

Supply of food and beverages to hostel students cannot be treated as sale of goods – Andhra Pradesh HC

13 February 2023



Summary

The Andhra Pradesh High Court (HC) has held that the sale of food and beverages to hostel students by the petitioner, which is an educational institution, cannot be treated as sale of goods. The HC stated that the principal function of the petitioner is to impart education with a non-commercial motive and running of the hostel is incidental to the main activity. The petitioner, in its hostel, supplies food to the students, but the said activity is not done in the course of the business of running a restaurant, eating house or a hotel. Therefore, though the petitioner charges subsidised prices from the students for the supply of the food items and beverages, it cannot be treated as sale of goods to bring under the purview of the Andhra Pradesh Value Added Tax Act, 2005 (AP VAT Act). Hence, the inclusion of the petitioner's institution in the category of dealer for the purpose of the AP VAT Act and assessing the same to tax is not correct.

Facts of the case

- The Bhartiya Vidya Bhavan's residential public school (hereinafter referred to as Petitioner) is a school established by the society's philanthropist with an object to provide education on a non-profit basis. The petitioner is one of the schools sponsored by the Bhartiya Vidya Bhavan in the state of Andhra Pradesh.
- The petitioner's school receives donations from the society and institutions that are eligible for exemption under Section 80(g) of the Income Tax Act, 1962. The petitioner remits surplus (if any) to the Bhartiya Vidya Bhavan Society.
- The petitioner has been directed to obtain registration under the AP VAT Act. Subsequently, it has been issued an assessment order proposing to levy VAT on the ground that the petitioner sells food items in the course of the business of running a restaurant/hotel.
- The petitioner has contended that it is engaged in providing education to children, and this activity will not qualify as an activity connected with trade, commerce or manufacture. Also, the supply of food to the students is not being made in the course of business and running a restaurant.

Andhra Pradesh HC Observations and ruling (Writ Petition no. 7417 of 2006 dated 30 January 2023) :

- **Principal function is imparting education:** The fundamental or principal activity of the petitioner's educational institution is not that of buying, selling, supplying or distribution of the goods. Its function is to rather impart education, that too on a non-

profit motive. The petitioner, in its hostel, supplies food to the students, but the said activity is not done in the course of the business of running a restaurant, eating house or a hotel.

- **Supply of food items and beverages to hostel student cannot be treated as sale of goods:** The principal function of the petitioner is to impart education with a non-commercial motive and running of the hostel is incidental to the main activity. Therefore, though the petitioner charges subsidised prices from the students for the supply of the food items and beverages, it cannot be treated as sale of goods to bring under purview of the AP VAT Act.
- **Categorisation of petitioner as a dealer under VAT is incorrect:** Section 2(10) (d) of the AP VAT Act specifically refers to only a restaurant or eating house or a hotel, but the word 'hostel' is not specifically included therein. Therefore, the HC has held that categorising the petitioner as a dealer under VAT and assessing tax liability thereon is incorrect.
- **Maintainability of writ petition as order passed without jurisdiction:** The HC observed that the impugned assessment order passed by the authorities is wholly without jurisdiction, as the petitioner does not come under the purview of 'dealer' as per the provisions of the AP VAT Act. Thus, it has held that the present writ petition is maintainable before the HC. Accordingly, the petition is allowed, and the order of the authorities is held as illegal, arbitrary, and contrary to the provisions of the AP AT Act.

Our comments

On a similar issue earlier, even the Allahabad High Court, in the case of the Indian Institute of Technology, had ruled that the provision of food is a minor, ancillary, and incidental aspect of the main activity, which was imparting education. As a result, the petitioner cannot be categorised as a dealer under the Allahabad VAT Act.

The service provided by an educational institution to its students, members, and staff, including the supply of food and beverages, have been exempted even under the GST law. The Board, vide its Circular No. 85/04/2019-GST dated 1 January 2019, has clarified that the supply of food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself, is exempt since the inception of GST. However, such supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST@5%.

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