



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

[3525]

WEDNESDAY, THE NINTH DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT PETITION Nos.17995, 17997, 18001, 18018, 18019 & 18024 of 2024

Between:

Ravindra Muthavarapu

...PETITIONER

AND

The Superintendent Of Central Tax and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.KARAN TALWAR

Counsel for the Respondent(S):

1.KUNUKU DURGA PRASAD(STANDING COUNSEL FOR CBIC)

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

As the issues raised in all these Writ Petitions are similar and they are being disposed of by way of this Common Order.

2. The company, M/s. Kusalava Batteries Private Limited, had been liquidated. It appears that the taxes and the penalty levied, against this company, could not be recovered during the liquidation process.

3. The 1st respondent in all these Writ Petitions had issued notices to the petitioners, calling upon them to remit the amounts set out in the notices, on the ground that the petitioners are directors in the liquidated company and would be liable to pay the dues of such company, by virtue of Section 88 of the Central Goods and Services Tax, 2017 [for short "the CGST Act"].

4. The details of the orders of assessment, notices of demand and the amounts claimed in each of the Writ Petitions, against the petitioners are given below:-

S. N o.	Writ Petition No.	Name of the Petitioner (Director of the company)	Impugned Order Number & Date	Demand Notice Number and Date	Penalty Amount
1.	17995 of 2024	Mr. Ravindra Muthavarapu, Former Additional Director, M/s. Kusalava Batteries Private Limited, Residing at: A-6, Venkata Balaji Towers, Near Jammi Chettu, Mogalrajpuram, Vijayawada, Andhra Pradesh, India - 520010	OIO No: GUN-EXCUS-000-COM-003-20-21., Dated 20.11.2020.	O.C.No.127/2024, dated 24.07.2024.	Rs.39,02,10,114/-
2.	17997 of 2024	Mr. Potluri Venkataratnam, Former Director, M/s. Kusalava Batteries Private Limited, Residing at: H.No.8-67 Srinivasa Nagar, Poranki, Vijayawada, A.P, 521137.	OIO No: GUN-EXCUS-000-COM-003-20-21., Dated 20.11.2020.	O.C.No.127/2024, dated 24.07.2024.	Rs.39,02,10,114/- along with Personal liability of Rs.1,30,00,000/-
3.	18001 of 2024	Mr. Chukkapalli Siddharth, Former Director, M/s. Kusalava Batteries Private Limited, Residing at: D.No.60-28-3, Gayatri Nagar, Vijayawada, Andhra Pradesh - 520008	OIO No: GUN-EXCUS-000-COM-003-20-21., Dated 20.11.2020.	O.C.No.127/2024, dated 24.07.2024.	Rs.39,02,10,114/-
4.	18018 of 2024	Mr. Chukkapalli Venkateswara Rao, Former Director, M/s. Kusalava Batteries Private Limited, Residing at: H. No. 40-15/2-10, Brindavan Colony, Labbipet, Vijayawada, Andhra Pradesh, India- 520010	OIO No: GUN-EXCUS-000-COM-003-20-21., Dated 20.11.2020.	O.C.No.127/2024, dated 24.07.2024.	Rs.39,02,10,114/-
5.	18019 of 2024	Mr. Chukkapalli Chakravarthi, Former Director, M/s Kusalava	OIO No: GUN-EXCUS-000-COM-003-20-	O.C.No.127/2024, dated 24.07.2024.	Rs.39,02,10,114/-

		Batteries Private Limited, Residing at: H. No.40- 15/2-10, Brindavan Colony, Labbipet, Vijayawada, Andhra Pradesh, India – 520008.	21., Dated 20.11.2020.		
6.	18024 of 2024	Mr. Chukkapalli Ramakrishna Prasad, Former Director, M/s. Kusalava Batteries Private Limited, Residing at: D.No.60-28-3, Vasireddy Sivaramakrishnayya Street, Gayatri Nagar, Vijayawada, A.P.	OIO No: GUN- EXCUS-000- COM-003-20- 21., Dated 20.11.2020.	O.C.No.127/ 2024, dated 24.07.2024.	Rs.39,02,10,114/- along with Personal liability of Rs.1,30,00,000/-

5. Apart from the above, two of the directors, namely petitioners, in W.P.No.17997 of 2024, and W.P.No.18024 of 2024, had been served with orders of personal liability of Rs.1,30,00,000/-.

6. The petitioners have approached this Court by way of these Writ Petitions with the contention that the provisions of Section 88 of the CGST Act, would not be available to the authority for recovery of the dues of the liquidated company, relating to the Central Excise Act, 1944 [for short “the Act, 1944”]. There is no dispute that all the dues that are sought to be recovered, under the aforesaid notices are dues which have arisen out of orders passed under the Act, 1944.

7. Sri Karan Talwar, learned counsel for the petitioners would contend that in all these cases, notices had been issued to the petitioners for recovery of the dues of the liquidated company, under the Act, 1944, as if the said dues have been assessed or has arisen under the provisions of the CGST Act or the APGST Act. He would contend that reading of Section 88

along with Section 174 of the CGST Act, would make it ample clear that the recovery of such taxes can be carried out, under the provisions of the CGST Act, only in relation to taxes and amounts levied or assessed under the provisions of the CGST Act, alone. He would also contended that Section 174 (2)(e)&(f) stipulates that the dues under the Act, 1944 would have to be recovered by using the machinery available under the Act, 1944 only.

8. The counter affidavits filed by the respondents contending that the Writ Petitions are not maintainable in as much as the petitioners have availed of the alternative remedy of the appeal. Apart from this, it is contended that the provisions of Section 88 of the CGST Act, can be used for recovery of dues under the Act, 1944 also. Sri Kunuku Durga Prasad, Learned Standing Counsel appearing for the official respondents reiterates the contentions.

9. Sri Karan Talwar, learned counsel for the petitioners would contend that three reliefs were sought in the Writ Petitions. He would submit that third relief relates to the order-in-original passed, under the Act, 1944. He submits that these appeals had been filed against these orders before the CESTAT under the Act, 1944 and money could not have been recovered against these orders, on account of the pendency of the appeals before the CESTAT. He further submits that the respondents, in their counter affidavits have clearly stated that they have withdrawn the notices against the amounts which had been levied against the directors, in their personal capacity and that the relief sought against the order-in-original is being withdrawn in all the Writ Petitions. He submits that the petitioners would pursue their remedies under

the Act, 1944. Learned counsel for the petitioners withdraws the relief sought against the orders-in-original, in details of the given above in all the Writ Petitions.

10. Sri Kunuku Durga Prasad, Learned Standing Counsel appearing for the official respondents would also contend that the notices are not notices for recovery that are only notices issued for ascertaining whether there is any mis-reasons on the part of the petitioners, as directors of the liquidated private limited company and the submissions made before this Court and the very same will made before the authority.

CONSIDERATION OF THE COURT:-

11. Section 88 of the CGST Act, reads as follows:-

“Section- 88:- Liability in case of company in liquidation:—

(1) When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the “liquidated”), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

(2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidated within three months from the date on which he receives intimation of the appointment of the liquidated, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

(3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.”

12. Section 88(3) of the CGST Act, states that the tax, interest or penalty of a private company, which would be windup can be recovered from the directors of the company, subject to certain conditions, when such tax, penalty and interest is determined under the CGST Act. This can only mean that tax, penalty or interest which had been determined under the CGST Act, alone can be recovered from the directors of private company which are under liquidation, subject to the condition set out in Section 88(3) of the CGST Act.

13. This would leave the question of how the taxes due to the State are to be recovered, in relation to liabilities arising under the Act, 1944. Section 174 of the CGST Act, provides for that situation.

14. Section-174 of the CGST Act, reads as follows:-

“Section-174:- Repeal and saving:—

(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), and the Central Excise Tariff Act, 1985 (5 of 1986) (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994) (hereafter referred to as “such amendment” or “amended Act”, as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts: Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal."

15. Section-174(2)(e) of the CGST Act, provides for institution or continuation of the proceedings to recovery of tax, surcharge, penalty, fine, interest or forfeiture arising out of the Act, 1944, by utilizing the provisions of the Act, 1944.

16. In the circumstances, it would be open to the respondents to initiate action, if permissible, under the provisions of the Act, 1944, against the petitioners. However, the provisions of the CGST Act would not be available for such recovery.

17. Accordingly, these Writ Petitions are allowed setting aside the impugned notices mentioned above in all these Writ Petitions by leaving it open to the respondents to avail of such remedies as may be available for

recovery of the amounts for which the petitioners may become liable. There shall be no order as to costs.

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

R. RAGHUNANDAN RAO, J.

DR K MANMADHA RAO, J.

BSM

HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT PETITION Nos.17995, 17997, 18001, 18018, 18019 & 18024 of 2024

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

Date: 09.04.2025

BSM