IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE THE ACTING CHIEF JUSTICE SRI P. SAM KOSHY
AND
THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA

WRIT PETITION No.3356 of 2009

(CNR No: HBHC010570382009)

DATE: 03.11.2026

Reserved on: 03.03.2026 **Pronouncement on: 03.11.2026**

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Between:

M/s. Southern Power Distribution Company of Telangana Ltd.

...Petitioner

AND

The State of Andhra Pradesh and others

...Respondents

ORDER: *(As per the Hon'ble Sri Justice Narsing Rao Nandikonda)*

Heard **Mr. S.Suri Babu,** learned counsel representing **Mr. S.Krishna Murthy,** learned counsel appearing for the petitioner and **Mr. Swaroop Oorilla,** learned Special Government Pleader for State Tax appearing for the respondents. Perused the entire material on record.

2. This Writ Petition is filed under Article 226 of the Constitution of India seeking the following relief:

> *"to issue a writ order or direction particularly one in the nature of Writ of Certiorari calling for the records of the impugned Assessment of Value Added Tax in Form VAT 305 dated 03.01.2009 passed by respondent No.2for the tax period from April, 2005 to July, 2008 under the APVAT Act, 2005, in seeking to levy tax under Section 4(8) of the APVAT Act on the amounts collected by the petitioner for the supply of electricity and the consequential garnishee notice dated 13.02.2009 in Form VAT 206, issued by respondent No.3 to the bankers of the petitioner, namely respondent No.5 herein and quash the same or to pass"*

3. The brief facts of the case are that the petitioner is engaged in the distribution of Power in the State of Andhra Pradesh and are wholly owned Government companies, constituting instrumentalities of the State within the meaning of Article 13 of the Constitution of India. The petitioner has the status of licensee under the Electricity Act, 2003, and is vested with the necessary powers and corresponding obligations as laid down in the statute and their financial activities relating to the distribution and supply of electricity are also regulated by the State Electricity Regulatory Commission, particularly with

regard to the determination of tariffs and other charges recoverable for the services rendered and the facilities provided for the transmission and distribution of electricity generated by APGENCO and other generating companies.

4. The petitioner has established transmission towers, transformers, sub-stations and other infrastructure necessary for the distribution of electricity. Section 42 of the Electricity Act, 2003, obligates the petitioners to develop and maintain an efficient, coordinated and economical distribution system in their respective areas of supply and to supply electricity in accordance with the provisions of the Act. Section 43 requires the distribution licensees to supply electricity to the owner or occupier of any premises upon receipt of an application, while sub-section (2) of Section 43 obligates the petitioner to provide, where necessary, electric lines or electric plants for extending such supply. Section 46 empowers the petitioner to recover expenses incurred in providing electric lines or electrical plants for the purpose of supplying electricity, subject to the regulations framed by APERC.

5. The petitioner contended that their activities are not confined to the mere trading of electricity but also involve laying overhead lines and underground cables to facilitate the transmission and distribution of electricity up to the point of supply, ordinarily where the metering equipment is installed. Such service lines are laid and maintained by the distribution licensees and continue to remain their property. The consumers are not entitled to interfere with such lines. The service line charges and development charges are determined in accordance with the principles and regulations prescribed by the State Electricity Regulatory Commission and the petitioner is not entitled to collect any additional amounts by way of tax or otherwise, except as authorized by law. The petitioner further contended that electricity has been treated as goods under the relevant sales tax legislation, subject to the applicable statutory exemptions and that the activities relating to the supply of electricity cannot, merely by reason of the provision of distribution infrastructure, be treated as transactions involving a transfer of the right to use goods.

6. The petitioner is an assessee registered on the rolls of respondent No.3. On 24.05.2008, respondent No.2 inspected the petitioner's premises. Based on the information furnished by the petitioner, a show-cause notice dated 10.11.2008 was issued, proposing to levy tax under Section 4(8) of the Andhra Pradesh Value Added Tax Act, 2005 (AP VAT Act), at the rate of 12.5% on the amounts collected by the petitioner towards the provision of electricity connections during the tax periods from April 2005 to July 2008, aggregating to Rs.241,57,35,483/-, on the premise that there had been a transfer of the right to use goods employed in providing electrical connections.

7. The petitioner submitted a reply dated 18.12.2008, contending that the provision of electricity to consumers did not involve any transfer of the right to use goods. However, *vide* order dated 03.01.2009, respondent No.2 rejected the petitioner's contentions, relying upon certain judicial decisions, and proceeded to assess the amounts collected towards development charges and service line charges as taxable turnover under Section 4(8) of the AP VAT Act.

8. The petitioner contended that the impugned assessment order is wholly without jurisdiction, illegal, arbitrary and unsustainable in law. It is further contended that the issue involves the interpretation and applicability of Section 4(8) of the AP VAT Act to the supply of electricity by distribution licensees and is of considerable public importance. The respondents had not initiated similar proceedings for several years under the provisions of the Andhra Pradesh General Sales Tax Act, 1957, and the impugned assessment, being the first of its kind, would have wider implications for other electricity distribution companies and could lead to multiplicity of proceedings and unnecessary harassment.

9. The main contention of the petitioner is that the essential ingredients for invoking Section 4(8) of the AP VAT Act are absent. The petitioner contended that for a transaction to constitute a transfer of the right to use goods, there must be identifiable goods forming the subject matter of the transfer, a transfer of the right to use such goods in favour of the lessee or licensee and the conferment of an effective right to use the goods

upon the transferee. None of these requirements is satisfied in the present case.

10. It is contended that the consumers are merely recipients of electricity and are neither lessees nor licensees of the infrastructure employed in supplying electricity. The overhead lines and underground cables laid by the petitioner are attached to the earth and acquire the character of immovable property. The ownership of such infrastructure remains with the petitioner, which also undertakes its maintenance and operation. The consumers are not granted possession or exclusive control over the infrastructure, nor are they entitled to use it independently of the petitioner's distribution activities. The petitioner therefore contended that no transfer of the right to use goods takes place and that the transaction cannot be characterized as a lease or any other transaction falling within the scope of Section 4(8) of the AP VAT Act.

11. The petitioner further contended that the reasoning adopted by respondent No.2 is self-contradictory, as the impugned order does not identify the goods in respect of which

the right to use is alleged to have been transferred or record a specific finding establishing the existence of a lease or a transfer of the right to use goods. There is no agreement between the petitioner and the consumers transferring such a right, either expressly or by necessary implication. The mere payment of the cost of infrastructure by a consumer does not confer upon the consumer any right to use the infrastructure independently, particularly when the petitioner retains ownership, control and responsibility for its maintenance and operation.

12. The petitioner also contended that respondent No.2 erred in treating concrete poles, distribution transformers, conductors, insulators, underground cables and other materials used in extending service lines as goods transferred to consumers. Though such materials may constitute goods before their incorporation into the distribution infrastructure, their use in establishing or extending the distribution system does not establish a transfer of the right to use those goods. In this regard, the petitioner relies upon a communication dated 28.05.2008 issued to one of its consumers, wherein the

materials required for laying the service line were enumerated to explain the charges payable by the consumer. According to the petitioner, those materials form part of the distribution system developed and maintained by it and no right to use them is transferred to the consumer.

13. The petitioner further relies upon Sections 42, 43 and 46 of the Electricity Act, 2003, to contend that the development and maintenance of the distribution system, the provision of electricity connections and the recovery of the corresponding expenses are statutory functions of a distribution licensee. The development charges and service line charges are collected in exercise of the authority conferred by Section 46 and in accordance with the applicable regulatory framework. Such collections cannot be treated as consideration for the transfer of the right to use goods, particularly in the absence of any contractual arrangement conferring such a right upon the consumer.

14. It is also contended that respondent No.2 failed to appreciate the nature of the petitioner's activities and the

definition of business applicable under the relevant tax legislation. The petitioner submitted that it discharges statutory public duties in distributing electricity and that its activities cannot be equated with the ordinary business of buying and selling goods merely because it collects charges for extending service lines and developing distribution infrastructure. The petitioner accordingly disputes the characterization of the impugned collections as taxable consideration for a transfer of the right to use goods.

15. In response to the notice issued by respondent No.2, the petitioner *vide* letter dated 31.10.2008, furnished details of the schemes sanctioned for extending service lines for domestic, commercial and water-supply purposes during the financial years 2005–06 to 2008–09. The petitioner stated that the amounts collected from consumers during the relevant period were set out in the material placed before the assessing authority. However, respondent No.2 treated the development charges and service line charges as consideration for the

transfer of the right to use goods, bifurcated the turnover on a proportionate basis and determined the tax payable accordingly.

16. The petitioner contended that respondent No.2 failed to appreciate the precise nature and purpose of the development charges and service line charges. The expression "transfer of the right to use goods" under Section 4(8) contemplates a transaction founded upon an agreement between the parties and involving the transfer of an identifiable right to use goods. The charges in question are collected towards the overall development of the distribution system and the extension of service lines to provide electricity connections. Since such collections are authorized by Section 46 of the Electricity Act, 2003, and do not represent consideration for the transfer of any right to use goods, the petitioner contended that they cannot be subjected to tax under Section 4(8) of the AP VAT Act.

17. By the impugned assessment order, respondent No.2 determined the tax liability at Rs.21.88 Crores and granted thirty days time for payment. Thereafter, respondent No.3 issued a demand to the petitioner's banker, respondent No.5 herein,

vide proceedings dated 13.02.2009 in Form VAT 206, initiating attachment proceedings for recovery of the said amount. The petitioner contended that the consequential recovery proceedings are unsustainable in view of the illegality and lack of jurisdiction alleged in the assessment order.

18. Respondent No.2 filed counter affidavit denying the averments made by the petitioner and contended that the petitioner has an efficacious alternative remedy of appeal against the impugned assessment order under the provisions of the Andhra Pradesh Value Added Tax Act, 2005 (AP VAT Act). Without availing such remedy, the petitioner has approached this Court under Article 226 of the Constitution of India, seeking to circumvent the statutory appellate mechanism.

19. It is submitted that the writ petitioner was a licensee under the Electricity Act, 2003, engaged in the distribution of electricity in the erstwhile State of Andhra Pradesh, subject to the statutory obligations and regulatory control of the State Electricity Regulatory Commission. Under Section 43 of the Electricity Act, the petitioner was obligated to develop and

maintain an efficient, coordinated and economical distribution system for the supply of electricity to consumers. Section 46 empowers the petitioner, subject to the regulations framed by the State Commission, to recover reasonable expenses incurred in providing electric lines or electrical plants for supplying electricity.

20. In accordance with the aforesaid provisions and the General Terms and Conditions of Supply approved by the Electricity Regulatory Commission, the petitioner collected security deposits, service line charges and development charges from consumers seeking new electricity connections or additional load to existing connections.

21. It is further contended by respondent No.2 that the service line charges and development charges collected from consumers include the cost of goods used for developing the necessary infrastructure, such as electric poles, transformers, conductors, underground cables and other electrical equipment. Though the consumer bears the cost of the service line, the infrastructure remains the property of the petitioner and forms part of the

overall distribution system. However, the petitioner contended that the goods become embedded in the earth and constitute immovable property, and that no effective delivery of such goods or transfer of the right to use them takes place in favour of the consumer.

22. It is an admitted fact that the writ petitioner is a registered VAT dealer on the rolls of the Commercial Tax Officer, Khairatabad, engaged in supplying electricity generated by APGENCO and other agencies to consumers and collecting charges at the rates determined by the Electricity Regulatory Commission. For this purpose, the petitioner develops and maintains the necessary distribution infrastructure, comprising electric poles, transformers, substations, conductors and underground cables.

23. Respondent No.2 further contended that although electricity is exempt from tax under the AP VAT Act, the petitioner was carrying on business within the meaning of the said Act. Where the main activity constitutes business under the Act, any ancillary or subsidiary activity undertaken in

connection therewith is also liable to tax, provided the transaction satisfies the relevant charging provisions.

24. It is stated that pursuant to the authorization issued by the Deputy Commissioner, Commercial Taxes, Punjagutta Division, respondent No.2 conducted an audit of the petitioner's business transactions on 24.05.2008. During the audit, it was noticed that the petitioner was recovering the full value of the goods used for developing electricity distribution infrastructure in certain cases. While the petitioner did not recover the infrastructure costs from individual domestic and commercial consumers in the ordinary course, such costs were recovered in respect of infrastructure projects undertaken for real estate developments and other specified applicants.

25. In such cases, the petitioner sanctioned schemes for developing the required infrastructure on land belonging to the concerned infrastructure companies or applicants. The cost was collected under two heads i.e., service line charges and development charges, in addition to the usual security deposit. The annexures to the proceedings sanctioning such schemes

specified the nature and value of the goods required for establishing the service lines and developing the infrastructure and the infrastructure was developed for the exclusive use of the respective applicants.

26. Respondent No.2 further contended that developing infrastructure and extending service lines to specified applicants, upon recovering the entire cost of the goods used therein, constitutes an ancillary or subsidiary activity connected with the petitioner's main business of supplying electricity. If such transactions satisfy the charging provisions of the AP VAT Act, they are liable to tax notwithstanding their ancillary nature.

27. It is further contended that the petitioner was assessed under Section 4(8) of the AP VAT Act by treating the value of the goods recovered from the specified applicants as turnover arising from the transfer of the right to use goods. The petitioner's contention that the levy amounts to taxation of immovable property is denied. The goods were identified as such at the time the infrastructure schemes were sanctioned and their temporary

attachment to the earth would not alter their character as goods for the purpose of the transaction in question.

28. Respondent No.2 also disputes the petitioner's contention that delivery of goods is indispensable for attracting tax under Section 4(8) of the AP VAT Act. Reliance is placed on the principles laid down by the Hon'ble Supreme Court in Bharat Sanchar Nigam Limited v. Union of India (BSNL), in support of the proposition that the relevant inquiry concerns the transfer of the right to use goods. It is further contended that the recovery of the entire cost of the infrastructure from a specified applicant, coupled with the exclusive use of such infrastructure for supplying electricity to that applicant, amounts to a transfer of the right to use the goods employed in developing the infrastructure.

29. Respondent No.2 contended that a transfer of ownership in the goods is not necessary to attract Section 4(8) of the AP VAT Act. It is sufficient if the right to use the goods is transferred. The assessment order accordingly explains that ownership comprises a bundle of rights and that the transfer of one such

right, namely, the right to use the goods, is sufficient to attract the levy.

30. It is pertinent to mention here that on the basis of the material available on record, respondent No.2 found that the applicants had paid the entire value of the goods and that the infrastructure developed therewith was exclusively used for supplying electricity to the respective applicants. Accordingly, tax was levied on the value of the goods recovered by the petitioner at the applicable rates of 4% or 12.5%, depending on the nature of the goods, under Section 4(8) of the AP VAT Act.

31. Respondent No.2 further contended that where an incidental or ancillary activity undertaken by the petitioner falls within the scope of a charging provision of the AP VAT Act, the petitioner cannot claim immunity from taxation merely because such activity is connected with the supply of electricity. The assessment covered the tax period from April 2005 to July 2008, involving a turnover of Rs.241,57,35,483/-, which represented transactions involving the transfer of the right to use goods to

specified applicants and was therefore taxable under Section 4(8) of the Act.

32. It is also contended that neither the Electricity Act nor the General Terms and Conditions of Supply prohibit the levy of tax on such transactions. The amounts collected under the heads of service line charges and development charges represent the value of the goods used in establishing the infrastructure for the specified consumers. Respondent No.2 contended that the assessment was made only in respect of the value of the goods identified in the proceedings issued to the respective applicants and not on the entire electricity distribution system, as alleged by the petitioner.

33. According to respondent No.2, payment of the full cost of the infrastructure by the consumer and the consumer's entitlement to receive electricity through the service lines developed using those goods establish the transfer of the right to use the goods. The absence of an express agreement transferring such a right does not, by itself, exclude the transaction from the purview of Section 4(8) of the AP VAT Act. It is therefore

submitted that the levy was lawfully imposed on the value of the goods for which the cost was recovered from the respective consumers.

34. Respondent No.2 further contended that the existence or absence of a profit motive is irrelevant for determining the taxability of a transaction under the AP VAT Act. Upon considering the facts, the objections raised by the petitioner and the applicable statutory provisions, the assessing authority concluded that the disputed turnover represented the value of goods in respect of which the right to use had been transferred to the consumers and was consequently exigible to tax under Section 4(8) of the Act.

35. Finally, it is submitted that the impugned assessment order is appealable before the Appellate Deputy Commissioner under Section 31 of the AP VAT Act. Since the petitioner has an efficacious statutory alternative remedy, the invocation of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India is unwarranted. On this ground also, respondent No.2seeks dismissal of the writ petition.

36. The learned counsel for the petitioner contended that the LCD projectors and audio-video multimedia equipment are provided only on a hire/rental basis for specific events, without transferring ownership or the right to use the equipment independently. The transactions are temporary in nature, and the petitioner retains ownership, effective control and supervision over the equipment, which must be returned immediately after completion of the event.

37. The learned counsel for the petitioner further contended that mere hiring of equipment for consideration does not constitute a deemed sale under Section 2(28) read with Section 4 of the Act. There must be a legally enforceable transfer of the right to use the goods, including the transfer of effective control and the right to use them. Since the customers have only temporary custody of the equipment and no independent or unrestricted right to use it, the assessment order treating the transactions as deemed sales is legally unsustainable and liable to be set aside.

38. The learned counsel for the petitioner has also relied upon the following judgments of the various High Courts which are mentioned below:

i. ***Banda Tent House Association vs. State of A.P. and Others[1],***
ii. ***State of Tripura and Another vs. Tripura Bus Syndicate[2],***
iii. ***State of Uttar Pradesh and Another vs. Union of India and Another[3],***
iv. ***Bharat Sanchar Nigam Limited and Another vs. Union of India and Others[4],***
v. ***Andhra Pradesh State Electricity Board vs. State of A.P.[5],***
vi. ***State of Andhra Pradesh and Another vs. Rashtriya Ispat Nigam Limited[6],***
vii. ***G.S. Lamba and Sons and Others vs. State of Andhra Pradesh,[7] and***
viii. ***State of Andhra Pradesh vs. Sri Ganesh Bhavan Hotel[8].***

39. The learned counsel for the respondents contended that the transfer of the right to use goods must be determined by considering who actually uses and enjoys the goods during the contracted period. The person responsible for maintaining, repairing, or supervising the equipment need not necessarily be

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[1] 2006 146 STC 355
[2] (2001) 122 STC 175
[3] *(2003) 130 STC 1*
[4] *(2006) 145 STC 91*
[5] *(2011) 52 APSTJ 175*
[6] *(2002) 126 STC 114*
[7] *(2011) 52 APSTJ 191*
[8] (1983) 53 STC 169

its user. Where the equipment is made available for the specific purpose of a customer's function or event, the customer is the beneficial user, notwithstanding the supplier's retention of limited supervisory or maintenance control.

40. The learned counsel for the respondents further contended that the relevant consideration is whether the goods are made available for the customer's use during the agreed period, and continuous physical control by the customer is not essential. Maintenance or repair obligations retained by the supplier do not negate the transfer of the right to use the equipment. Therefore, the transactions constitute a transfer of the right to use goods and are liable to be treated as deemed sales.

41. In support of his contentions, the learned Special Government Pleader for State Tax appearing for the respondents has relied upon the judgment rendered by the Division Bench of the erstwhile High Court of Andhra Pradesh in ***Viceroy Hotels***

Ltd. v. Commercial Tax Officer[9], the relevant paragraphs are extracted below:

> ***33.*** *On a notice being issued, calling upon them to show cause why the transaction relating to hire of audio-visual equipment should not be treated as a "deemed sale" under section 4(8) of the Act as it involved the transfer of the right to use the said equipment, the burden lay on the petitioner to adduce proof, by way of documentary evidence, that the hiring of audio- visual equipment did not involve the transfer of the right to use such goods. A perusal of the bill, enclosed as part of the documents annexed to the writ petition, shows that M/s. Abbot Industries were charged Rs. 12,500 towards audio-visual equipment rental charges, in addition to the charges for food, liquor, etc. The contents of the "bill" does not justify the petitioner's plea show that the audio-visual equipment rentals charged on the consumer did not involve the transfer of the right to use the audio-visual equipment. In their objections to the show-cause notice the petitioner, vide letter dated March 31, 2010, stated that they had outsourced certain items during conferences/meetings, and were collecting consideration from the parties who were renting such LCD projectors, audio and video equipments, etc., ; they had transferred part of the consideration to the provider of such equipment, and had retained the balance amount ; providing equipment, and operating them through their own operators, for the conferences, meetings and functions amounted to "service", and did not fall within the ambit of section 4(8) of the Act ; and effective control and possession of the equipment vested in the hands of the outsourcing agency. They relied on the decision of the Karnataka High Court in Lakshmi Audio Visual [2001] 124 STC 426 (Karn), and the Division Bench judgment of this court in RashtriyaIspat Nigam Ltd. [1990] 77 STC 182 (AP), to contend that they did not fall within the ambit of section 4(8) of the Act.*
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> ***36.*** *In the impugned order of assessment dated April 8, 2010, the assessing authority notes that the sample bill, produced as part of the objections, revealed that the petitioner-hotel was providing equipment*

[9]2011 SCC OnLine AP 1089

> *to its customers on rental basis ; this amounted to a "deemed sale" under Explanation (iv) to section 2(28) of the Act ; the bill produced for verification did not reveal that technicians were provided along with the LCD projectors or audio/video equipment ; consideration was charged exclusively for the equipment ; effective control over the said goods had been transferred to the ultimate customer for use in their functions ; the petitioner had given the LCD projectors and audio/video multimedia equipment on hire to their customers without rendering any other service, i.e., they merely delivered the equipment to their customers on hire ; the customer could use the equipment in any manner he wanted, and had to return the equipment at the end of the event ; possession and effective control was transferred to the customer during the event, and the customer had the right to use the same ; in view of Explanation (iv) to section 2(28), the activity of renting of LCD projectors and audio and video equipments was "sale" attracting tax under section 4(8) of the Act; and, in the judgments relied on by the petitioner possession vested with the service provider, whereas, in the present case, the petitioner had transferred possession and control of the equipment rented to their customers.*

42. The learned Special Government Pleader has also placed reliance upon the judgment of the Hon'ble Supreme Court in ***Great Eastern Shipping Co. Ltd. v. State of Karnataka***[10], the relevant paragraphs are extracted below:

> *21. A reading of the definition of sale makes it crystal clear that every transfer of property in goods by one person to another in the course of trade or business, includes the transfer of right to use any goods for any purpose. Section 5-C of the Act also provides levy of tax on the transfer of the right to use any goods. Article 366(29-A)(d) inserted by the Constitution (46th Amendment) Act, 1982 on 2-2-1983 reads:*
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> *"366. (29) "tax on income" includes a tax in the nature of an excess profits tax;*

[10](2020) 3 SCC 354

(29-A) "tax on the sale or purchase of goods" includes—

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;"

33. *When we peruse the various terms and conditions of the charter party agreement (Annexure I), Clause 1 provides that the contractors "let" and the charterer "hire" the goods vessel for six months. The expression "let" has been used, and the vessel most significantly*

during the charter period has been placed at the "disposal" of the charterers and under their control in every respect. The charterers have been given the right to use all outfits, equipment, and appliances on board the vessel at the time of the delivery, including the whole reach, burthen, and deck capacity. Thus, in our considered opinion, merely by providing the staff, insurance, indemnity, and other responsibilities of bearing officials costs. Effective control for the entire period of six months has been given to the charterers. It is a case of transfer of right to use the vessel for which certain expenses and staff are to be provided by the contractor, which is not sufficient to make out that the control and possession of the vehicle are with the contractor. The possession and control are clearly with the charterer. As in essence, it has to be seen from a conjoint reading of various conditions whether there is a transfer of right to use the vessel. In our considered opinion there is not even an iota of doubt that under the charter agreement coupled with the instructions to tenderers, general conditions and special conditions for the contract as specified in the tender documents and charter party clauses, there is a transfer of right to use the vessel for the purposes specified in the agreement.

34. *To constitute a transaction for the transfer of right to use of goods, essential is, goods must be available for delivery. In the instant case, the vessel was available for delivery and in fact, had been delivered. There is no dispute as to the vessel and the charterer has a legal right to use the goods, and the permission/licence has been made available to the charterer to the exclusion of the contractor. Thus, there is complete transfer of the right to use. It cannot be said that the agreement and the conditions subject to which it has been made, is not a transfer of right to use the goods, during the period of six months, the contractor has no right to give the vessel for use to anyone else. Thus in view of the provisions inserted in Article 366(29-A)(d), Section 5-C, and definition of "sale" in Section 2 of the KST Act, there is no room for doubt that there is a transfer of right to use the vessel.*

35. *What constitutes the transfer of right to use tangible property has been dealt with in various decisions. In BSNL v. Union of India*

[BSNL v. Union of India, (2006) 3 SCC 1] , this Court has observed thus: (SCC pp. 29-32 & 37-38, paras 42, 44-45, 50 & 73-75)

"42. All the sub-clauses of Article 366(29-A) serve to bring transactions where one or more of the essential ingredients of a sale, as defined in the Sale of Goods Act, 1930 are absent within the ambit of purchase and sales for levy of sales tax. To this extent, only is the principle enunciated in State of Madras v. Gannon Dunkerley& Co. (Madras) Ltd. [State of Madras v. Gannon Dunkerley& Co. (Madras) Ltd., AIR 1958 SC 560] (sic modified). The amendment especially allows specific composite contracts viz. works contracts [sub-clause (b)]; hire-purchase contracts [sub-clause (c)], catering contracts [sub-clause (e)] by legal fiction to be divisible contracts where the sale element could be isolated and be subjected to sales tax.

44. Of all the different kinds of composite transactions, the drafters of the Forty-sixth Amendment chose three specific situations, a works contract, a hire-purchase contract, and a catering contract to bring them within the fiction of a deemed sale. Of these three, the first and third involve a kind of service and sale at the same time. Apart from these two cases where splitting of the service and supply has been constitutionally permitted in sub-clauses (b) and (f) of clause (29-A) of Article 366, there is no other service which has been permitted to be so split. For example, the sub-clauses of Article 366(29-A) do not cover hospital services. Therefore, if during the treatment of a patient in a hospital, he or she is given a pill, can the Sales Tax Authorities tax the transaction as a sale? Doctors, lawyers, and other professionals render service in the course of which can it be said that there is a sale of goods when a doctor writes out and hands over a prescription or a lawyer drafts a document and delivers it to his/her client? Strictly speaking, with the payment of fees, consideration does pass from the patient or client to the doctor or lawyer for the documents in both cases.

45. The reason why these services do not involve a sale for the purposes of Entry 54 of List II is, as we see it, for reasons ultimately attributable to the principles enunciated in Gannon Dunkerley case [State of Madras v. Gannon Dunkerley& Co. (Madras) Ltd., AIR 1958

SC 560] , namely, if there is an instrument of contract which may be composite in form in any case other than the exceptions in Article 366(29-A), unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to render service, and impose tax on the sale. The test, therefore, for composite contracts other than those mentioned in Article 366(29-A) continues to be: Did the parties have in mind or intend separate rights arising out of the sale of goods? If there was no such intention, there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or the other is as to what is "the substance of the contract". [SeeAtiyah, The Sale of Goods, (1995 reprint) p. 27.] We will, for want of a better phrase, call this the dominant nature test."

50. What are the "goods" in a sales transaction, therefore, remains primarily a matter of contract and intention. The seller and such purchaser would have to be ad idem as to the subject-matter of sale or purchase. The court would have to arrive at a conclusion as to what the parties had intended when they entered into a particular transaction of sale, as being the subject-matter of sale or purchase. In arriving at a conclusion, the court would have to approach the matter from the point of view of a reasonable person of average intelligence.

73. With respect, the decision in 20th Century Finance Corpn. Ltd. v. State of Maharashtra [20th Century Finance Corpn. Ltd. v. State of Maharashtra, (2000) 6 SCC 12] , cannot be cited as authority for the proposition that delivery of possession of the goods is not a necessary concomitant for completing a transaction of sale for the purposes of Article 366(29-A)(d) of the Constitution. In that decision, the Court had to determine where the taxable event for the purposes of sales tax took place in the context of sub-clause (d) of Article 366(29-A). Some States had levied a tax on the transfer of the right to use goods on the location of goods at the time of their use irrespective of the place where the agreement for such transfer of right to use such goods was made. The other States levied a tax upon delivery of the goods in the State pursuant to agreements of transfer while some other States levied a tax on deemed sales on the premise that the agreement for the

transfer of the right to use had been executed within that State (vide para 2 of the judgment as reported). This Court upheld the third view, namely, merely that the transfer of the right to use took place where the agreements were executed. In these circumstances, the Court said that: (SCC p. 42, para 28)

'28. No authority of this Court has been shown on behalf of the respondents that there would be no completed transfer of right to use goods unless the goods are delivered. Thus, the delivery of goods cannot constitute a basis for the levy of tax on the transfer of right to use any goods. We are, therefore, of the view that where the goods are in existence, the taxable event on the transfer of the right to use goods occurs when a contract is executed between the lessor and the lessee and situs of sale of such a deemed sale would be the place where the contract in respect thereof is executed. Thus, where goods to be transferred are available, and a written contract is executed between the parties, it is at that point situs of taxable event on the transfer of right to use goods would occur, and situs of sale of such a transaction would be the place where the contract is executed.'

74. In determining the situs of the transfer of the right to use the goods, the Court did not say that the delivery of the goods was inessential for the purposes of completing the transfer of the right to use. The emphasised portions in the quoted passage evidences that the goods must be available when the transfer of the right to use the goods takes place. The Court also recognised that for oral contracts, the situs of the transfer might be where the goods are delivered (see para 26 of the judgment).

75. In our opinion, the essence of the right under Article 366(29-A)(d) is that it relates to user of goods. It may be that the actual delivery of the goods is not necessary for effecting the transfer of the right to use the goods, but the goods must be available at the time of transfer, must be deliverable and delivered at some stage. It is assumed, at the time of execution of any agreement to transfer the right to use, that the goods are available and deliverable. If the goods, or what is claimed to be goods by the respondents, are not deliverable at all by the

> *service providers to the subscribers, the question of the right to use those goods, would not arise."*

43. The aforesaid judgment dealt with a situation, wherein the petitioners had transferred possession and control of the equipment taken on hire to their customers. In that case, the petitioners had hired audio-visual equipment from an outsourcing agency for consideration and, in turn, provided the facility of such equipment to their customers for consideration. As there was no privity of contract between the outsourcing agency and the petitioner's customers, and the petitioners did not render any service to their customers in relation to the audio-visual equipment, the contract between the petitioners and their customers was held not to be a contract for rendering services. In those circumstances, the Court held that the assessing authority was justified in treating the transaction as a transfer of the right to use goods and levying tax thereon under Section 4(8) of the Act.

44. In view of the above judgment, the Hon'ble Supreme Court considered a case concerning the charter of a vessel/tug, wherein the vessel was made available to the charterer and was

delivered. There was no dispute that the charterer had a legal right to use the vessel. The relevant permissions and licences were also made available to the charterer, thereby enabling the charterer to use the vessel to the exclusion of the contractor. Having regard to the complete transfer of the right to use the vessel, the Hon'ble Supreme Court held that the charter party agreement amounted to a deemed sale within the meaning of Article 366(29-A)(d) of the Constitution of India and that the transaction was, therefore, liable to tax.

45. The Hon'ble Supreme Court also considered the definition of sale under Section 5-C of the Karnataka Sales Tax Act. On a reading of the said definition, the Court observed that the expression sale encompasses every transfer of property in goods by one person to another in the course of trade or business and includes the transfer of the right to use any goods for any purpose. The Court further observed that Section 5-C of the Act provides for the levy of tax on the transfer of the right to use goods, consistent with Article 366(29-A)(d) of the Constitution of India, which was inserted by the Constitution (Forty-sixth

Amendment) Act, 1982. Further, while examining the charter party agreement between the parties, in the context of the instructions to tenderers, the general conditions, the special conditions of the contract and the charter party clauses contained in the tender documents.

46. The Hon'ble Supreme Court categorically held that, upon a conjoint reading of the charter agreement and the relevant contractual documents, there could be no doubt that the right to use the vessel had been transferred to the charterer for the purposes specified in the agreement. Accordingly, the Court concluded that the transaction constituted a transfer of the right to use goods within the meaning of Article 366(29-A)(d) of the Constitution of India.

47. Having heard the rival contentions made by the learned counsel appearing for both parties and upon perusal of the entire material placed on record, including the decisions relied upon by them, the following facts emerge for consideration. Admittedly, the writ petitioner is the Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL), Hyderabad,

which, following the bifurcation of the erstwhile State of Andhra Pradesh into the States of Andhra Pradesh and Telangana, was renamed as the Southern Power Distribution Company of Telangana Limited.

48. The petitioner company is a registered VAT dealer bearing TIN No.28580127730 and is on the rolls of the Commercial Tax Officer, Khairatabad. The company is engaged in the business of distribution of electricity and has been filing monthly returns under the provisions of the Andhra Pradesh Value Added Tax Act, 2005 (AP VAT Act).

49. Pursuant thereto, the petitioner filed VAT-200 monthly returns for the tax periods from April 2005 to July 2008, disclosing a total output turnover of Rs.25,62,96,515/- and output tax of Rs.1,13,05,264/-.The dispute arose pursuant to an audit conducted in respect of the petitioner's business transactions under the instructions and authorization of the Deputy Commissioner of Commercial Taxes, Panjagutta Division.

50. During the course of the audit, it was noticed that apart from its other business activities, the petitioner company was also undertaking the extension of service lines for domestic, commercial, and water supply purposes to its consumers for consideration. The said extension schemes involved the supply and erection of electrical lines of suitable kV capacity, PFCC cables, distribution transformers, and the laying of underground cables. The expenditure incurred under the said schemes was recovered from the consumers under two heads i.e., service line charges and development charges.

51. Whenever a service line was extended or such facilities were provided to a consumer, the petitioner company issued proceedings to the concerned consumer. One such proceeding, which was examined by the audit officer, revealed that the petitioner had recovered an amount of Rs.99,20,500/- from M/s. Fortune Infra Developers Private Limited towards service line charges and development charges.

52. The said proceedings specifically recorded that the petitioner company had supplied electric poles, transformers,

and cables while extending the power distribution network to the said consumer and had recovered the cost of the materials under the aforesaid two heads. During the audit, the petitioner company also informed the audit officer that the schemes undertaken for other consumers were similar to the scheme sanctioned in favour of M/s. Fortune Infra Developers Private Limited and that the corresponding costs were recovered from the respective consumers.

53. Upon examining the documents, the audit officer concluded that the transactions attracted Section 4(8) of the AP VAT Act, which deals with the transfer of the right to use goods for valuable consideration. According to the audit officer, under the scheme for the extension of service lines, the petitioner company transferred the right to use electrical poles, transformers, and cables to individual consumers for monetary consideration. As the turnover relating to these transactions had not been disclosed in the monthly VAT-200 returns, a notice was accordingly issued to the petitioner.

54. The petitioner company also furnished details pursuant to a letter issued by its General Manager (Finance). A total amount of Rs.241,57,35,483/- had been collected from consumers under the aforesaid schemes during the tax period from April 2005 to July 2008.

55. Upon consideration of the rival submissions and the material placed on record, it is evident that though the petitioner company supplied electrical poles, transformers, and cables while extending its power distribution network to the respective consumers and recovered the cost of such materials under the heads of service line charges and development charges, the mere recovery of the cost of the materials does not establish that the right to use the goods was transferred to the consumers.

56. It is pertinent to note that the electrical poles, transformers, cables, and other equipment forming part of the distribution network continued to remain under the control and maintenance of the petitioner company. The petitioner company remained responsible for maintaining the entire electricity distribution infrastructure, including the transformers, cables,

and poles. The consumers were not entitled to interfere with or independently operate or maintain the said equipment and the responsibility for its maintenance rested with the petitioner company.

57. In these circumstances, the continued ownership and control of the equipment, together with the petitioner's responsibility for its maintenance and operation, are relevant factors in determining whether the transactions amounted to a transfer of the right to use goods in favour of the consumers.

58. It is further evident that the electrical poles, transformers, and cables were supplied and installed by the petitioner company for the specific purpose of distributing electricity to the consumers. The question that therefore arises is whether the installation and use of such equipment for supplying electricity, notwithstanding the recovery of its cost from the consumers, constitutes a transfer of the right to use goods within the meaning of Section 4(8) of the AP VAT Act.

59. For a proper understanding and appreciation of the issue, the relevant provisions of Sections 42, 43, and 46 of the Electricity Act, 2003, are extracted hereunder:

> ***Section 42(1):*** *It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.*
>
> ***Section 43(1):*** *[Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:*
>
> *Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission.*
>
> ***Section 43(2):*** *It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1).*
>
> ***Section 43(3):*** *If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.*
>
> ***Section 46:****The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.*

60. Further, to ascertain the nature of the rights over the said equipment, it is necessary to examine Clauses 5.12.5, 5.12.6, and 6.1 of the General Terms and Conditions of Supply of the

Central Power Distribution Company of Andhra Pradesh Limited, Hyderabad. The relevant provisions are extracted hereunder:

> ***Clause 5.12.5***
> *All Meters and other equipment belonging to the Company and installed in the Premises of the consumer, shall be and continue to be at all times the property of the Company. This is notwithstanding the fact that such Meters and other equipment or any part thereof, may be fixed or fastened to or embedded, in any part of the consumer's Premises. Such equipment shall not be disturbed or dealt with in any manner except by the Designated Officers of the Company.*
>
> ***Clause 5.12.6.1***
> *The consumer shall not interfere in any manner with the property of the Company and shall be fully responsible for the safety of the Company's property on the consumer's premises. In the event of any loss or damage caused to Company's property by any act, neglect or default of the consumer, his servants or persons employed by him or due to any reason other than force-majeure conditions, the consumer shall compensate the Company for the cost of necessary repairs or replacement as may be assessed by the Company and in addition shall pay penalties prescribed or lawfully due to the Company for unauthorized interference with the Company property or seals, within thirty days of the issue of the bill, in this behalf. Non-payment of such bill by the consumer will entail all the consequences attendant on failure to pay the Monthly bill for current consumption.*
>
> ***Clause 5.12.6.2***
> *The Company has to provide quality power supply in accordance with the 'Standards of Performance' Regulation and the Distribution & Retail Supply licence issued by the Commission.*
>
> ***Clause 6.1 — Access to Premises and Apparatus***
> *Any officer or person duly authorized by the company as per 'Designated Officers Notification' may, enter any premises to which electricity is, or has been, supplied by him for the purpose provided by*

> *and in accordance with the provisions of sub-section (1) or (2) of Section 163 of the Act and the APERC (Electricity Supply Code) Regulation, 2004 (No.5 of 2004) issued by the Commission.*

61. It is also pertinent to note that, where the equipment supplied by the petitioner is fixed or fastened to, or embedded in, any part of the consumer's premises, such equipment may be intended for the exclusive use of the concerned consumer in connection with the supply of electricity. However, the fact that the equipment is installed at the consumer's premises and is used for supplying electricity to that consumer must be considered along with the question of who retains control over the equipment and who is entitled to operate, maintain, and regulate its use.

62. Therefore, the issue as to whether the transactions constitute a transfer of the right to use goods cannot be determined merely on the basis of the recovery of the cost of the equipment or its installation at the consumer's premises. The relevant statutory provisions and the applicable terms and conditions of supply must be examined to determine whether the essential requirements for a transfer of the right to use goods are satisfied.

63. Having considered the said provisions of the Electricity Act and the General Terms and Conditions of supply of the Central Power Distribution Company of Andhra Pradesh Limited, it is pertinent to mention that the entire control over the equipment and infrastructure vests with the petitioner Department. In the event of any interference with the equipment by the consumer or any damage being caused thereto, the consumer would be liable for penal action under the provisions of the Electricity Act. This clearly demonstrates that the equipment is installed and utilized by the Electricity Department for the purpose of transmitting electricity through the said infrastructure to the end-user, namely, the consumer.

64. Though the equipment and infrastructure are procured and installed at the instance of the petitioners, the corresponding costs are recovered by the Department from the consumers. Admittedly, the infrastructure extending up to the substations and primary distribution lines is provided by the petitioners themselves. However, for the subsequent supply of electricity to individual domestic consumers, commercial

establishments and other applicants, the cost incurred towards the development of the electricity distribution infrastructure is recovered from the respective applicants, particularly in cases involving real estate developments and other infrastructure projects.

65. The said costs are recovered under two heads i.e., service line charges and development charges, in addition to the usual security deposit. Such recovery is made in respect of infrastructure developed exclusively for the use of the respective applicants.

66. The recovery of the entire cost of the goods utilized in developing the infrastructure constitutes an ancillary or subsidiary activity connected with the petitioners principal business of supplying electricity. There is a clear element of recovery of the value of the goods employed in developing the infrastructure on the land belonging to the consumer, for the purpose of facilitating the supply of electricity. Though the principal business of the petitioners is the supply of electricity, the installation of equipment, establishment of service lines and

development of the requisite infrastructure, coupled with the recovery of the cost of the goods employed therein, constitute activities incidental or ancillary to such principal business.

67. Further, the subsequent control over the said equipment and infrastructure continues to vest with the petitioners. The consumer merely utilizes the infrastructure for the purpose of receiving electricity supplied by the petitioners. Such use by the consumer does not amount to a transfer of ownership of the equipment or infrastructure. However, the nature of the transaction, viewed in its entirety, establishes a transfer of the right to use the goods employed in developing the infrastructure and supply of electricity.

68. In view of the aforesaid discussion and in the absence of any transfer of ownership of the goods to the consumer, we are of the considered opinion that the transaction in question constitutes a transfer of the right to use the goods and consequently, attracts the levy of tax. Accordingly, the tax levied on the value of the goods recovered by the petitioners is exigible at the applicable rates under Section 4(8) of the Andhra Pradesh

Value Added Tax Act. Consequently, the question framed for consideration is answered in favour of respondent and the petitioners are not entitled to the relief sought in the writ petition.

69. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

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

P. SAM KOSHY, HACJ

NARSING RAO NANDIKONDA, J

Date: 03.11.2026.
vjb