the matter and comply with such directions as may accompany the order of remand. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below and failure on the part of the latter to carry out such directions or to question the propriety of such directions would be destructive of the hierarchical system in the administration of justice. Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others, .

24. The hierarchy of Courts/Tribunals requires an authority, lower in order, to adhere to the orders passed and the law declared by a higher Court/Tribunal. (Royal Aquarium and Summer and Winter Garden Society v. Parkinson (1892) 1 QB 431 (452); Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunhunwala and Others, ; Union of India (UOI) Vs. Namit Sharma, . It is necessary for each lower tier, in the hierarchical system of courts" which exists in our country, "to accept loyally the decisions of the higher tiers". The better wisdom of the court below must yield to the higher wisdom of the court above. Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others, ; Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, ; Cassell and Co. Ltd. v. Broome, (1972) 1 All ER 801. While the declaration of law by the Supreme Court and the jurisdictional High Court would bind the STAT, the decision of the STAT would bind all the authorities of the Commercial Tax Department, who are lower in the hierarchical structure, including the revisional authority, the first appellate authority and the assessing authority. (Tirupati Chemicals, Vijayawada v. Deputy Commercial Tax Officer (2011) Vol. 52 APSTJ 48 (APHC: DB)). A lower authority is obligated to follow the decisions of a higher Court/Tribunal even in the absence of a specific statutory provision in this regard.

The proviso to Section 32 for the A.P. VAT Act only emphasises this requirement.

C. WHAT IS A "DECISION" ON A QUESTION OF LAW?

25. The word "decided", used in the proviso to Section 32 of the A.P. VAT Act, is significant. In view of the law declared by the Full Bench of this Court, in *Indo-National Ltd. (2004) 136 STC 586 (AP)*, it is only a decision of the STAT, on an issue or question of law, which would bar exercise of the revisional jurisdiction on the said issue or question. What then is a decision on an issue or question of law? Every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) a judgment based on the combined effect of the above. *State of Orissa and Others Vs. Md. Illiyas, ; The State of Orissa Vs. Sudhansu Sekhar Misra and Others, ; Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, ; State of N.C.T. of Delhi Vs. Ajay Kumar Tyagi, .* It is only a decision on the interpretation of an Act which is binding, and not the words used in giving the decision. This is often a very fine distinction as a decision can only be expressed in words. Nevertheless it is a real distinction as, in the interpretation of a statute, the sole function of the court/tribunal is to apply the words of the statute to a given situation. *ICICI Bank Ltd. and Another Vs. Municipal Corporation of Greater Bombay and Others, ; Paisner v. Goodrich (1955) 2 All ER 330, 332; Cull v. IRC (1939)3 All ER 761, Morelle Ltd. v. Wakeling (1955)1 All ER 708).*

26. A "decision" is on the question involved in the case in which it is rendered and, while applying the decision to a later case, the Court must ascertain and determine the true principle, laid down by the decision, by analysing all the material facts and issues involved in the case. *ICICI Bank Ltd. and Another Vs. Municipal Corporation of Greater Bombay and Others, ; Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., .* The decision of the STAT would bind the revisional authority, and bar him from exercising his revisional jurisdiction, only if it is rendered after considering the relevant statutory provisions and binding precedents. The view, if any, expressed without analysing the statutory provision cannot be treated as a binding precedent. *N. Bhargavan Pillai (Dead) by Lrs. and Another Vs. State of Kerala, .* A decision not expressed and accompanied by reasons, and not preceded by a conscious consideration of the issue, cannot be deemed to be a law declared to have binding effect. *Arnit Das Vs. State of Bihar, ; Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, ; State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, ; B. Shama Rao Vs. The Union Territory of Pondicherry, .*

D. DECISION OF THE STAT ON A QUESTION OF LAW, RENDERED EITHER IN IGNORANCE OF THE STATUTORY PROVISIONS OR CONTRARY TO THE LAW DECLARED BY THE SUPREME COURT OR THE JURISDICTIONAL HIGH COURT, WOULD NEITHER BIND THE REVISIONAL AUTHORITY NOR BAR EXERCISE OF

THE POWERS OF REVISION:

27. Against the order of the STAT, in T.A. No. 110 of 2012 dated 23.04.2012, the State Government has, for reasons best known, not carried the matter in revision to this Court under Section 34 of the A.P. VAT Act. The order of the STAT has, therefore, attained finality. Would that mean that, even if the decision of the STAT is erroneous, is in ignorance of the relevant statutory provisions and is contrary to the law declared by the Supreme Court and this Court, it would still bind the lower authorities for all times to come? As the order of the STAT, in T.A. No. 110 of 2012 dated 23.04.2012, has attained finality, the assessment for 2008-2009, to which period the said order related to, cannot be reopened. Merely because the order of the STAT has attained finality would not justify the proviso to Section 32 of the A.P. VAT Act being construed as disabling the revisional authority from exercising his powers of revision, in all circumstances and for all times to come, as that would result in absurd consequences. The logical corollary of such a construction would be that if, after the STAT has decided a question of law for a particular assessment year, the Supreme Court or the High Court, in another case, declares the law to be otherwise, the sales tax authorities would not be bound by the declaration of law by the High Court or the Supreme Court, but by the earlier decision of the STAT. Such a convoluted construction of the proviso to Section 32 of the A.P. VAT Act necessitates rejection.

28. As the STAT would also be bound by the law declared by the Supreme Court and the jurisdictional High Court, the proviso to Section 32 of the A.P. VAT Act would not disable the revisional authority from exercising his powers of revision in accordance with the law declared by the Supreme Court and the High Court and he would, in such circumstances, not be bound by the decision of the STAT. It cannot, therefore, be laid down as a blanket rule that in all cases, and irrespective of the nature of the order of the STAT, the power of the revisional authority is excluded in view of the proviso to Section 32 of the A.P. VAT Act, and the exercise of the revisionary jurisdiction is barred.

29. It is only if the STAT renders its decision on a question of law, after noticing and considering the relevant statutory provisions, would the decision bind the revisional authority and disable him from taking a different view, that too only if, and as long as, there is no judgment of the Supreme Court and the jurisdictional High Court, on the said question of law, to the contrary. If, however, the relevant statutory provisions have not been noticed by the STAT, the decision rendered by it in ignorance thereof would not be a "decision" on a question of law under the proviso to Section 32 of the A.P. VAT Act; and would not disable the revisional authority from exercising jurisdiction under Sections 32(1) and (2) of the Act.

E. ORDER OF THE STAT IN T.A. No. 110 OF 2012 DATED 23.04.2012:

30. Notwithstanding the submission of Sri S. Ravi, Learned Senior Counsel appearing on behalf of NECL, that this Court is not being called upon to decide

upon the correct basis for computing the turnover, and that the correct interpretation to be placed on Rule 17(1)(d) & (e) of the A.P. VAT Rules is not the subject matter of enquiry in this writ petition, this Court has, necessarily, to examine whether the STAT, in its order in T.A. No. 110 of 2012 dated 23.04.2012, has noticed the relevant statutory provisions and has considered the binding precedents of the Supreme Court and this Court, for it is only then would the order of the STAT constitute a "decision" which would bar exercise of the revisional jurisdiction under the proviso to Section 32 of the Act.

31. Against the assessment order passed by the Assistant Commissioner dated 30.03.2011, for the period 01.04.2008 to 31.03.2009, NECL carried the matter in appeal to the Appellate Deputy Commissioner who, while remanding the matter, directed the assessing authority to make a de-novo assessment duly following Section 4(7)(a) of the Act, after allowing the deductions prescribed under Rule 17(1)(e) of the Rules; and to levy tax at the standard rate of 12.5% under the V Schedule to the Act. Aggrieved thereby, NECL carried the matter in appeal to the STAT. In its order, in T.A. No. 110 of 2012 dated 23.04.2012, the STAT noted the contention of NECL that the balance amount of tax under clause (e) of Rule 17(1) should be arrived at the time of finalisation of the accounts relating to the particular work; such additional turnover, and the tax payable, should be declared in the return for the month in which the accounts were finalised; they were eligible to pay tax on the goods at the rates applicable to the goods under the Act; and no gross profit should be added to the taxable turnover until the accounts were finalised till the final work was executed. The STAT also noted the conclusion of the Appellate Deputy Commissioner, in the order under appeal before it, that this contention was not acceptable as the proviso to Rule 17(1)(e) was not consistent with the provisions of Section 4(7)(a) of the Act.

32. The STAT held that the Appellate Deputy Commissioner had decided the constitutional validity of the rules viz-?-vis the provisions of the Act; it is only the High Court and the Supreme Court which could do so; in *K.S. Venkataraman & Co. (P) Ltd. v. State of Madras* (1966) 17 STC 418, the Supreme Court had held that an authority, created by a statute, could not question the provisions of a statute, and must act under the Act and not decide its validity; the Deputy Commissioner was not competent to hold that Rule 17(1)(d) and (e) were inconsistent with Section 4(7)(a) of the Act; in *Assistant Commissioner of Commercial Taxes v. Dharmendra Trading Company* (1988) 70 STC 59, the Supreme Court had held that functionaries of the State could not hold that the State did not have the power to grant concession; the Karnataka High Court, in *Manjunatha Roller Flour Mills Private Limited Vs. Assistant Commissioner of Commercial Taxes and Others*, , had held that creatures of a statute, or functionaries of the State Government, could not hold that the corrigendum, issued by the State Government, was ultra vires its powers under the Act; Rule 17(1)(d) and (e) stipulated that, in the case of a dealer executing works contract, he is required to pay tax on the value of the goods at the time of its incorporation; this Rule had been newly introduced in the VAT Rules in order to

compute the correct and exact value of the goods; in the light of the decision of the Supreme Court in *Gannon Dunkerley* (1993) 88 STC 204, the High Court of A.P., in *Seven Hills Constructions* (2012) Vol. 54 APSTJ 1, had held that profit should be added for arriving at the correct value of the goods when they were incorporated or used in the execution of a works contract; in order to safe guard the revenue of the Government, Rules were framed under the Act, and a comprehensive procedure was prescribed; these Rules indicated that, in computing the turnover of a works contractor, the purchase price was not the true value; the purchase price of the goods, used in the execution of the works contract, must include incidental charges such as seigniorage charges, blasting and breaking charges, transport charges etc; Rule 17(1)(d) was specifically framed, under the Rules, only to safeguard the interests of the revenue; the second proviso, adumbrated under Rule 17(1)(e), showed that when a contract has been executed by a dealer, and if he files his returns after completion of the works contract, he must declare in that return, after the finalisation of the accounts in respect of that completed works contract, the tax payable by them; the additional tax payable, for the work completed by them, must be declared in the returns of that month; the Act provides for self-assessment; a dealer is required to file his returns every month which is the assessment; he is required to disclose the tax payable by him for the works contract; the VAT dealer may not be in a position to complete execution of the works contract within one month; completion of the works contract would range from one year to two years or three years or even more; initially the VAT dealer is required to file monthly returns in accordance with Rule 17(1)(d); while filing his returns, the VAT dealer has to show the value of the goods used in execution of the works contract including the amounts referred to in Rule 17(1)(d), subject to the deductions enumerated in Rule 17(1)(e); while disclosing the value of the goods, when filing returns for paying tax on a monthly basis, the dealer is expected to arrive at the turnover by showing the value of the goods which includes various charges referred to in Rule 17(1)(d); the VAT dealer is, at the same time, entitled to deduct the amounts indicated in Rule 17(1)(e); Rule 17(1)(e) is subject to Rule 17(1)(d) when the taxable turnover is computed every month by a VAT dealer; while finalising the accounts, in respect of each completed contract in a particular month, the VAT dealer has to follow the second proviso to Rule 17(1)(e); while filing the returns, he has to declare the true value of the additional taxable turnover and the tax due thereon, and pay the same; gross profit is not referred to in Rule 17(1)(d); the dealer is not expected to receive gross profit in the initial months while executing the works contract; he would generally derive and receive net profit only after finalisation and completion of the contract; the government, in its wisdom, has specifically framed the second proviso to Rule 17(1)(e) stating that the dealer is liable to declare the additional taxable turnover, and the additional tax paid, in the return for the month for which the accounts are finalised after completion of the works contract; the assessing authority and the Deputy Commissioner had erred in holding that the dealer had to add gross profit also under Rule 17(1)(d), while computing the taxable

turnover for the works which were not completed at all; whenever the work is completed in a month, every dealer has to declare the additional taxable turnover; while doing so, he is also expected to show the gross profit or the net profit earned; he has to add the same to the value of the goods, and has to pay the balance tax accordingly; taking into consideration these aspects, the Government had framed Rule 17(1)(d) and (e) which are consistent with the nature of the works being executed by works contractors; the Government correctly arrived at the decision that a works contractor may not be in a position to complete the work in a month to declare the incorporation value including profit; the second proviso to Rule 17(1)(e) specifically stipulates that the dealer should declare and pay the additional tax payable, soon after completion of execution of the works contract, by impliedly adding the actual profit derived while computing the incorporation value of the goods involved in the execution of the works contract; the Deputy Commissioner was wrong in holding that Rule 17(1)(d) & (e) were inconsistent with Section 4(7)(a) of the Act; the Deputy Commissioner had also erred in directing the assessing authority to levy tax at 12.5% holding that the accounts were not clear; the assessing authority should delete the gross profit, while computing the turnover under Section 4(7)(a), for the uncompleted works; tax should be levied after ascertaining the true value of the goods, in accordance with Rule 17(1)(d) of the Rules, for ascertaining the value at the time of incorporation; and while computing the tax on the turnover payable by the appellant, under Section 4(7)(a) of Act, addition of gross profit is incorrect when the works contracts are not completed.

F. IS THE ORDER OF THE STAT, IN T.A. No. 110 OF 2012 DATED 23.04.2012, CONTRARY TO THE LAW DECLARED BY THE SUPREME COURT IN "GANNON DUNKERLY" AND THE FULL BENCH OF THIS COURT IN "SEVEN HILLS CONSTRUCTIONS"?

33. As Sri P. Balaji Verma, Learned Special Standing Counsel for Commercial Taxes, would submit that the order of the STAT, in T.A. No. 110 of 2012 dated 23.04.2012, is contrary to the law declared by the Supreme Court in Gannon Dunkerly, and the Full bench of this Court in Seven Hills Constructions, it is necessary to take note of the law declared therein. In Gannon Dunkerley (1993) 88 STC 204 the Supreme Court held that the tax, on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, falling within the ambit of Article 366(29-A)(b), is leviable on the goods involved in the execution of a works contract, and the value of the goods which are involved in the execution of the works contract would constitute the measure for imposition of the tax; keeping in view the legal fiction introduced by the Forty Sixth Amendment to the Constitution whereby the works contract, which are entire and indivisible, are deemed to have been divided into two contracts i.e., one for sale of goods and other for supply of labour and services, the value of the goods involved in the execution of a works contract, on which tax is leviable, must exclude the charges which appertain to the contract for supply of labour and services; to ascertain the value of the goods involved in the

execution of a works contract, for the purpose of imposition of tax, the cost of transportation of the goods to the place of works has to be taken as part of the value of the said goods; the cost of establishment, relating to supply of material involved in the execution of the works contract, must be included in the value of the goods; the profits, relating to the supply of materials, should be included in the value of the goods, and the profits relating to supply of labour and services must be excluded; and the value of the goods involved in the execution of a works contract will have to be determined taking into account the value of the entire works contract and deducting therefrom the charges towards labour and services.

34. On the question whether or not the order of the STAT is contrary to the law declared by the Full Bench of this Court in *Seven Hills Constructions (2012) Vol. 54 APSTJ 1*, it is necessary at the outset to note the relevant provisions of the APGST Act, and the Rules made thereunder, which fell for consideration in *Seven Hills Constructions (2012) Vol. 54 APSTJ 1*, and examine whether they are similar to the provisions of the A.P. VAT Act which arose for consideration before the STAT in T.A. No. 110 of 2012 dated 23.04.2012, and those under consideration in the present batch of cases. Section 5-F of the APGST Act related to levy of tax on the transfer of property of goods involved in the execution of a works contract and stipulated that every dealer should pay a tax under the Act, for each year, on his turnover on the transfer of property of goods involved in the execution of a works contract. Rule 6(2) of the APGST Rules, which required the tax under Section 5-F of the Act to be levied on the turnover of a dealer who transferred property in goods involved in the execution of a works contract, stipulated that, in determining the turnover of a dealer liable to tax, the amounts specified in clauses (a) to (i), subject to the conditions specified therein, should be deducted from the total turnover of the dealer i.e., (a) labour charges for execution of the works; (b) amount paid to a sub-contractor for the execution of works contract; (c) charges for planning, designing and architect's fees; (d) charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract; (e) cost of consumables such as water, electricity, fuel, etc., used in the execution of the works contract; (f) cost of establishment of the contractor to the extent it was relating to supply of labour and services; (g) other similar expenses relating to supply of labour and services; (h) profit earned by the contractor to the extent it related to supply of labour and services etc. Rule 6(3) (i) of the APGST Rules stipulated that, in cases where the execution of a works contract extended over a period of more than one year, the total turnover, for the purpose of sub-rule (2), for that year should be deemed to be the value of the goods purchased for being supplied or used in the execution of such contract in that year.

35. Section 4(7)(a) of the AP VAT Act stipulates that every dealer executing works contracts shall pay tax on the value of the goods, at the time of incorporation of such goods in the works executed, at the rates applicable to the goods under the Act. Under the proviso thereto, where accounts are not

maintained to determine the correct value of the goods at the time of incorporation, such dealer shall pay tax at the rates specified in Schedule V on the total consideration received or receivable subject to such deductions as may be prescribed. Rule 17(1)(d) of the Rules stipulates that the value of the goods, used in the execution of a works contract, declared by the contractor shall not be less than the purchase value and shall include seigniorage charges, blasting and breaking charges, crusher charges, loading, transport and unloading charges, stacking and distribution charges, expenditure incurred in relation to hot mix plant and transport of hot mix to the site and distribution charges. Rule 17(1)(e) provides that, subject to Rule 17(1)(d), the following amounts should be allowed as deductions, from the total consideration received or receivable, for arriving at the value of the goods at the time of incorporation ie (i) labour charges for execution of the works; (ii) charges for planning, designing and architect's fees; (iii) charges for obtaining, on hire or otherwise, machinery and tools used for the execution of the works contract; (iv) cost of consumables such as water, electricity, fuel, etc., used in the execution of the works contract; (v) cost of establishment of the contractor to the extent it is relatable to supply of labour and services; (vi) other similar expenses relatable to supply of labour and services; (vii) profit earned by the contractor to the extent it is relatable to supply of labour and services; and (viii) amounts paid to the sub-contractor as consideration for the execution of works contract. Under the first proviso to Rule 17(1)(e), the contractor-VAT dealer is required to arrive at the value of the goods at the time of incorporation, tax rate wise, from out of the taxable turnover arrived at as per Rule 17(1)(e) on a pro-rata basis, taking the ratio of the value of goods liable to tax at different rates, against the total value of purchases relating to such contract. Under the second proviso, subject to the filing of the returns and payment of tax as per Rule 17(1)(d), the VAT dealer is required to pay the balance amount of tax, arrived at by following Rule 17(1)(e), at the time of finalisation of accounts relating to the particular work; and such additional taxable turnover and taxes payable shall be declared in the return for the month in which accounts are finalised.

36. Section 5F of the APGST Act is similar to Section 4(7)(a) of the A.P. VAT Act and its proviso. Like Rules 6(2) and 6 (3)(i) and (ii) of the APGST Rules, 1957, which related to the determination of the turnover of the dealer who transferred property in the goods involved in the execution of a works contract, Rule 17(1) (a), (d) & (e) of the AP VAT Rules, 2005, and its provisos, provide for the treatment of works contract.

37. In *Seven Hills Constructions* (2012) Vol. 54 APSTJ 1, a Full bench of this Court held that, as the charge to tax is on the transfer of property in goods, i.e., on the transfer of the right in goods, it is only the value of the goods involved in the execution of the works contract which would constitute the measure for imposition of tax, and not the purchase cost or the cost of acquisition of goods by the dealer; the taxable event is the transfer of property in goods involved in the execution of a works contract, and the transfer of property in such goods

takes place when the goods are incorporated in the works; the value of the goods, which would constitute the measure of tax, is its value at the time of its incorporation in the works; the point of levy of tax is on the transfer of property in the goods involved in the execution of the works contract, and not on the purchase of goods by a dealer; the turnover liable to tax under Section 5-F of the APGST Act is the taxable turnover of the dealer for one year; Rule 6(2) of the APGST Rules provides for the manner in which the turnover, liable to tax under Section 5-F of the Act, is to be arrived at; where books of accounts are maintained by the assessee-dealer, the gross receipts less the deductions of the nature specified in Rule 6(2) determine the turnover to be taxed as works contracts; where the deductions specified in Rule 6(2) are not ascertainable from the accounts of a dealer, the turnover has to be determined after reducing the standard deduction, prescribed for different types of contracts under Rule 6(3) (ii), from the amounts paid or payable to the dealer for executing such works contracts; Rule 6(3)(i) merely provides another method, a direct manner, of determining the turnover on the basis of the value of the goods purchased and supplied or used in the execution of works contracts in that year, instead of arriving at the turnover under Rule 6(2) by deducting certain items of expenditure from the gross receipts paid or payable to the contractor-dealer; as Rule 6(3)(i) must be read harmoniously with Section 5-F of the Act, and as the charge to tax under the Act is on the transfer of property in the goods involved in the execution of works contract, the law laid down by the Supreme Court in *Gannon Dunkerley* (1993) 88 STC 204 would equally apply to the provisions of the APGST Act, and the Rules made thereunder; where books of accounts are separately maintained each year, for the works contracts, ascertaining profits arising therefrom would present no difficulty; unlike other components, the profit element in the value of the goods may necessitate estimation in cases where the books of accounts are not maintained annually, but project-wise; estimation of profit would then be a matter for determination by the assessing authority; if the cost of acquisition of goods, or the purchase cost of the goods, is held to be the measure of tax under Rule 6(3)(i), the said Rule would not be in conformity with Section 5-F of the Act whereunder the charge to tax is on the transfer of property in the goods i.e., the value of the goods when it is transferred to, or is incorporated in, the works; the Rules have to be read harmoniously, and not to be in conflict with the parent Act; the words in a Rule cannot be read in a manner as to elevate, by implication, the Rule to a charging provision; Article 265 of the Constitution mandates that no tax shall be levied or collected except by authority of law; the authority of law has to be specific and explicit and expressly provided; there must be a charging section specifically empowering the State to levy tax; the power to tax can neither be inferred nor is there any such thing as taxation by implication; there is nothing like an implied power to tax; the provision cannot be so interpreted by expanding its width as to include therein the power to tax by implication or by necessary inference; a rule has to be read as supplemental to the provisions of the parent Act; it cannot be interpreted in a way as to come into conflict with the parent Act, in which case

the Act will prevail; a piece of subordinate legislation should be read in the light of the statutory scheme of the Act; the Rules should be interpreted in a manner so as to be in conformity with the provisions of the Act, and not the other way round; Rules made, for carrying out the purposes of the Act, cannot be so framed as not to carry out the purposes of the Act, and cannot be in conflict therewith; and if a rule goes beyond, or is contrary to, what the Section contemplates, the rule must yield to the Statute.

38. The law declared by the Supreme Court in *Gannon Dunkerly* (1993) 88 STC 204 is that the charge to tax is on the transfer of property in goods i.e., on the transfer of the right in the goods; it is only the value of the goods, when it is incorporated in the works which would constitute the measure for imposition of the tax; and the taxable event is the transfer of property in goods involved in the execution of the works contract, and the transfer of property in such goods takes place when the goods are incorporated in the works. The law declared by the Full Bench of this Court in *Seven Hills Constructions* (2012) Vol. 54 APSTJ 1 is that the point of levy of tax is on the transfer of property in the goods involved in the execution of the works contract. In view of the non-obstante clause, in the charging Section 4(7)(a) of the Act, the liability to pay tax is on the value of the goods at the time of incorporation of such goods in the works executed. As Section 5-F of the APGST Act, like Section 4(7)(a) of the A.P. VAT Act, subjects the value of the goods involved in the execution of the works contract to tax, the law declared by the Full bench of this Court, in *Seven Hills Constructions* (2012) Vol. 54 APSTJ 1, would also apply to the provisions of the A.P. VAT Act and the rules made thereunder, and would require Rules 17(1)(d), 17(1)(e) of the Rules and its two provisos, to be read harmoniously with Section 4(7)(a) of the Act, and not to be in conflict therewith; if these rules comes into conflict with Section 4(7)(a) of the Act, the latter would prevail; the Rules should be interpreted in a manner so as to be in conformity with the provisions of the Act, and not the other way round; and, if Rule 17(1)(e) and its two provisos go beyond or are contrary to what Section 4(7)(a) of the Act contemplates, the Rules must yield to the statute.

39. Though the judgment in *Seven Hills Constructions* (2012) Vol. 54 APSTJ 1 was binding on it, the STAT brushed it aside holding that there was no provision, similar to the second proviso to Rule 17(1)(e) of the Rules, in the APGST Rules. The STAT referred to certain judgments to hold that a creature of the statute cannot decide the vires of a statutory rule. While neither the STAT nor the revisional authority can declare a statutory rule to be ultra-vires the provisions of the Constitution or the parent Act, they can interpret the Rules and construe them harmoniously with the provisions of the parent Act. The interpretation of the second proviso to Rule 17(1)(e) by the STAT is contrary to the law declared in the binding judgments of the Supreme Court in *Gannon Dunkerly* (1993) 88 STC 204, and the Full bench of this Court in *Seven Hills Constructions* (2012) Vol. 54 APSTJ 1.

G. WAS THE ORDER OF THE STAT, IN T.A. NO.110 OF 2012 DATED 23.04.2012, PASSED IN IGNORANCE OF THE RELEVANT STATUTORY PROVISIONS?

40. As the construction placed on the second proviso to Rule 17(1)(e) by the revisional authority is at variance with the interpretation placed thereon by the STAT, in its order in T.A. No. 110 of 2012 dated 23.04.2012, it is necessary to note the contents of the impugned orders of the revisional authority.

41. On the question of levy of tax, on works under progress, NECL had contended before the revisional authority that, for the completed works, tax was paid deriving the turnover as per Rule 17(1)(e), after deducting the tax already paid on the turnover derived and reported as per Rule 17(1)(d); and this procedure was followed in view of the second proviso to Rule 17(1)(e) especially the phrase "finalization of accounts relating to the particular work". In the impugned orders of revision, the revisional authority held that self-assessment is provided for dealers under the Act; the dealer is required to file returns every month, and to disclose the tax payable towards works contract; in cases where the work extends beyond the period, the VAT dealer is required to file monthly returns provisionally in accordance with Rule 17(1)(d) of the Rules; for works which are completed, tax has to be paid deriving the turnover as per Rule 17(1)(e), after deducting the tax already paid on the turnover derived and reported as per the provisions of Rule 17(1)(d); the term "finalization of accounts relating to particular work" in the proviso must be understood with reference to a particular financial year, and not at the end of the project after several years; this is because works contractors are required to finalise their accounts every year for each work, and report revenue profit as per the standards prescribed under the Companies Act; the meaning of the proviso is that if the dealer files returns, adopting the method of additions to the purchase price of material as prescribed in Rule 17(1)(d), he has to report the correct taxable turnover, and pay the balance tax after finalisation of accounts at the end of the financial year; in the exercise of the powers conferred under Section 211(3C) of the Companies Act, the Central Government had notified the Companies Accounting Rules, 2006; these accounting standards are mandatory for all companies; accounting standards under AS7 deal with construction contracts; as per the revised standard AS7, the percentage of completion method, on a year to year basis, is the only method adopted in contracts extending for more than a year to arrive at the revenue; as per these standards, companies are required to maintain records showing all types of costs and expenses; AS22 prescribes the manner of accounting for taxes on income and profit every year; NECL was not correct in stating that they cannot ascertain the correct value of material, at the time of incorporation, until the end of the project; the taxable event in a works contract is the transfer of property which takes place when goods are incorporated in the works; the value of the goods, at the time of incorporation in the works, constitutes the measure for levy of tax; the value of the goods, involved in the execution of works contract, must be determined taking into account the value of the entire works contract, and deducting therefrom the charges towards labour

and services, and other deductions as prescribed in Rule 17(1)(e); reliance placed by NECL, on the order of the STAT in T.A. No. 110 of 2012 dated 23.04.2012, was misplaced; the order of the STAT was inapplicable, as it had only examined the applicability of addition of gross profit under Rule 17(1)(d), for ascertaining the value of the goods at the stage of incorporation; and, in the present case, the assessment was revised under Rule 17(1)(e) to arrive at the value of the goods at the time of its incorporation, after deducting expenditure relating to labour and services.

42. Rule 17(1)(e) of the Rules is subject to Rule 17(1)(d) thereof. The phrase "subject to" conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject. *Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram*, ; *The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another*, . As Rule 17(1)(e) must yield place to Rule 17(1)(d) to which it is made subject, the value of the goods used in the execution of the works contract, computed in terms of Rule 17(1)(d), shall be the minimum value. Subject to this minimum, Rule 17(1)(e) stipulates that, for arriving at the value of the goods, at the time of incorporation, the "total consideration received or receivable" shall be taken as the basis from out of which the amounts referred to in items (i) to (viii) thereof shall be allowed as deductions, and the net amount (i.e., the difference between the total consideration received or receivable and the permissible deductions under items (i) to (viii)) shall be the value of the goods, at the time of incorporation, liable to tax under the Act. If this net amount, arrived at under Rule 17(1)(e), is lower than the value determined in terms of Rule 17(1)(d), then the value of the goods, as determined under Rule 17(1)(d), shall be the value of the goods liable to tax under Section 4(7)(a) of the Act.

43. The second proviso qualifies Rule 17(1)(e) of the Rules. A proviso qualifies the generality of the main enactment by providing an exception and taking out from the main provision a portion which, but for the proviso would be a part of the main provision. A proviso must, therefore, be considered in relation to the principal matter to which it stands as a proviso. A proviso should not be read as if providing something by way of addition to the main provision which is foreign to the main provision itself. *J.K. Industries Ltd. and Others Vs. Chief Inspector of Factories and Boilers and Others*, ; *The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited*, . A proviso cannot be torn apart from the main provision nor can it be used to nullify or set at naught the real object of the main provision. *S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others*, ; *Craies: Statute Law 7th Edn.*). A proviso must be construed harmoniously with the main enactment. *Abdul Jabar Butt Vs. State of Jammu and Kashmir*, ; *The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited, Ram Narain Sons Ltd. Vs. Asst. Commissioner of Sales Tax and Others*, ; and *State of Punjab Vs. Kailash Nath*, .

44. A proviso is a qualification of the preceding provision, and is not to be interpreted as stating a general rule. Haryana State Cooperative Land Development Bank Ltd. Vs. Haryana State Cooperative Land Development Banks Employees Union and Another, ; Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha, ; The Calcutta Tramways Co. Ltd. Vs. The Corporation of Calcutta, ; A.N. Sehgal v. Raje Ram Sheoran 1992 SUPPL. (2) SCC 651; Tribhovandas Haribhai Tamboli Vs. Gujarat Revenue Tribunal and others, and Kerala State Housing Board and Others Vs. Ramapriya Hotels (P) Ltd. and Others, . A proviso, to a particular provision, only embraces the field which is covered by the said provision. It carves out an exception to the provision to which it has been enacted as a proviso, and to no other. The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited, ; Tribhovandas Haribhai Tamboli Vs. Gujarat Revenue Tribunal and others, ; Ramapriya Hotels (P) Ltd.; Binani Industries Ltd., Kerala Vs. Assistant Commissioner of Commercial Taxes, VI Circle, Bangalore and Others, ; AIR 1944 71 (Privy Council); Nagar Palika Nigam Vs. Krishi Upaj Mandi Samiti and Others, ; Ram Narain Sons Ltd. Vs. Asst. Commissioner of Sales Tax and Others, . A proviso must be limited to the subject-matter of the enacting clause. It must be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. Dwarka Prasad Vs. Dwarka Das Saraf, . As a general rule, in construing an enactment containing a proviso, it is proper to construe the provisions together without making either of them redundant or otiose. The enacting clause and the proviso should be reconciled to avoid repugnancy between the two. Tahsildar Singh and Another Vs. The State of Uttar Pradesh, .

45. In the impugned orders of revision, the revisional authority relied on the clarification given by Advance Ruling Authority, in the case of M/s. Jaiprakash Associates Limited. Hyderabad Order in A.R. Com/15/2012 dated 16.08.2012, to hold that the words "finalization of accounts", in the second proviso to Rule 17(1) (e), would mean the accounts which are finalized at the end of the financial year. The STAT, in its order in T.A. No. 110 of 2012 dated 23.04.2012, however interpreted the said proviso to require payment of the balance tax on completion of the entire work. The second proviso to Rule 17(1)(e) is not an independent provision, and only carves out an exception to Rule 17(1)(e). The words "subject to", which is also used in the second proviso, makes it subject to (i) filing of returns and (ii) payment of tax as per Rule 17(1)(d). On compliance with the aforesaid twin requirements, a VAT dealer is required to pay the balance amount of tax arrived at by following Rule 17(1)(e), (i.e., the difference between the tax as computed under Rule 17(1)(e), and the tax computed under Rule 17(1)(d)), at the time of "finalization of accounts relating to the particular work", and not after its completion. This is evident from the second limb, of the second proviso, which stipulates that such additional taxable turnover and the taxes payable, (i.e., the difference between the tax computed under Rule 17(1)(d) and Rule 17(1)(e)), shall be declared in the return for the month in which "accounts are

finalized". The requirement of the second proviso is for the payment of the balance amount of tax at the time of finalization of the accounts, and not after the work is completed in its entirety.

46. Clause 3.3.1 of the revised concessional agreement entered into between GoAP and KPCL defines "concession period" to mean the period commencing from the date of execution of the agreement, for development of the Krishnapatnam Port, dated 04.01.1997 and ending on the expiry of thirty years from the commercial operations date. The said clause also entitles KPCL to seek further extension for a period of 20 years. Accepting the construction, placed by the STAT on the second proviso to Rule 17(1)(e), would enable NECL (the contractor of the works relating to Krishnapatnam Port Project) to pay the differential tax (the difference between the tax as computed under Rule 17(1)(e) and Rule 17(1)(d)) after thirty years and, if extension is granted, after fifty years. Such a construction is impermissible on a plain and literal reading on the proviso. The construction placed thereon by the STAT would require the words "finalization of accounts relating to the particular work" to be read as "finalization of accounts relating to the particular work on its completion". The primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. 965212--> . Courts should not, ordinarily, add words to a statute or read words into it which are not there, especially when a literal reading thereof produces an intelligible result. Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others, . There is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. Courts expound the law, they do not legislate. State of Kerala Vs. Mathai Verghese and Others, , Union of India and another Vs. Deoki Nandan Aggarwal, . A Judge is not entitled to add something more than what is there in the Statute by way of a supposed intention of the legislature. Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and Others etc., . The legislative casus omissus cannot be supplied by judicial interpretative process. Maruti Wire Industries Pvt. Ltd. Vs. S.T.O., Ist Circle, Mattancherry and Others, , State of Jharkhand and Another Vs. Govind Singh, .

47. Even otherwise the second proviso, when both its limbs are read together, clearly shows that the balance tax payable, and the requirement of the additional taxable turnover and the taxes payable to be declared in the return, is in the month in which the "accounts are finalized", and not when the entire work is completed. The second proviso to Rule 17(1)(e) is not an independent provision. It is merely a proviso to Rule 17(1)(e) and carves out an exception thereto. It cannot be elevated to a charging Section to postpone the point of levy, (which is at the stage of incorporation of the goods in the works), to a period several years thereafter on completion of the works which, in the present case, would be atleast after thirty years if not longer.

48. We find considerable force in the submission of Sri P. Balaji Varma, Learned

Special Standing Counsel for Commercial Taxes, that the construction placed on the second proviso to Rule 17(1)(e) by the STAT, in its order in T.A. No. 110 of 2012 dated 23.04.2012, if accepted, would result in a part of the tax being levied only on completion of the project, in which event the value of the goods would not be its value at the time of incorporation, but would be the profit shown as a separate element later; it would also result in the second proviso to Rule 17(1)(e) being elevated to a charging section prescribing the point of levy of tax, on the deemed sale of goods, at the stage of completion of the entire work, and not at the stage of its incorporation in the works; and the tax so levied would then not be a tax on the sale of goods, but a tax on income which taxing power is beyond the legislative competence of the State Legislature.

49. Rule 31 of the Rules which was taken into consideration by the revisional authority was not even noticed by the STAT. Rule 31 relates to the records to be maintained by a dealer executing works contracts. Rule 31(1) requires every dealer executing works contract to keep separate accounts for each contract specifying the particulars of the names and addresses of the persons for whom he has executed works contracts. Rule 31(3) requires every dealer executing works contract, and not opting to pay tax by way of composition, to keep the following records, namely:-(a) the particulars of goods procured by way of purchase or otherwise for the execution of works contract; (b) the particulars of goods to be used or used in the execution of each works contract; (c) the details of payment received in respect of each works contract; and (d) the details of; (i) labour charges for works executed, (ii) amount paid to sub-contractor for labour and services, (iii) charges for planning, designing and architect's fees, (iv) charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract, (v) cost of consumables such as water, electricity, fuel etc., used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract, (vi) cost of establishment of the contractor to the extent it is relatable to supply of labour and services, (vii) other similar expenses relatable to supply of labour and services, (viii) profit earned by the contractor to the extent it is relatable to supply of labour and services, (ix) all amounts for which goods exempt under Schedule I are transferred in execution of the works contract, and (x) turnover of goods involved in the execution of works contract which are transferred in the course of inter-State trade or commerce under Section 3 of the Central Sales Tax Act, 1956 or transferred outside the State under Section 4 or transferred in the course of import or export under Section 5 of the said Act.

50. Rule 31 of the Rules makes it clear that the dealer is required to maintain records project wise. The records required to be maintained, in terms of items (i) to (viii) of Rule 31 (3)(d), are the very same items (i) to (viii) which, under Rule 17(1)(e), are required to be allowed as deductions, from the total consideration received or receivable, for arriving at the value of goods at the time of incorporation. The statutory requirement under Rule 31 (3), more particularly under clause (d) thereof, to maintain these records is only to enable the balance

amount of tax, payable in terms of clause (e) of Rule 17(1), to be arrived at the time of finalisation of accounts which is, ordinarily, at the end of a financial year.

51. NECL, a company incorporated under the Companies Act, is required to adhere to the provisions of the Companies Act, and the rules made thereunder. Section 210(3)(b) of the Companies Act requires the profit and loss account of the company, to be placed before the annual general meeting, to relate to the period beginning with the date immediately after the period for which the account was last submitted, and ending with a date which shall not precede the date of the meeting by more than six months. Section 210(4) of the Act stipulates that the period, to which the accounts referred to in Section 210(3)(b) relates to, shall be referred to, in the Companies Act, as a "financial year"; and it may be less or more than a calendar year, but it shall not exceed fifteen months-Section 2(17) of the Companies Act defines "financial year" to mean, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate, laid before it in the annual general meeting, is made up, whether that period is a year or not. Section 211(1) requires every balance sheet of a company to give a true and fair view of the state of affairs of the company as at the end of the financial year and, under Section 211(2), every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year. Section 211(3A) requires every profit and loss account and balance sheet of the company to comply with the accounting standards. Section 211(3C) stipulates that, for the purposes of Section 211, the expression "accounting standards" shall mean the standards of accounting recommended by the Institute of Chartered Accountants of India, as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards. Under the proviso thereto, the standards of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the accounting standards, until accounting standards are prescribed by the Central Government under Section 211(3)(c) of the Act.

52. Both the Advance Ruling Authority in M/s. Jaiprakash Associates Hyderabad Order in A.R. Com/15/2012 dated 16.08.2012, and the revisional authority in the impugned orders of revision, have held, rightly so, that the term "finalisation of accounts relating to a particular work", used in second proviso to Rule 17(1)(e), must be understood with reference to a particular financial year, and not on completion of the project several years thereafter, as the works contractors are required to finalise their accounts every year for each work, and report revenue profit as per the accounting standards prescribed under the Companies Act. The STAT, in its order in T.A. No. 110 of 2012 dated 23.04.2012, has also failed to notice the aforesaid provisions of the Companies Act.

53. The object, for which the second proviso to Rule 17(1)(e) was provided, is evident if the distinction in the provisions, relating to assessment, under the APGST Act and the A.P. VAT Act, is noticed. Section 2(u) of the APGST Act defined "Year" to mean the twelve months ending on the 31st day of March.

Section 5(1) of the APGST Act requires a dealer to pay tax, under the Act, for each year on his turnover of sales or purchases of goods in each year. Under Section 2(36) of the AP VAT Act, "Tax period" means a "calendar month". Unlike the APGST Act, which provided for assessment of tax every year, a tax period, under Section 2(36) of the AP VAT Act, is a calendar month. As the requirement of Rule 17(1)(e), including computation of the deductions thereunder, can be complied with, and the value of the goods at the time of incorporation determined thereunder, only on the accounts of the subject work being finalised at the end of a financial year, the second proviso to Rule 17(1)(e) was made to provide for such an eventuality, unlike under the APGST Act where no such proviso was required. While a dealer is required to compute the value of the goods, at the time of incorporation, in terms of Rule 17(1)(d) and pay tax accordingly along with their monthly returns, they are required to pay the balance tax computed in terms of Rule 17(1)(e) in the month in which the accounts are finalised at the end of a financial year. The deductions to be made, under Rule 17(1)(e), is from the total consideration "received or receivable" for arriving at the value of the goods at the time of incorporation. The value of the goods is its value at the time of incorporation, and Rule 17(1)(e) does not postpone its determination till receipt of the total consideration (on completion of the entire work), for it also provides for arriving at the value of the goods after deducting certain items from the total "consideration receivable". The STAT has also ignored the words "total consideration received" and "total consideration receivable" in Rule 17(1)(e) itself.

54. As the construction placed, on the second proviso to Rule 17(1)(e), by the STAT is in ignorance of the relevant statutory provisions, its order, in T.A. No. 110 of 2012 dated 23.04.2012, is not a "decision", in terms of the proviso to Section 32 of the A.P. VAT Act. Consequently the bar thereunder is not attracted, and the revisional authority is not disabled from exercising revisional jurisdiction under Section 32(2) of the Act.

55. Unlike the proviso to Section 32(1) and (2), which restricts exercise of the power of revision, no such limitation is to be found in Section 21 of the Act in relation to assessment proceedings. Section 21(3) stipulates that, where the prescribed authority is not satisfied with a return filed by the VAT dealer or the return appears to be incorrect or incomplete, he shall assess, to the best of his judgment, within four years of the due date of the return, or within four years of the date of filing of the return, whichever is later. Section 21(4) enables the prescribed authority, based on any information available or on any other basis, to conduct a detailed scrutiny of the accounts of any VAT dealer and where any assessment, as a result of such scrutiny, becomes necessary, such assessment shall be made within a period of four years from the end of the period for which the assessment is to be made.

56. Even in the absence of a provision, similar to the proviso to Section 32, the decision of the STAT, on a question of law, would bind the assessing authority.

However, as noted hereinabove, the order of the STAT was passed in ignorance of the relevant statutory provisions, and is contrary to the law declared by the Supreme Court in Gannon Dunkerly (1993) 88 STC 204 and the Full bench of this Court in Seven Hills Constructions (2012) Vol.54 APSTJ 1, and is not a "decision on a question of law" which alone would bind the revisional and assessing authorities. As the orders of the revisional and assessing authorities are in accordance with the statutory provisions - both plenary and subordinate, and the law declared in the aforesaid judgments, the impugned revisional and assessment orders do not necessitate interference on this score.

III. CLARIFICATION OF THE ADVANCE RULING AUTHORITY IS BINDING, UNDER SECTION 67 OF THE A.P. VAT ACT. ON THE OFFICERS OF THE COMMERCIAL TAXES DEPARTMENT:

57. Sri P. Balaji Verma, Learned Special Standing Counsel for Commercial Taxes, would submit that the revisional authority issued show-cause notice dated 25.5.2013, and the petitioner filed the review petition before the Advance Ruling authority on 12.6.2013, after initiation of revisional proceedings; and Rule 67(2) bars such an application. In his order dated 31.05.2014, the Assessing Authority held that, in terms of Section 67 of the Act, the ruling/clarification given by the Advance Ruling Authority, in the case of M/s. Jai Prakash Associates Ltd. Hyderabad Order in A.R. Com/15/2012 dated 16.08.2012, is binding on the dealers, and also on all the officers of the Department, except the Commissioner of Commercial Taxes; Section 67 of the A.P. VAT Act was upheld by the High Court in Tirupati Chemicals (2011) Vol. 52 APSTJ 48 (APHC : DB); and, in view of the decision of the Advance Ruling Authority, the contention of the assessee was devoid of merits.

58. In the revisional order dated 31.01.2014, the revisional authority noted the contention of the petitioner that they had filed a review petition against the Advance Ruling Authority ("ARA" for short) in the case of M/s. Jaiprakash Associates Limited, Hyderabad Order in A.R. Com/15/2012 dated 16.08.2012, and held that the revisional show cause notice was issued on 20.05.2013; NECL had filed a review petition before the ARA on 12.06.2013 after initiation of revision of assessment; Section 67(2)(1) prohibited any application from being entertained, by the ARA, when the question raised in the application was pending before any officer or authority of the department or the appellate tribunal or any Court; and the review petition filed by NECL was merely an after thought to stall statutory proceedings under the Act

59. In M/s. Jaiprakash Associates Limited. Hyderabad Order in A.R. Com/15/2012 dated 16.08.2012, the ARA held that every dealer executing works contract shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under the Act; Rule 17(1)(d) deals with the treatment of works contract; Rule 17(1)(e) prescribes another method of arriving at the value of the goods at the time of incorporation, by deducting certain expenses or amounts from the total

consideration received or receivable; these deductible amounts include labour charges, administrative expenses relatable to supply of labour, any similar expenses relatable to labour, and profit relatable to supply of labour etc; it goes without saying that administrative and similar expenses, relatable to material and profit, are also required to be added to the cost price of material in order arrive at the value of the goods incorporated at the time of execution of the works contract, if the method prescribed in Rule 17(1)(d) is adopted; the applicant had claimed that it was not possible to ascertain the correct value of the material at the time of incorporation before the finalization of accounts, and the yearly accounts closure would not reflect the correct value of the material at the time of incorporation, except by the end of the project; in this regard Rule 31(3) of the AP VAT Rules mandated that the works contractors, not opting to pay tax by way of composition, should keep the records, mentioned therein, showing all relevant details such as labour charges, administrative expenses relatable to supply of labour, any similar expenses relatable to labour and profit, relatable to supply of labour etc; if the works contractors had difficulty in maintaining records showing these details, they could have sought composition which they did not do; the Central Government, in the exercise of their powers under Section 211(3C) of the Companies Act, 1956, had notified the Companies (Accounting Standards) Rules, 2006 in the official Gazette; and these Rules provided for Accounting standards 1 to 7 and 9 to 29 as recommended by the Institute of Chartered Accountants of India.

60. Section 67(1) of the AP VAT Act enables the Commissioner to constitute a State level "Authority for Clarification and Advance Rulings" comprising of three officers not below the rank of Joint Commissioner to clarify, in the manner prescribed, any aspect of the implementation of the Act. Section 67(2)(1) stipulates that no application shall be entertained where the question raised in the application is already pending before any officer or authority of the Department or Appellate Tribunal or any Court-Section 67(3) stipulates that no officer, or any other authority of the department, shall proceed to decide any issue in respect of which an application has been made by an applicant under Section 67, and is pending. Section 67(4) makes the order of the authority binding on the persons referred to therein which, under clause (iii) thereof, also includes all officers other than the Commissioner. Section 67(5) confers power on the authority for clarification to review, amend or revoke its rulings, at any time for good and sufficient cause, by giving an opportunity to the affected parties. An order giving effect to such review or amendment or revocation is not subject to the period of limitation.

61. Under Section 67(4)(iii) of the A.P. VAT Act, the order of the Advance Ruling Authority binds officers in the Commercial Tax Department below the rank of the Commissioner of Commercial Taxes. In the exercise of his revisional powers, under Section 32(1) of the Act, the Commissioner of Commercial Taxes is not bound by the Ruling of the Advance Ruling Authority. Use of the word "officers" in Section 67(4)(iii) makes it clear that the order of the Advance Ruling Authority

would not bind the STAT or this Court in the exercise of its jurisdiction under Section 34 of the Act. Orders of the STAT would bind all officers/quasi-judicial authorities of the Commercial Taxes department, including the Commissioner, notwithstanding a ruling of the Advance Ruling Authority to the contrary, more so as an appeal lies to the STAT against the ruling of the Advance Ruling Authority. (Tirupati Chemicals (2011) Vol. 52 APSTJ 48 (APHC : DB)). The "decision" of the STAT on a question of law would bind officers in the commercial taxes department even if there be a decision of the ARA to the contrary. However as noted hereinabove the order of the STAT, in T.A. No. 110 of 2012 dated 23.04.2012, is not a "decision on a question of law" and would not, therefore, bind the revisional or the assessing authority.

IV. DENIAL OF COMPOSITION OF TAX UNDER RULE 17(1)(G) OF THE RULES:

62. Sri S. Ravi, Learned Senior Counsel appearing on behalf of the petitioners, would submit that the only ground on which the petitioner has been assessed to tax, by resorting to Rules 17(1)(d) and 17(1)(e) of the Rules, is that they did not disclose the turnovers, in relation to the Works Contract executed for KPCL; this is not a permissible ground for denial of the benefit of composition; and the petitioner's registration for composition not being in dispute, the turnovers relating to the KPCL Works Contract cannot be determined under Rule 17(1) of the A.P. VAT Rules, 2005.

63. On the applicability of Rule 17(1)(g), the revisional authority held that, as payment of tax under composition, is a concession or privilege given by the statute, the assessee has to meet all the conditions prescribed therein; NECL had violated the conditions; they had neither reported the turnover nor had they brought these facts to the notice of the assessing authority while making assessment; there was a clear intention to avoid the burden of taxation by suppression of facts; at the revisional level, NECL could not claim the right of concession, or the facility under the statute, to pay tax under the composition scheme; their contention that the escaped turnover should be considered under composition was not tenable; and the escaped turnover would be assessed to tax under Rule 17(1)(g) as proposed in the revised revision show cause notice.

64. Rule 17(1) of the AP VAT Rules relates to the treatment of works contract. Clause (a) thereof provides that, in the case of contracts not covered by Rules 17(2) and (4), the VAT dealer shall pay tax on the value of the goods at the time the goods are incorporated in the works at the rates applicable to the goods. Rule 17(1)(b) enables the VAT dealer to claim input tax credit on 75% of the tax paid on the goods purchased other than those specified in Rule 20(2). Rule 17(1)(g), which is referable to the proviso to Section 4(7)(a), stipulates that, where the VAT dealer has not maintained accounts to determine the correct value of the goods at the time of incorporation, he is required to pay tax at 12 1/2% or 14 1/2% on the total consideration subject to the deductions mentioned in the table thereunder.

65. While the liability to pay tax under Rule 17(1)(a) is on the value of the goods at the time of its incorporation in the works, the manner in which the value should be determined is as provided in clauses (d) and (e) of Rule 17(1). It is only when books of accounts are not maintained, and the assessing authority is disabled thereby from determining the correct value of the goods at the time of incorporation, can the dealer then be required to pay tax, under Rule 17(1)(g), at 12 1/2 %/14 1/2% of the total consideration subject to the deductions given in the table. As Rule 17(1) applies to a contract not covered by 17(2) and (4), Rule 17(1)(g), can only be applied to cases falling under Rule 17(1) and not those falling under Rule 17(2).

66. Section 4(7)(b) of the AP VAT Act enables a dealer executing works contract, in lieu of the amount of tax payable under Section 4(7)(a), to opt to pay, by way of composition, at the rate of 4%/5% of the total amount received or receivable by himself towards execution of the works contract-Rule 17(2) relates to treatment of works contract under composition. Rule 17(2)(a) stipulates that any VAT dealer, who executes a contract and opts to pay tax as specified in Section 4(7)(b), must register himself as a VAT dealer. Rule 17(2)(b) requires the said VAT dealer to pay tax at the rate of 4%/5% of the total consideration received or receivable whichever is earlier. Rule 17(2)(c) stipulates that, in cases where the VAT dealer opts for composition, he shall, before commencing execution of the work, notify the prescribed authority, on Form VAT 250, of the details including the value of the contract on which the option has been exercised. Rule 17(2)(d) stipulates that, on receipt of any payment related to the contract, the contractor VAT dealer shall calculate the tax due at 4%/5% of the amount received and shall enter such details on Form 200; and the tax due shall be paid with the return in Form Vat 200.

67. While Rule 17(2), before its amendment by G.O.Ms. No. 33 dated 21.01.2013 with effect from 15.09.2011, related to treatment of works contract executed for the State Government or Local authority under composition, and Rule 17(3) related to treatment of works contracts (other than for the State Government or the Local Authority) under composition, the distinction between works contracts executed for the State Government or the Local authority and others has been obliterated after its amendment, and the treatment of all works contracts under composition has been brought under the ambit of Rule 17(2). As Rule 17(2Hb), (prior to its amendment - Rule 17(3)(b)), requires the VAT dealer, who has opted to pay tax under composition, to pay tax at the rate of 4%/5% on the total consideration received or receivable, such dealer cannot be subjected to tax under Rule 17(1)(g) even if he has not maintained accounts to determine the correct value of the goods. Once the dealer has exercised his option for composition, by notifying the prescribed authority in Form VAT 250 before commencement of execution of the work, the liability to pay tax is only under Rule 17(2)(b) at 4%/5%, on the total consideration received or receivable, and they cannot be subjected to tax under Rule 17(1) of the Rules much less under Rule 17(1)(g).

68. The revisional authority has erred in denying the petitioner the benefit of payment of tax under Rule 17(2)(b), merely on the ground that they had not disclosed the turnover in their returns, particularly when there is no statutory sanction for denial of such a benefit. No statutory provision either plenary or subordinate, which confers power on the authorities to deny the assessee the benefit of composition on this ground, has been brought to our notice. While failure of the assessee to disclose the turnover in their returns may attract the penal provisions under Chapter VIII of the AP VAT Act, it would not disable them for claiming the benefit of composition provided, of course, that they have exercised their option for composition under Rule 17(2)(c), by notifying the prescribed authority on Form Vat 250, before commencing execution of the work. The revisional authority shall, to this limited extent, examine the matter afresh and, in case the petitioner has opted for composition before commencement of the execution of the work and has notified the authority on Form VAT 250 prior thereto, consider extending them the benefit of composition, and for payment of tax under Rule 17(2)(b) & (c) of the Rules. If, however, they have not exercised their option, as stipulated under the aforesaid Rules, the authorities cannot then be faulted for subjecting NECL to tax under Rule 17(1)(g) provided that they have not maintained books of accounts to determine the correct value of the goods at the time of its incorporation in the works.

V. IS THE DOCTRINE OF PROMISSORY ESTOPPEL APPLICABLE?

69. NECL is admittedly, not a party to the revised concession agreement entered into between the GoAP and KPCL. They have invoked the doctrine of promissory estoppel on the ground that KPCL, which is the employer for whom NECL is executing works as a contractor, is entitled to invoke the said doctrine; they are, consequently, entitled to exemption from tax on all inputs; and there would be no tax liability, on the turnover relating to execution of works for KPCL, on them also. As NECL is not a party to the revised concession agreement, they are not entitled to invoke the doctrine of promissory estoppel more so as no promise has been made to them by the GoAP. In any event, a similar claim by KPCL has been negated by this Court in its order in W.P. No. 34680 of 2013. The claim of NECL, for application of the doctrine of promissory estoppel, must therefore fail.

VI. CONCLUSION:

70. While NECL is liable to pay tax on the turnover relating to execution of the works contract for KPCL, the provisions of the Act and the Rules obligate KPCL to deduct tax at source from the running account bills of NECL. However both NECL and KPCL cannot be subjected to tax on the very same transactions. The respondents shall grant NECL reasonable time to produce TDS certificates from KPCL. In case NECL fails to submit the TDS certificates within such stipulated period, it is open to the respondents thereafter to recover the said amount, along with other tax dues, from them in accordance with law. The impugned orders of the revisional and assessing authorities subjecting NECL to tax under Rule 17(1)(e) of the Rules, on completion of the financial year, is upheld. With regards

payment of tax, for the works executed by them for KPCL, the respondents shall consider the claim of NECL for composition, provided they have complied with the requirements of Rule 17(2) of the AP VAT Rules. It is made clear that this order shall not preclude the respondents from instituting penal proceedings, if they so choose, against NECL for their having suppressed the turnover, relating to the works executed for KPCL, in their returns. All the Writ Petitions are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand automatically disposed of. However, in the circumstances, without costs.