



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

[3562]

**FRIDAY, THE TWENTY FIRST DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FIVE**

PRESENT

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA**

WRIT PETITION NO: 5898/2024

Between:

1. M/S. JBD EDUCATIONALS PVT. LTD, H. NO. 30-5-1,
KRISHNA GARDENS, DABAGARDENS, VISAKHAPATNAM
- 530 020, REP. BY ITS DIRECTOR SRI. ABHISLIEK
NEOTIA TIN 37542372279.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, REP. BY ITS
PRINCIPAL SECRETARY, REVENUE (CT-II)
DEPARTMENT, A.P. SECRETARIAT, VELAGAPUDI,
GUNTUR DISTRICT.

2. THE COMMISSIONER OF COMMERCIAL TAXES, NOW
CHIEF COMMISSIONER (ST) 12-468-4, ADJ. TO NH-16,
SERVICE ROAD, KUNCHANAPALLY-522 501, GUNTUR
DISTRICT, ANDHRA PRADESH.

3. THE JOINT COMMISSIONER CT AUDIT AND REFUNDS,
12-468-4, ADJ. TO NH-16, SERVICE ROAD,
KUNCHANAPALLY-522 501, GUNTUR DISTRICT,
ANDHRA PRADESH.

4. THE PAY AND ACCOUNTS OFFICER, , COMPREHENSIVE

FINANCIAL MANAGEMENT SYSTEM, APCFSS, 6TH FLOOR, C-BLOCK, ANJANEYA TOWERS, IBRAHIMPATNAM-521 456, NTR DISTRICT ANDHRA PRADESH.

5.THE COMMERCIAL TAX OFFICER, NOW ASSISTANT COMMISSIONER (ST) DWARAKANAGAR CIRCLE, VISAKHAPATNAM-1 DIVISION, VISAKHAPATNAM.

6.THE DEPUTY COMMISSIONER CT, NOW JOINT COMMISSIONER (ST C.T. COMPLEX, DEENDAYALAPURAM, CHINAGADILI, VISAKHAPATNAM-530040

...RESPONDENT(S):

Counsel for the Petitioner:

1.C SANJEEVA RAO

Counsel for the Respondent(S):

1.GP FOR COMMERCIAL TAX

The Court made the following:

ORDER: *(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri C.Sanjeeva Rao, learned counsel for the petitioner appearing through virtual mode and Sri Mannam Venkata Krishna Rao, learned Government Pleader for Commercial Tax I, appearing for the respondents 2 to 6. Notice was accepted by the learned Government Pleader for the 1st respondent.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner for direction to the respondents to pay interest on the belated refund amount of

Rs.1,27,34,194/- as determined by the 3rd respondent vide order dated 19.06.2020, but rejected vide endorsement dated 23.06.2023.

3. The Joint Commissioner (CT), Audit and Refunds, by an order dated 19.06.2020 for the tax period April, 2013 to March, 2016, on the claim application of the petitioner, approved the refund claim.

4. The amount was refunded but beyond the period of 90 days. The actual refund was made on 31.03.2022.

5. Claiming the interest on the amount of refund for the period of delay beyond 90 days, the petitioner applied under Section 38 of the Andhra Pradesh Value Added Tax (APVAT) Act, 2005 r/w Rule 35 (a) and (e) of the A.P.VAT Rules, 2005. The same has been rejected vide an endorsement dated 23.06.2023 (Annexure P-10) by the Assistant Commissioner of Sales Tax, Dwarakanagar Circle, Vijayawada.

6. The rejection is on the ground that there was no delay from the Departmental Authorities as regards the refund claim from the office of the PAO, Ibrahimpatnam, Vijayawada and upto credit of the claim by 31.03.2022. It was found that there were certain

problems with CFMS (RBI) and thus, the bill was kept pending before them only, but not with the Department.

7. Another reason assigned in the impugned endorsement is that, in view of the order of the Hon'ble Apex Court, dated 23.03.2020 in suo motu WP(C) No.03/2020 and in the Miscellaneous Application No.665 of 2021, the period of limitation shall stand extended till further orders. So, the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation. The payment having been made on 31.03.2022, there was in fact no delay and the petitioner was therefore not entitled for any interest.

8. Learned counsel for the petitioner submits that mere passing of the order within the statutory period of 90 days is not a sufficient compliance. The liability for payment of interest would still be, if the amount has not been actually refunded within the statutory period. Learned counsel for the petitioner placed reliance in the case ***M/s. Venkateswara Electricals v. the State of Andhra Pradesh***(W.P.No.4072 of 2022 decided on 09.03.2022(DB)).

9. Learned counsel for the petitioner submits that the respondents cannot claim the benefit of the judgment of the

Hon'ble Apex Court in suo motu WP(C) No.03/2020, which does not apply for the refund by the Authorities under the Act. He placed reliance in ***M/s.Punjab Carbonic (P) Ltd v. The Commercial Tax Officer, Vizianagaram (W.P.No.12529 of 2024 decided on 21.04.2025).***

10. Learned counsel for the respondents submits that there was no fault on the part of the Department. The order of refund was passed within the statutory period of 90 days and the bill was sent to the Treasury on 26.06.2020. The Department had no control for credit of the amount due to C.F.M.S problem. Consequently, there would be no liability for payment of interest for actual payment of refund amount.

11. We have considered the aforesaid submissions and perused the material on record.

12. The claim for payment of interest on the refund amount is on the ground that there was delay in payment which was beyond the statutory period.

13. The question, therefore is, whether the impugned endorsement denying liability to pay interest is justified and whether the respondents can avoid the liability for the interest?

14. We shall refer to Section 38 of the APVAT Act and Rule 35 (8) of the Andhra Pradesh Value Added Tax (APVAT) Rules, 2005, on the subject as under:

*“38. Refund of Tax: (1)(a) A VAT dealer effecting sales falling under sub-section (1) or (3) of Section 5 [xxx] of the Central Sales Tax Act, 1956 in any tax period shall be eligible for refund of tax, if the input tax credit exceeds the amount of tax payable subject to the condition that the exports have been made outside the territory of India. **The excess of tax shall be refunded within a period of ninety days on a claim made on a VAT return** prescribed to the authority prescribed subject to the provisions of the Act and the rules made thereunder;*

Rule 35 (8)(a):

“ Where the VAT dealer makes a claim under Section 38, such refund shall be made within a period of ninety days of the date the return was due or the date the return is filed whichever is later.

(b) Where the VAT dealer fails to produce accounts or records required by the authority prescribed within seven days of date of issue of the notice, the time limit specified in clause (a) shall not apply.

*(c) Where the VAT dealer has produced accounts or records within the prescribed time limit, interest shall be payable at the rate of [one and quarter percent (1.25%)] per month from the date after the expiry of the ninety days **till the date of actual refund.***

The interest in respect of part of month shall be computed proportionately and for this purpose, month shall mean a period of thirty days.”

15. As per Section 38 r/w Rule 35(8) of the Rules, in clause (c), where the VAT dealer has produced accounts or records within the prescribed time limit, interest shall be payable at the rate of [one and quarter percent (1.25%) per month from the date after the

expiry of the ninety days on a claim made on VAT return, till the date of actual refund. So, the liability for payment of interest is from the date, after the expiry of 90 days, till the date of actual refund.

16. As per the impugned order/endorsement, the relevant dates mentioned therein are as under:

1.	Orders of the Commercial Tax Officer, Dwarakanagar Circle, Viskhapatnam as per the orders of the Hon'ble Supreme Court of India	A.O.No.202114 Dt.11.03.2020
2.	Refund claim of the dealer	Dt.16.03.2020
3.	Submitted the refund proposals to DC(CT), Visakahpatnam Division, Visakhapatnam	Rc.No.110/2019/SA-V dt.17.03.2020
4.	Final refund approval orders of the Joint Commissioner Refunds, Commissioner (CT), (Audits & Refunds), Vijayawada	JC(Ct) Ref.No.(R)/65/2020 dt.19.06.2020
5.	Bill sent to Treasury vide No.752944	26.06.2020

17. So, even as per the respondents' case, as per the dates, the final order of refund was not passed within 90 days of the claim for refund. So, the contention of the respondents; counsel that the order for refund was passed within 90 days is not correct.

18. Even if the order for refund be in 90 days, the expression used in Rule 35(8)(c) of APVAT Rules, 2005 is till the 'date of actual refund' and not till the date of passing of order of refund beyond 90 days.

19. It is one of the principles of interpretation that the words used in a statute are primarily to be given their plain meaning.

20. In **State of Maharashtra vs. Shri Vileparle Kelvani Mandal and others**¹, the Hon'ble Apex Court referring to the judgment in the case of **Giridhar G. Yadalam vs. CWT**² held that, in a taxing statute, it is the plain language of the provision that has to be preferred, where language is plain and is capable of one definite meaning. It was further observed that the purposive interpretation can be given only when there is some ambiguity in the language of the statutory provision. The Hon'ble Apex Court also referred to the case of **Godrej & Boyce Mfg. Co. vs CIT**³, in which it was observed and held that where the words of the statute are clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal

¹ (2022) 2 SCC 725

² (2015) 17 SCC 664

³ (2017) 7 SCC 421

view. It is the bounden duty and obligation of the court to interpret the statute as it is. It would be contrary to all rules of construction to read words into a statute which the legislature in its wisdom has deliberately not incorporated.

21. Paras 16 and 17 of *Shri Vileparle Kelvani Mandal (supra)* read as under:

*“16. In **Giridhar G. Yadalam (supra)**, it is observed and held that in a taxing statute, it is the plain language of the provision that has to be preferred where language is plain and is capable of one definite meaning. It is further observed that the strict interpretation to the exemption provision is to be accorded. It is observed that the purposive interpretation can be given only when there is some ambiguity in the language of the statutory provision or it leads to absurd results. In para 16, it is observed and held as under:*

“16. We have already pointed out that on the plain language of the provision in question, the benefit of the said clause would be applicable only in respect of the building “which has been constructed”. The expression “has been constructed” obviously cannot include within its sweep a building which is not fully constructed or in the process of construction. The opening words of clause (ii) also become important in this behalf, where it is stated that “the land occupied by any building”. The land cannot be treated to be occupied by a building where it is still under

construction. If the contention of Mr Jain is accepted, an assessee would become entitled to the benefit of the said clause, at that very moment, the commencement of construction even with construction the moment one brick is laid. It would be too far-fetched, in such a situation, to say that the land stands occupied by a building that has been constructed thereon. Even Mr Jain was candid in accepting that when the construction of building is still going on and is not completed, literally speaking, it cannot be said that the building “has been constructed”. It is for this reason that he wanted us to give the benefit of this provision even in such cases by reading the expression to mean the same as “is being constructed”. His submission was that the moment construction starts the urban land is put to “productive use” and that entitles the land from exemption of wealth tax. This argument of giving so-called purposive interpretation has to be rejected for more than one reasons. These are:

(i) In taxing statute, it is the plain language of the provision that has to be preferred where language is plain and is capable of one definite meaning.

(ii) Strict interpretation to the exemption provision is to be accorded, which is the case at hand.

(iii) The purposive interpretation can be given only when there is some ambiguity in the language of the statutory provision or it leads to absurd results. We do not find it to be so in the present case.”

17. In Godrej & Boyce Mfg. Co. (supra), it is observed and held by this Court that where the words of the statute are clear and unambiguous, recourse cannot be had to principles of interpretation other than the literal view. It is further observed that it is the bounden duty and obligation of the court to interpret the statute as it is. It is further observed that it is contrary to all rules of construction to read words into a statute which the legislature in its wisdom has deliberately not incorporated.”

22. In the **Commissioner of Customs (Import), Mumbai vs. Dilip Kumar and Company and others**⁴, the Constitution Bench of the Hon'ble Apex Court, referring to its previous pronouncements, held that, in interpreting the taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency. Para 34 of **Dilip Kumar and Company** (supra), reads as under:

⁴ (2018) 9 SCC 1

“34. The passages extracted above, were quoted with approval by this Court in at least two decisions being Commissioner of Income Tax vs. Kasturi Sons Ltd., (1999) 3 SCC 346 and State of West Bengal vs. Kesoram Industries Limited, (2004) 10 SCC 201 [hereinafter referred as ‘Kesoram Industries Case’ for brevity]. In the later decision, a Bench of seven Judges, after citing the above passage from Justice G.P. Singh’s treatise, summed up the following principles applicable to the interpretation of a taxing statute:

“(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency;

(ii) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and

(iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of Legislature’s failure to express itself clearly”.

23. The expression used in Rule 35(8)(c) is ‘actual refund’.

24. The word ‘Actual’ has been defined as follows:

“1. In Stroud’s Judicial Dictionary of Words and Phrases, 7th Edition, Volume 1,

ACTUAL. The word “actual” does not, usually, advance the meaning Speaking generally a thing is not more itself because it is spoken of as “actual”, nor is an act more done or enjoined because it is said, or required, to be “actually” done.

2. In Black’s Law Dictionary, 11th Edition

actual, adj. (14c) Existing in fact; real <actual malice>

3. In The Law Lexicon, 6th Edition

Actual. Real; existing in act as opposed to constructive or theoretical, or speculative, as in “actual possession” “actual seizure” “actual resident”.

In legal phraseology “actual” is used as the opposite of “constructive” or “virtual” or “symbolic” as in “actual delivery”.

4. In Oxford English Dictionary, 12th edition

actual/’aktfuəl, -tjuəl/ adj. 1 existing in fact; real. 2 existing now; current.”

25. The date of actual refund in the present case, is 31.03.2022, which is beyond the statutory period, on which there is no dispute.

26. In **Shree Bajarang Jute Mills Ltd., Guntur vs. State of Andhra Pradesh, represented by Deputy Commissioner of**

Commercial Taxes, Guntur⁵, the question was whether the sale to the Associated Cement Company Limited (ACC) might be recorded as “non-explanation sales”. In that context, explanation to [Art.286\(1\)\(a\)](#) of the Constitution of India was considered. The explanation used the expression “Goods have **actually been delivered**”. The Hon’ble Apex Court held that the expression “actually delivered” in the context in which it occurred could only mean physical delivery of the goods or such action has put the goods in the possession of the purchaser. It did not contemplate mere symbolical or notional delivery e.g. by entrusting the goods to a common carrier, or even delivery of documents of title like railway receipts. So, actual delivery, was held as physical delivery and putting the purchaser in possession of the goods. Not merely symbolical or notional delivery.

27. Para No.8 of **Shree Bajarang Jute Mills Ltd.**, (supra) reads as under:

“8. The facts found by the taxing authorities clearly establish that property in the goods despatched by the appellant

⁵ 1964 SCC OnLine SC 124

passed to the A.C.C. within the State of Andhra when the railway receipts were handed over to the agent of the A.C.C. against payment of price. The question still remains: were the transactions 'non-Explanation sales' i.e. falling outside the Explanation to [Art. 286\(1\)](#)? To attract the Explanation, the goods had to be actually delivered as a direct result of the sale, for the purpose of consumption in the State in which they were delivered. It is not disputed that the goods were supplied for the purpose of consumption outside the State of Andhra, and in the States in which they were supplied. It is submitted that the goods were actually delivered within the State, when the railway receipts were handed over to the agent of the buyer. But the expression "a actually delivered" in the context in which it occurs, can only mean physical delivery of the goods, or such action as puts the goods in the possession of the purchaser : it does not contemplate mere symbolical or notional delivery e.g. by entrusting the goods to a common carrier, or even delivery of documents of title like railway receipts. In [C. Govindarajulu Naidu & Company v. State of Madras](#)⁶ Venkatarama Ayyar, J., dealing with the concept of actual delivery of goods, so as to attract the application of the Explanation to [Art. 286\(1\) \(a\)](#) rightly observed:

"In the context it can mean only physical delivery and not constructive delivery such as by transfer of documents of title to the goods. The whole object of the Explanation is to give a power of taxation in respect of goods actually entering the State for the purpose of use therein and it will defeat such a purpose if notional delivery of goods as by transfer of

⁶ AIR (1953) Mad 116

documents of title to the goods within the State is held to give the State a power to tax, when the good are actually delivered in another State."

A similar view has been expressed in two other cases M/s. [Capco Ltd. v. The Sales Tax Officer and another](#)⁷ and [Khaitan Minerals v. Sales Tax Appellate Tribunal](#)

28. We are of the view that mere passing of the order within the period of 90 days would not be sufficient to avoid liability for payment of interest under Section 38 of the APVAT Act and Rule 35(8) of the APVAT Rules, 2005. The amount if not refunded actually within 90 days period from the date of claim made in a case covered by clause(c), there would be liability for payment of interest. So, the amount if not refunded actually within 90 days period, there would be liability for payment of interest. The actual date of payment in this case is beyond 90 days.

29. Nothing has been argued before us to take a different view and to apply a different rule of interpretation or construction to the words used 'actual refund'.

30. The submission raised that the Department is not at fault and had no control over the payment for processing the bills and so no

⁷ AIR (1960) All 62

liability for interest deserves rejection. The statute does not permit any reason as an excuse, for non-payment, within the statutory period. Such period is also not subject to extension on any ground. Once time has been prescribed by the statute for doing an act, it has to be done within the period prescribed and if not so done, the consequences provided under the statute shall necessarily follow.

31. In ***M/s. Venkateswara Electricals (W.P.No.4072 of 2022 decided on 09.03.2022(DB))*** (supra), actual refund was made beyond the period of 90 days. The reason assigned was that they were awaiting fund clearance. A Coordinate Bench held that the petitioner therein was entitled for interest on the belated payment.

32. The submission based on the judgment in suo motu WP(C) No.03/2020 also cannot be accepted. In ***M/s.Punjab Carbonic (P) Ltd (supra)***, a Coordinate Bench, of this Court, considering ***S.Kasi v. State through the Inspector of Police, Samaynallur Police Station, Madurai District***⁸, ***V-Guard Industries Limited v. The Commercial Tax Officer, Mangalagiri Circle***⁹ and ***Gobindo Das v. Union of India***¹⁰ and ***VIKAS WSP Ltd. V. Directorate***

⁸ 2020 SCC Online SC 529

⁹ (2022(3) ALD 77),

¹⁰ 2021 SCC OnLine Cal.2739

Enforcement¹¹ held that the extension of the limitation period due to Covid, would not be available to an authority acting under any statute.

33. Following the aforesaid judgment, any extension of the limitation period due to Covid, vide order in ***M/s.Punjab Carbonic (P) Ltd(W.P.No.12529 of 2024 decided on 21.04.2025)*** would not be available to the respondents. It has to be within the statutory period, without any extension of limitation period.

34. So, the grounds on which the impugned endorsement has been passed is unsustainable.

35. The petitioner/dealer would be entitled for the interest and such entitlement, in view of the mandate of the statutory provision, he cannot be deprived of.

36. The Writ Petition is allowed, quashing the endorsement dated 23.06.2023 and a direction is issued in a writ of Mandamus, to the respondents to make the payment of interest on the belated refund amount, for the belated period as per Section 38 of the Act r/w Rule 35(8) of the APVAT Rules, 2005 till the date of actual refund. There shall be no order as to costs in the writ petition.

¹¹ 2021(376) E.L.T. 201 (Del)

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

RAVI NATH TILHARI, J

SUBHENDU SAMANTA, J

Date: 21.11.2025

Note:

L.R.copy to be marked.

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*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA**

+ WRIT PETITION NO.5898/2024

% Dated: 21.11.2025

M/s.JBD Educational Pvt. LtdPetitioner

And

The State of Andhra Pradesh,
Rep. By its Principal Secretary and 5 othersRespondents

! Counsel for the Petitioner : Sri C.Sanjeeva Rao

^ Counsel for the Respondents : Sri Mannam Venkata Krishna Rao,
learned Government Pleader for Commercial Tax 1

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? Cases referred :

- 1. M/s. Venkateswara Electricals v. the State of Andhra Pradesh**(W.P.No.4072 of 2022 decided on 09.03.2022(DB)).
- 2. M/s.Punjab Carbonic (P) Ltd v. The Commercial Tax Officer, Vizianagaram (W.P.No.12529 of 2024 decided on 21.04.2025).**
- 3.** (2022) 2 SCC 725
- 4.** (2015) 17 SCC 664
- 5.** (2017) 7 SCC 421
- 6.** (2018) 9 SCC 1
- 7.** 1964 SCC OnLine SC 124
- 8.** AIR (1953) Mad 116
- 9.** AIR (1960) All 62
- 10.** 2020 SCC Online SC 529
- 11.** (2022(3) ALD 77),
- 12.** 2021 SCC OnLine Cal.2739
- 13.** 2021(376) E.L.T. 201 (Del)

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

WRIT PETITION NO.5898/2024

M/s.JBD Educational Pvt. LtdPetitioner

And

The State of Andhra Pradesh,
Rep. By its Principal Secretary and 5 othersRespondents

DATE OF ORDER PRONOUNCED: 21.11.2025

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. Yes/No
3. Whether Their Lordship wishes
to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

SUBHENDU SAMANTA, J

