



MAJESTY LEGAL
Advocates & Solicitors

**INVOCATION OF SECTION 21(5) OF AP VAT ACT REQUIRES PROOF OF WILLFUL
SUPPRESSION**

“CHAKKAS ENTERPRISES V. THE CHIEF COMMISSIONER OF STATE TAXES & OTHERS”

Hon’ble Andhra Pradesh High Court, in case of *Chakkas Enterprises v. The Chief Commissioner of State Taxes & Others*¹, held that the mention of "suppression of facts" or "willful suppression of facts" leading to "willful evasion of tax" is a prerequisite for invoking Section 21(5) of the A.P. Value Added Tax Act, 2005. In this case, an assessment order was passed against petitioner, of which he became aware only after his bank accounts and immovable property were attached. Assessing Officer contended that the order was based on a "best judgment assessment."

Hon’ble Court emphasized that for a best judgment assessment, there must be clear proof of suppression of facts, particularly willful suppression resulting in tax evasion, to invoke Section 21(5) of the Act. It further observed that the assessment was entirely based on the returns filed by the petitioner and lacked such proof. Additionally, Hon’ble Court noted that order was issued beyond the limitation period.

Consequently, the impugned order was set aside.

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¹ W.P.No.30501/2023 & W.P.No.16819/2024

² Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

APHC010590822023



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

[3488]

WEDNESDAY, THE FIFTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FIVE
PRESENT

**THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO
THE HONOURABLE SRI JUSTICE HARINATH.N**

W.P.NO: 30501/2023 & W.P.No. 16819/2024

W.P.No.30501/2023

Between:

Chakkas Enterprises

...PETITIONER

AND

The Chief Commissioner Of State Taxes and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.PEDDIBHOTLA VENKATA SAI RAJESH

Counsel for the Respondent(S):

1.GP FOR COMMERCIAL TAX

WRIT PETITION NO: 16819/2024

Between:

Chakka Sundara Raja

...PETITIONER

AND

The State Of Ap and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.PEDDIBHOTLA VENKATA SAI RAJESH

Counsel for the Respondent(S):

1.GP FOR COMMERCIAL TAX

2.GP FOR REGISTRATION AND STAMPS

The Court made the following Common Order:

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

Heard Sri P. Venkata Sai Rajesh, learned counsel appearing for the petitioner and learned Government Pleader for Commercial Tax appearing for respondents 1 to 3.

2. These two writ petitions have been filed by the same petitioner in relation to tax demand arising for the tax period 02.06.2014 to 13.06.2017 and the consequent order dated 16.09.2021 in relation to attachment of property and bank accounts of the petitioner.

3. The petitioner is registered as a dealer under the A.P. Value Added Tax Act, 2005 (for short 'the Act') and has been filing his returns in relation to the tax period mentioned above. The Commercial Tax Officer, Addanki Circle, had passed an assessment order, dated 24.08.2021, and a subsequent notice of penalty dated 16.09.2021. The petitioner contends that he did not receive these orders or notices until the bank accounts of the petitioner were attached and subsequently immovable property of the petitioner was also attached for recovery of the amounts, which arose out of the order of assessment, dated 24.08.2021.

4. The petitioner had initially challenged only the orders of attachment of the bank account and the immovable property. However, after

receipt of the order of assessment, the petitioner has amended the prayer in W.P.No.30501 of 2023 raising a challenge to the assessment order also.

5. The case of the petitioner is that the tax period in question ends on 30.06.2017 and consequently the limitation for issuing an assessment order under Section 21 (4) of the Act is restricted to four years from the end of the period, which would be 30.06.2021. However, the order has been passed on 24.08.2021 and is consequently beyond limitation and nonest.

6. The Assessing Officer has filed a counter affidavit stating that the petitioner had deliberately avoided service of notices and deliberately refused to cooperate with the Assessing Officer. She would also contend that the notice of the order was sent to the last known business address of the petitioner by registered post and the same had been served on 28.07.2021 itself. The Assessing Officer would also contend that subsequent penalty notice, dated 16.09.2021, was also sent to the business address of the petitioner, under registered post, and the same was served on 04.10.2021. The Assessing Officer, after contending that the writ is not maintainable as there is an effective alternative remedy of appeal, would also contend that the provisions of Section 21(5) would be applicable wherein the period of limitation would be six years, ending on 30.06.2023.

7. The learned Government Pleader for Commercial Tax would contend that the impugned assessment order came to be passed, on a best judgment assessment basis, in view of the refusal of the petitioner to attend to

the assessment proceedings and in view of the fact that no books of accounts or other material have been placed before the Assessing Officer. Learned G.P. would contend that in such circumstances, it would have to be held that there is willful suppression of facts, due to which provisions of Section 21(5) of the Act would be applicable.

8. A perusal of the impugned order would show that the entire order goes on the basis of best judgment assessment, relying upon the returns filed by the petitioner. There is nowhere any mention of suppression of facts, much less, willful suppression of facts, resulting in willful evasion of tax, which is the *sine qua non*, for invoking Section 21(5) of the Act. In such circumstances, the provisions of Section 21(5) of the Act would not be applicable and the period of limitation would be four years, as set out under Section 21(4) of the Act.

9. As the impugned assessment order has been passed beyond the period stipulated under Section 21(4) of the Act, it must be held that the impugned order is beyond limitation and non-est.

10. Accordingly, both the writ petitions are allowed setting aside the impugned assessment order of the Commercial Tax Officer, Addanki Circle, dated 24.08.2021 and penalty notice dated 16.09.2021. Consequently, all the consequential proceedings of attachment of bank account as well as the immovable property of the petitioner are also set aside. There shall be no order as to costs.

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

R. RAGHUNANDAN RAO, J

HARINATH.N, J

Js.

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO
&
HON'BLE SRI JUSTICE HARINATH. N

W.P.No.30501 of 2023

And

W.P.No.16819 of 2024

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

5th February, 2025

Js