(2011) 12 AP CK 0024

Andhra Pradesh High Court

Case No: Writ Petition No. 21875 of 2011

M/s.City Tex Pvt. Ltd.	APPELLANT
Vs	
The Commercial Tax officer, Auto Nagar, Vijayawada Krishna District and The Deputy Commissioner (CT), No. II Division Autonagar, Vijayawada, Krishna District	RESPONDENT

Date of Decision: Dec. 13, 2011

Acts Referred:

- Andhra Pradesh General Sales Tax Act, 1957 - Section 14(1), 14(4), 2
- Andhra Pradesh Value Added Tax Act, 2005 - Section 2(36), 20, 21(3), 21(7), 32
- Andhra Pradesh Value Added Tax Rules, 2005 - Rule 20, 23
- Central Sales Tax (Andhra Pradesh) Rules, 1957 - Rule 14A(1), 14A(10), 14A(11), 14A(4), 14A(5)
- Central Sales Tax (Registration and Turnover) Rules, 1957 - Rule 11, 11(1)
- Central Sales Tax Act, 1956 - Section 13(3), 13(4), 13(5), 14, 14A(8)

Citation: (2012) 3 ALT 266

Hon'ble Judges: V.V.S. Rao, J; Sanjay Kumar, J

Bench: Division Bench

Advocate: G. Narendra Chetty, for the Appellant; P. Balaji Varma SPL. GP For Commercial Tax, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.V.S. Rao

1. The petitioner company is engaged in the business of manufacture of cotton terry toweling fabrics. It is registered on the rolls of the first respondent under the Andhra Pradesh Value Added Tax Act, 2005 (the VAT Act). For the year 2006-2007, the petitioner filed returns in VAT Form 200 disclosing purchases, sales and input tax credit availed and output tax payable. The petitioner claims that he is entitled for tax refund of Rs.4,09,427/-. The returns under Central Sales Tax Act, 1956 (CST Act) were also filed in CST VI Forms for 2006-07 disclosing export sales of terry towels, taxable at zero rate. They claimed exemption of interstate sales as falling under Entry 45 of I Schedule to the VAT Act.

2. In pursuance of authorization issued by the second respondent, the Deputy Commercial Tax Officer (DCTO), Benz Circle, Vijayawada, conducted audit of the accounts of the petitioner on 20.01.2009 for the periods from 01.04.2006 to 30.11.2008. By order dated 27.02.2009, the DCTO disallowed the input tax credit on the goods for which exemption was claimed and by applying formula AXB/C as per Rule 20 of the Andhra Pradesh Value Added Tax Rules, 2005 (the VAT Rules) disallowed the input tax credit for an amount of Rs.2,73,966/-. Thereafter, in exercise of powers u/s 32 of the VAT Act, the second respondent issued a show cause notice proposing to revise the order of the DCTO, dated 27.02.2009. He proposed to levy tax on the sales turnover of cotton terry toweling fabrics on the premise that the petitioner claimed exemption on the sales turnover on the terry towels in the guise of terry toweling fabrics. The petitioner submitted objections to the show cause notice on 23.06.2010. While the matter is pending, at that stage, the first respondent issued show cause notice dated 23.11.2009 under CST Act for the year 2006-07; petitioner filed objections on 16.12.2009 and thereafter first respondent passed the assessment order dated 30.03.2011 demanding Rs. 1,97,065/- towards CST duly giving credit to the tax paid. Assailing the same, the dealer has filed the instant writ petition.

3. It is contended by the dealer that the impugned order dated 30.03.2011 was served on the petitioner on 29.06.2011 and that the same is antedated. The impugned order is beyond the period of limitation prescribed u/s 21(3) of the VAT Act and it was passed only to deny the refund claim made by the petitioner. It is further contended that the first respondent did not establish the fact that the petitioner sold the cotton terry towels in the guise of cotton terry toweling fabrics and the fabrics sold by the petitioner falls under Entry 45 of I Schedule to the VAT Act and therefore exempted from VAT, The order was passed without verifying the record and without considering the issues raised by the petitioner. The impugned order is contrary to the circular issued by the Commissioner of Commercial Taxes, whereunder the interstate sales of textiles will be treated as exempted under the VAT Act even if the buying dealers are not able to produce "C" Forms.

4. At the state of admission itself, the first respondent has filed counter affidavit opposing the writ petition. It is submitted that the petitioner has effective

alternative remedy and the writ petition is filed without availing the remedy which is not maintainable. The first respondent would further submit that the petitioner claimed exemption for the goods "cotton terry toweling fabrics" falling under Entry 45 of the I Schedule to the VAT Act and also on the input tax credit on the purchase of value of the cone cotton yarn (raw material) purchased within the State from the registered dealers. They also claimed refund of tax in VAT 200 return filed for the month of March, 2009. During the audit, it was noticed that the assessment for the year 2006-2007 under the CST Act was not finalized. Therefore, a show cause notice was issued on 23.06.2010 proposing to levy tax @ 10% on the interstate sales turnover of cotton terry towels treating the goods as falling under Entry 52 of the IV Schedule to the VAT Act. The petitioner submitted objections. Duly considering all the objections, the first respondent passed orders raising demand for CST of Rs.1,97,065/-. The petitioner is neither registered with the Central Excise and Customs Department nor has paid additional excise duty to claim exemption under the VAT Act. Entry 52 originally read as "Readymade Garments". By G.O.Ms.No. 1564, dated 17.08.2005, it was amended with effect from 18.08.2005 to read as "Readymade garments, bed sheets, pillow covers, towels, blankets, travelling rugs, curtains, crochet laces, zari, embroidery articles (and all other made ups)". The bracketed portion was omitted with effect from 01.03.2009 and the items "Bed sheets, pillow covers, towels, blankets, travelling rugs, curtains, crochet, zari and embroidery articles" were omitted with effect from 01.05.2009 and no tax was levied from that day.

5. The first respondent would further submit that after audit, the DCTO finalized the assessment on 20.09.2006; the petitioner paid the tax and penalty determined by the authority and therefore he cannot raise any objection if assessment under CST Act for 2005-2006 is undertaken by the first respondent. The petitioner accepted the assessment under the VAT Act and therefore he cannot question the assessment under the CST Act. As per Rule 14-A(8)(b) of the Central Sales Tax (Andhra Pradesh) Rules, 1957 (the State Rules), the assessment can be made within a period of four years from the expiry of the year to which the turnover relates, if the whole or any part of the turnover has escaped or under-assessed in any year. Therefore the plea that the assessment is not barred by limitation cannot be accepted.

6. The counsel for the petitioner and the Special Counsel for the Commercial Taxes have reiterated the submissions from their pleadings which are surmised supra.

7. The background facts and submissions would give rise to two issues for consideration, namely, whether the impugned assessment is barred by limitation and whether the impugned assessment is in accordance with law.

Question of Limitation

8. Section 9(2) of the CST Act is to the effect that subject to provisions of the Act and Rules made thereunder the machinery and method of assessment of CST shall be in

accordance with the provisions of general sales tax law of the State. Further, as per Rule 11 of the Central Sales Tax (Registration and Turnover) Rules, 1957 (the Central Rules), the period of turnover in relation to any dealer liable to pay Central Sales Tax shall be the same as the period in respect of which he is liable to submit returns under the State law.

9. Under the Andhra Pradesh General Sales Tax Act, 1957 (the APGST Act) every registered dealer is required to submit returns relating to his turnover to the assessing authority on or before 7th day of March and 20th day of every other month along with a receipt from the Government Treasury or crossed demand draft in favour of the assessing authority for the full amount of taxes payable for the month to which the returns related under various charging Sections. Section 14 empowers the assessing authority to undertake assessment within a period of three years from the expiry of the year to which the assessment relates. Section 2(U) defines a year as to mean the 12 months ending 31st day of March. Thus, under the sales tax regime though a registered dealer is required to file monthly returns, the assessing authority can undertake annual assessment of tax on the basis of the return after giving an opportunity to the dealer. The assessment, however, shall have to be made within a period of three years from the expiry of the year to which the assessment relates. Section 14(4) of APGST Act, however, enables reassessment when it is found the dealer was assessed at a rate lower than the applicable rate or the turnover escaped assessment.

10. The VAT Act came into force from 01.04.2005. u/s 20 thereof read with Rule 23 of the Andhra Pradesh Value Added ''Tax Rules, 2005 (the VAT Rules), every registered VAT deader shall have to submit return along with proof of payment of tax within 20 days after the end of the tax period. Tax period is defined in Section 2(36) as to mean the calendar month or any other period prescribed. If a return is filed within the prescribed time, it shall be accepted as his assessment. But u/s 21, if the assessing authority is not satisfied, he shall assess the VAT within four years of due date of return or within four years of the date of filing of the return whichever is later. As Rule 23 read with Section 2(36) requires a VAT dealer to file return within 20 days after the end of the tax period, the assessing authority can undertake assessment within four years from the date of filing of the return or otherwise assessment would be barred subject however to Section 21(7) with which we are not concerned in this case.

11. In exercise of the powers conferred under sub sections (3) (4) and (5) of Section 13 of the CST Act, the Governor of the State promulgated the Central Sales Tax (Andhra Pradesh) Rules, 1957 (the State Rules). Rule 14-A(1)(a), (4), (5), (5A) and (8) to (11) thereof are relevant and read as under.

Rule (14-A)(1)(a):- Every dealer registered u/s of the Act and every dealer liable to pay tax under the Act shall submit so as to reach the assessing authority on or before the 20th of every month a return in Form CST VI showing the total and net turnover

of his transactions including those in the course of inter-State trade or commerce (the total value of the goods transferred outside the State otherwise than as a result of sale and in the course of export of the goods out of the territory of India) during the preceding month and the amount or amounts collected by way of tax. The return shall be accompanied by a receipt from a Government treasury or (a crossed demand draft) in favour of the assessing authority for the full amount of the tax payable for the month to which the return relates. (Provided that where a dealer intends to pay the tax through a crossed cheque, the cheque should be sent so as to reach the assessing authority on or before the 15th day of the month succeeding the month to which the tax relates. (Provided further that a dealer who is not liable to pay tax under the Andhra Pradesh General Sales Tax Act, 1957 shall submit return for each quarter as shown below instead of each month.

Quarter ending Due date for submission of the return

30th June On or before the 15th July

30th September On or before the 15th October

31st December On or before the 15th January

31st March On or before the 15th April

(b) Along with the return mentioned in clause (a) of sub-rule (1) the dealer shall also, submit to the assessing authority-

(i) the originals of the declarations in Form C, received by him from the dealers to whom he sold goods;

(ii) the originals of the certificates in Form D, if any received by him in the case of sales to Government of India or to the Government of any State;

(iii) the originals of the certificates in Form E-I or E-II, if any, received by him from the dealers from whom he purchased the goods, and

(iv) the originals of the declarations in Form ''F'' received by him from the transferee of the goods to whom he transferred goods otherwise than as a result of sale.

(v) an extract of columns (5) to (13) of the register in Form CST IV maintained by him.

(Sub Rules (2) and (3) omitted here as not relevant)

Rule 14A (4) If no return is submitted for any month or quarter, as the case may be, before the due date or if the return submitted appears to be incorrect or incomplete, the assessing authority shall after making such enquiry as he considers necessary after giving the dealer an opportunity of proving the turnover to the best of his judgment, and provisionally assess the tax or taxes payable for the month or quarter, as the case may be and shall serve upon the dealer a notice in Form CST VII and the dealer shall pay the sum demanded at the time and in the manner specified

in the notice.

Provided that if for any reason the determination of provisional assessment of tax or taxes payable for any month or quarter is not completed on or before the receipt of the return for the succeeding month or quarter, as the case may be, the assessing authority may in his discretion provisionally assess in a single order the tax or taxes payable for all such months or quarters as the case may be and serve upon the dealer a notice in Form CST VII and the dealer shall pay the sum demanded within the time and in the manner specified in the notice.

Rule 14A (4A) Omitted

Rule 14A (5) If the return or returns are filed within the prescribed time by the dealer and such return or returns are found in order, the return or returns shall be accepted as self assessment, subject to adjustment of any arithmetical error, apparent on the face of the said return or returns.

Rule 14(5-A): Every dealer shall be deemed to have been assessed to tax, based on the returns filed by him, if no assessment is made within a period of four years from the date of filing of the return.

(Sub-rules (6) and (7) are omitted as not relevant)

Rule 14(8): If, for any reasons, the whole or any part of the turnover of business of a dealer has escaped assessment to tax or has been under assessed in any years, the assessing authority may after issuing a notice to the dealer and after making such enquiry as he considered necessary determine to the best of his judgment the correct turnover, and assess the tax payable on such turnover-

(a) In cases where an order of assessment or levy had been passed earlier, within a period of four years from the date on which such order was served on the dealer;

(b) within a period of four years from the expiry of the year to which the turnover relates in other cases.

Rule 14A (9) If, for any reason, any tax has been assessed at too low a rate in any year, the assessing authority may after issuing a notice to the dealer and after making such enquiry as he consider necessary revise the assessment within a period of four years from the date on which the order of assessment to be revised was served upon the dealer.

Rule 14A (10) An assessing authority may, at any time within four years from the date of any order passed by him rectify any arithmetical mistake apparent from the record:

Provided no such rectification, which has the effect of enhancing the assessment shall be made unless the assessing authority has given a notice to the dealer of the intention to do so and has allowed him a reasonable opportunity of being heard.

Rule 14A (11) The powers conferred by sub-rules (8),(9) and (10) on the assessing authority may also be excised by the appellate or revising authority, subject to the same limitations and conditions as are applicable in the case of assessing authority.

12. Unlike Section 14(1) of the APGST Act and Section 20 of the VAT Act, the CST Act does not specifically prescribe any period of limitation for undertaking the assessment of CST payable by a registered dealer. As already noticed supra, by virtue of Section 9(2) of the CST Act all the provisions of the State law, relating to the sales tax would also apply to assessment of CST. Further the Central Rules also do not prescribe any period of limitation but Rule 11(1) thereof stipulates that the period of turnover in relation to any dealer liable to pay CST shall be the same as the period in respect of which he is liable to submit returns under the State law. The Central Rules have been made in exercise of the powers u/s 13(1) of the CST Act. Section 13(3) empowers the State Government to make Rules not inconsistent with the provisions of the CST Act and the Central Rules. As the CST Act or the Central Rules are silent with regard to the limitation, one has to look to the State Rules alone and there is no dispute that Rule 14A of the State Rules is comprehensive and deals with the obligation of a dealer to file returns, the assessment of such returns and the period during which the competent officer can undertake assessment. We have quoted Rule 14A of the State Rules extensively supra and we shall analyse the same hereinbelow.

13. Every dealer shall submit the return in Form CST-VI so as to reach the assessing authority on or before 20th of every month along with a receipt from District Treasury or crossed demand draft for full payment of tax payable for the month to which the return declares. It has also to be accompanied by the originals of declarations in Form-C, the certificates in Form-D, Form-El or E2 and declarations in Form-F.

14. As per sub-rule (5) read with sub-rule (5A) of Rule 14A of the State Rules, the return so filed within the prescribed period, if it is in order, shall be accepted as self-assessment and shall be deemed to have been assessed to tax. But within a period of four years from the date of filing of the return, the assessing officer can always undertake assessment even if it is deemed self-assessment. This is one situation that is contemplated by sub-rules (1), (4), (5) and (5A) of Rule 14A of the State Rules.

15. The other situation arises when the dealer does not file return or files an incorrect return. Sub-rules (6) and (7) of Rule 14A deal with such a situation and enable the assessing authority to determine the turnover to best of judgment and finally assess in a single order the tax or taxes payable under the CST Act followed by the demand in Form CST-VII. Sub-rules (9), (10), (11) and (15) of Rule 14A deal with reassessment by the same assessing authority, or pursuant to the modification by hierarchical superior authority or the Court subject to period of limitation as contained in sub-rules (9) and (15) of Rule 14A.

16. Sub-rule (8) of Rule 14A of the State Rules specifically deals with the period of limitation for undertaking assessment when the turnover escaped assessment to tax in cases where assessment had already been made and also in cases where no assessment was made. Rule 14A (8)(a) of the State Rules deals with cases where assessment order had already been passed under sub-rule (6) read with sub-rule (7) of Rule 14A. Sub-rule (8)(b) thereof deals with, among others, cases where assessment orders were not passed earlier which only means those cases falling under sub-rules (5) and (5A) which speak of self-assessment and deemed assessment.

17. The Counsel for the petitioner would strongly rely on sub-rule (5A) of Rule 14A in support of the plea that impugned assessment is barred by limitation. We are afraid we cannot accept the submission. In our opinion it only deals with deemed assessment and lays down that if no assessment is made within a period of four years from the date of filing of the return, such deemed assessment would be final. The period of limitation is specifically dealt with by sub-rule (8). If this construction is not adopted it would amount to giving extended meaning to legal fiction in sub-rule (5A) which is not permissible rule of interpretation.

18. A legal fiction is a legislative device created for a specified and definite purpose of clarifying the context or a situation for the purpose of applicability or inapplicability or some times for enlarging the scope of the provision. It is not necessary to refer to the case law which is galore. Suffice to extract hereinbelow the passage from the recent Full Bench Judgment, dated 25.11.2011 of this Court to which both of us are members in State of A.P., v Seven Hills Constructions (TRC No.274 of 2001 and batch).

A legal fiction is created only for some definite purpose. The fiction is to be limited to the purpose for which it was created, and should not be extended beyond that legitimate field. A legal fiction presupposes the existence of the state of facts which may not exist, and then works out the consequences which flow from that state of facts. Such consequences have got to be worked out only to their logical extent having due regard to the purpose for which the legal fiction has been created. Stretching the consequences beyond what logically follows amounts to an illegitimate extension of the purpose of the legal fiction. The Bengal Immunity Company Limited Vs. The State of Bihar and Others, ; P. Prabhakaran Vs. P. Jayarajan, . A legal fiction should not be extended beyond the language by which it is created. A deeming provision cannot be pushed too far so as to result in an anomalous or absurd position. (Maruti Udyog Ltd. v Ram Lal (2005) 2 SCC 6, 38). The fiction enacted by the legislature must be restricted by the plain terms of the statute. Commissioner of Income Tax, Bombay City II Vs. Shakuntala and two Ors. etc., ; Mancheri Puthusseri Ahmed and Others Vs. Kuthiravattam Estate Receiver, . The legal fiction is not to be extended beyond the purpose for which it is created, or beyond the language of the Section by which it is created. State of Maharashtra Vs.

Laljit Rajshi Shah and Others, ; State of West Bengal Vs. Sadan K. Bormal and Another, . A legal fiction cannot be extended by the court on analogy or by addition or deleting words not contemplated by the legislature. (Mancheri Puthusseri Ahmed).

19. As long as assessment order is not made even in a case falling under Rule 14A (5) read with sub-rule (5A), an assessment can be undertaken by the assessing authority subject to Rule 14A(8) of the State Rules. The various sub-rules in Rule 14A have to be harmoniously read without causing harm to any of the sub-rules. If this is not adopted, it would result in clash between the two sub-rules, which the Court ought to avoid. If both of them can be reconciled, they should be interpreted in such a manner that the effect should be given to both.

20. The rule of harmonious construction is well settled. Where there are two provisions in an enactment which cannot be reconciled, they should be interpreted in a manner to give effect to both (Venkata Ramana Dora v. State of A.P. AIR 1958 SC 555 and Sultana Begum Vs. Prem Chand Jain, . While doing so, it is trite, all the provisions of the Act must be read together. Similarly all the sub-sections or sub-rules should also be read together while harmonizing the effect of the provision. In Ankamma Trading Company v. Appellate Deputy Commissioner (2011) 53 APSTJ 1, a Division Bench of this Court to which one of us is a member (VVSR, J) explained this principle which we may quote hereunder.

A harmonious construction of a provision, which subserves the object and purpose for which the provision is intended to serve, is permissible provided it does not cause violence to the language of the provision (M/s.Oxford University Press v. Commissioner of Income Tax AIR 2001 SC 886, Administrator Municipal Corporation, Bilaspur Vs. Dattatraya Dahankar and another, and when a literal meaning may result in absurdity. Courts must, however, keep in mind that an interpretation which reduces one of the provisions to a "dead letter" or "useless lumber" is not harmonious construction. To harmonise is not to destroy any statutory provision or to render it otiose Sultana Begum Vs. Prem Chand Jain, In construing enacted words Courts are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used. Even if the literal interpretation results in hardship, or to the language used. Even if the literal interpretation results in hardship, or inconvenience, it has to be follows Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others, and AIR 1945 48 (Privy Council) .

21. Interpreting harmoniously it becomes clear that whether it is a "deemed assessment" under Rule 14(5A) or assessment under sub-rules (6) and (7), if an assessing officer undertakes assessment on the ground that the turnover escaped assessment to tax, it shall be within the period prescribed under sub-rule (8). Thus the return filed under sub-rule (1) within the time prescribed shall be deemed to have been assessed if no assessment is made within a period of four years from the

date of filing the return. But if the assessing authority considers that the turnover escaped assessment to tax, it is competent to determine to the best of his Judgment the correct turnover in cases where assessment order is passed earlier, within a period of four years from the date on which the order was served on the dealer, which only means assessment order referred to sub-rule (7). It is also competent to undertake assessment under sub-rule (8)(b) in other cases including a case falling under sub-rule (5A). In such a case, such assessment shall have to be within a period of four years from the expiry of the year to which the turnover relates.

22. The phrase, "the whole or any part of the turnover of the business of a dealer..... in any year" appearing in Rule 14A(8) and the phrase "within a period of four years from the expiry of period in which the turnover relates" appearing in clause (b) thereof are indicative enough that the period of four years limitation has to be reckoned from the date of expiry of the year which as per Section 2(k) of the CST Act read with Section 2(u) of the APGST Act means 31st day of March. If the turnover during the period from 1st April of the preceding year to 31st March of the succeeding year, be it the turnover in relation to a month, a quarter or a year, is found to have escaped assessment or deemed to have assessed incorrectly, the competent officer can undertake assessment within four years from 31st March of the year relevant during which the whole or any part of the turnover escaped assessment. The submission of the Counsel that the period of four years as contemplated u/s 14A(8) (b) of the CST Act shall have to be reckoned from the expiry of each month of the year cannot be accepted on plain construction of the said Rule.

23. The patent difference in the language used in the phrase "if no assessment is made within a period of four years from the date of filing of the return" used in sub-rule (5A) and the phrase "within a period of four years from the expiry of the year to which the turnover relates" appearing in sub-rule 8(b) make it very clear that an assessment undertaken under Rule 14A(8)(b) should be within four years from the expiry of the year to which the turnover relates. In that view of the matter, the submission made by the petitioner that except in regard to the returns filed for the months of March, 2007, the assessment in respect of returns for the months of April 2006 - March 2007 is barred by limitation cannot be accepted. The returns for the months of April, 2006 to March, 2007 or the returns relate to the turnover of the financial year 2006-2007, and therefore, the assessment order passed on 30th March, 2007, is well within the limitation. It is not barred by limitation. The feeble submission that the impugned assessment order was antedated has not been-substantiated and therefore, we reject the same. We accordingly hold that the impugned assessment order dated 30.03.2011 is not barred by limitation as per Rule 14A(8) of the State Rules.

Question of validity assessment

24. For 2006-07, the petitioner reported a total turnover of Rs. 1,07,95,742/- and "nil" net turnover while claiming the entire turnover as exempt from CST. The turnover

was reported for each quarter of the financial year. On verifying the assessment file the first respondent noticed that the petitioner did not furnish the details about the turnover except claiming them as exempt sales. The turnover was not supported by declaration forms. The "cotton terry toweling fabrics" are taxable under Entry 52 of the IV Schedule to VAT Act. Therefore the CTO proposed to subject the turnover to tax at 12.5% treating the entire turnover as not covered by C-Forms. A show cause notice dated 23.11.2009 was issued. In reply thereto the petitioner filed objections on 16.12.2009 reporting a total turnover of Rs.1,73,13,407/-. Out of this, turnover of Rs.1,52,45,806/- was shown towards export sales of cotton terry towels as well as export through third party supported by H-Form declarations and invoices. This turnover was treated as exempt from tax. On the interstate sales of cotton terry towels amounting to Rs.4,92,406/-, the dealer paid the tax of Rs. 19,695/-. As the said sales are not supported by C-Form declarations, the CTO confirmed exigibility of the said turnover at 10%. The other item was an amount of Rs. 16,75,195/-. The dealer claimed that it is exempt under Entry 45 of the I Schedule to VAT Act being sale of "cotton fabric" only. After considering the claim, the CTO proposed to tax the turnover towards interstate sales of "cotton terry towels" at 10% under Entry 52 of IV Schedule to VAT Act, as the petitioner took input tax credit under the VAT Act on the entire purchase value of the cotton procured from within the State. Be it noted that if the cotton fabric is exempt from VAT, the petitioner should have restricted the input tax credit on the purchase value of the cotton applying the formula A X B/C but they did not do so leading to inference that they sold "cotton terry towels" falling under Entry 52 of IV Schedule. Further most of the sales were made to hotels and traders and, therefore, the items sold are cotton terry towels and not fabric. The CTO, Autonagar Circle, Vijayawada verified machinery of the dealers and noticed that the petitioner was producing cotton terry towels in different lengths. The CTO also relied on the fact that the entire export sales disclosed by the dealers were in respect of cotton terry towels only. Accordingly while treating the export sales as exempt from tax, the CTO levied tax at 10% on interstate sales not covered by C-Forms as well as other sales and raised demand for Rs. 1,97,065/-.

25. The Counsel for the petitioner would contend that the petitioner is a dealer manufacturing and marketing terry toweling fabrics and, therefore, the same is exempt under Entry 45 of I Schedule to VAT Act; the cotton terry toweling fabric is liable to basic excise duty as mentioned in Chapter heading 58 of the Central Excise Tariff and also liable to additional excise duty and, therefore, the goods manufactured by the petitioner are exempt under Entry 45 of I Schedule to VAT Act read with, Explanation appended to the said Schedule; even though cotton towels are included in Entry 52 of IV Schedule to VAT Act. The power loom machines available in the petitioner''s factory produced not only towels but also fabric manufactured in grey (kora) stage in lengths (thaans) and processed to bleaching/dyeing and then sales are effected in lengths and bundles. The petitioner sold the fabric in length and has not collected the tax from the customers on 100%

interstate sales as they are exempt under the VAT. He nextly contended that as per the circular dated 23.7.2011 issued by the Commissioner of Commercial Taxes even if the petitioner cannot obtain Form-C declarations, the interstate sales of textiles are exempted from tax.

26. The Special Counsel for Commercial Taxes would submit that the plea of the petitioner that they are exempt from payment of tax in view of Entry 45 of I Schedule to VAT Act as "cotton terry toweling fabric" is covered by Central Excise Tariff heading cannot be accepted because as per the letter of the Assistant Commissioner of excise dated 08.6.2010 the petitioner surrendered registration certificate and had not paid central excise duty from April, 2005. He nextly contended that in view of amendment of Entry 52 of IV Schedule terry towels are taxable to 4% and that the petitioner sold terry towels after stitching the edges and sometimes towels were sold in the same condition. The claim of exemption treating the goods manufactured by the petitioner as cotton fabric is untenable and, therefore, the claim was rejected. He further contended that during the VAT assessment for 2005-06 the department levied 4% VAT under Entry 52 of IV Schedule which the petitioner accepted and paid tax on as well as penalty and, therefore, he cannot be permitted to question levy under the CST Act.

27. The petitioner has not filed reply affidavit. Therefore it remains uncontroverted that the Central Excise registration stood cancelled with effect from April, 2005. His plea, therefore, that the goods manufactured by it are exempted as they are covered by the relevant chapter heading in Central Excise Tariff cannot be accepted. There is no denial of the fact that by G.O.Ms.No. 1564, dated 17.8.2005, Entry 52 of IV Schedule to VAT Act was amended with effect from 17.7.2005 bringing the towels under Entry 52 of Schedule IV.

28. We quote- hereunder Entry 45 of I Schedule and Entry 52 of IV Schedule as they appeared at the relevant time.

I Schedule Entry 45	Cotton fabrics, rnanmade fabrics, woolen fabrics and textile made ups.
IV Schedule Entry 52	Readymade garments (bed sheets), pillow covers, towels, blankets, travelling rugs, curtain, ... Laces, terry embroidery articles and all other made ups.

29. Section 7 of VAT Act exempts goods listed in I Schedule from VAT. As per Entry 45 it is cotton fabrics which are exempted and not towels. Towels fall under Entry 52 of IV Schedule. Therefore whenever a dealer seeks exemption for cotton fabrics as falling under Entry 45 of IV Schedule it is for the assessment officer to enquire into the same. In this case, it is neither disputed nor denied by the petitioner that the

CTO, Autonagar Circle, Vijayawada inspected the petitioner''s machinery and found that they were producing terry towels. Secondly in their objections filed after receiving show cause notice the petitioner admitted of effecting sales of cotton terry towels. Further it was found that most of the sales were made to hotels and proposed that the petitioner was converting the fabric into towels and selling them. It is a question of fact and ordinarily in writ jurisdiction, it cannot be interfered with. Further the petitioner had an effective alternative remedy of filing appeal before the Appellate Deputy Commissioner. They waited for four months and chose to file writ petition challenging the impugned order. In this background, we are afraid we do not find any merit in the impugned assessment order.

30. The writ petition, for the above reasons, is dismissed. No costs.