

APHC010124482020



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

[3535]

FRIDAY, THE NINTH DAY OF MAY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

W.P.NOs: 7514 of 2020, 20411, 20429 & 20551 of 2021

W.P.No.7514/2020

Between:

M/s Acme Fitness Pvt Ltd

**...PETITIONER
(in all W.Ps)**

AND

The State Of AP and Others

**...RESPONDENT(S)
(in all W.P.s)**

Counsel for the Petitioner:

1.G V S Ganesh

Counsel for the Petitioner:

1.G. Tuhin Kumar

Counsel for the Respondent(S):

1.GP FOR COMMERCIAL TAX (AP)

The Court made the following Order:

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

Heard Sri G.V.S. Ganesh, learned counsel appearing for the petitioner
in W.P.No.7514 of 2020, Sri G. Tuhin Kumar, learned counsel appearing for

the petitioner in rest of the writ petitions and learned G.P. for Commercial Tax, appearing for the respondents.

2. The petitioner is a dealer in Gym Equipment and is registered under the A.P. Value Added Tax Act and Central Sales Tax Act. The petitioner, was paying tax at the rate of 5% on the sale of goods, by classifying the goods sold by him under Entry-60 of Schedule-IV of the AP VAT Act. The petitioner had filed his returns, under the Central Sales Tax Act. The 5th respondent passed the assessments orders against the petitioner in relation to various assessment periods in the following manner.

S.No	Writ Petition No.	Assessment Period	Impugned Assessment Order
1.	7514 of 2020	2015 - 2016	A.O.No. 166188 dated 31-08-2019.
2	20411 of 2021	2016-2017	A.O.No. ZH370321OD11236 dated 30-03-2021
3	20429 of 2021	01-02-2016 to 31-07-2017	A.O.ZH370421OD42108 dated 23-02-2021
4.	20551 of 2021	2017-2018	A.O.No. ZH370721OD44557

3. In all these cases, the 5th respondent took the view that the petitioner was not eligible for the concessional rate of 2%, as necessary C-Forms and F-forms have not been filed. Consequently, the rate of tax applicable to goods, under the State Act would be applicable. The petitioner

contended that the goods would fall under entry 60 of the IVth Schedule, to the A.P.VAT Act, attracting tax at the rate of 5%. The 5th respondent took the view that the goods sold by the petitioner do not fall under Entry-60 of Schedule-IV of the A.P. VAT Act and would have to be treated as unspecified goods under Schedule-V, which would be amenable to tax at the rate of 14.5%.

4. Sri G. Tuhin Kumar, learned counsel for the petitioner would submit that the goods sold by the petitioner, even according to the 5th respondent are weight lifting equipment, dumbbells, treadmill, rotators and fit-kit exercisers. Learned counsel would submit that all these goods are related to sporting activity and consequently, the petitioner was entitled to treat the said goods as falling under Entry-60 of Schedule-IV. Learned counsel would contend that the view of the 5th respondent, that these goods are not associated with any specific sport and consequently cannot be treated as sports goods, is not based on any proper logic. Apart from this, the learned counsel for the petitioner would also rely upon the judgment of the Hon'ble High Court of Uttarakhand at Nainital, in **Commercial Tax Revision No.12 of 2013, dated 11.03.2022**, in the case of **M/s. Bhatia Sports Company vs. The Commissioner, Commercial Tax, Uttarakhand**.

5. The learned Government Pleader would contend that the equipment mentioned above, are general fitness equipment and do not relate to any specific sports. He would submit that the goods in Entry-60 would have

to be the goods associated with a specific sport before they can be treated to be goods falling under that Entry.

6. Entry-60 of Schedule-IV to A.P. VAT Act, reads as follows:

“Entry-60:- Sports goods excluding apparels and footwear.”

7. By virtue of G.O.Ms.No.1615, dated 31.08.2013, the categorization of goods in the A.P. VAT Act had earlier relied upon HSN Codes prescribed under the Central Excise Act. HSN Code-9506 included articles and equipment for general physical exercise in the category of sports equipment. However, the Government by issue of G.O.Ms.No.140, dated 19.03.2013, had repealed G.O.Ms.No.1615 dated 31.08.2013. On account of this repeal, no reliance can be placed on the classification of goods through HSN Codes.

8. In the circumstances, this Court would have to, *de novo*, consider the question of whether the above goods would fall within Entry-60.

9. Weight lifting equipment, is connected to the sport of weight lifting and would therefore qualify to be treated as sports goods, even according to the interpretation placed by the 5th respondent that only goods which are directly associated with a sport can be treated as sports goods.

10. The other goods, such as treadmill, dumbbells, rotators and fit-kit exercise kit cannot be associated with any one specific sport. However, the fact remains that every sports person has to maintain physical fitness and the goods mentioned are used for maintaining such physical fitness. In such

circumstances, the goods mentioned above would also answer the description of sports goods as these goods are needed by sports persons to maintain themselves physically and to achieve the necessary physical fitness to participate in any physical sport.

11. We are fortified in this view by the judgment of the Hon'ble High Court of Uttarakhand at Nainital, which had considered the question of categorization of similar goods. The Division Bench of the Hon'ble High Court of Uttarakhand, following the judgment of the Hon'ble High Court of Allahabad, in the case of **Cosco Industries Ltd., vs. State of U.P. & Ors.**,¹, had held as follows:

“5. Applying this principle to this case, we hold that Entry No.106 of Schedule II(B) provides for sports goods excluding apparels and footwear, and it is liable to tax @ 4%. Fitness exercises are also held to be goods relating to sports and games by the aforesaid judgment. The learned Tribunal, however, did not accept the view taken by the Hon'ble High Court of Allahabad only on the ground that HSN Code was not provided in the VAT Act, 2005, which was drawn under the Uttar Pradesh Value Added Tax Act.

6. We are unable to agree with the view taken by the learned Tribunal in view of the fact that the question is whether fitness equipment and other equipment of exercises are sports good, or not. Whether HSN Code was provided, or not, was not the question.

¹ 2009 NTN (Vol.40)

12. In that view of the matter, all the writ petitions are allowed and the orders of assessment, set out above, are set aside. The matters are remanded back to the Assessing Officer for passing fresh orders, after treating the goods in question, as goods falling within Entry-60 of Schedule-IV to the A.P. VAT Act. There shall be no order as to costs.

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

R. RAGHUNANDAN RAO, J

B.V.L.N. CHAKRAVARTHI, J

Js.

THE HON'ABLE SRI JUSTICE R RAGHUNANDAN RAO
AND
THE HON'BLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

W.P.NOs: 7514 of 2020, 20411, 20429 & 20551 of 2021

(per Hon'ble Sri Justice R Raghunandan Rao)

9th May, 2025

Js.