

IN THE HIGH COURT OF ANDHRA PRADESH: AT AMARAVATI

WRIT PETITION No.11644 of 2023

Between:

M/s. BALAJI READY MIX CONCRETE, TRILOCHANAPURAM,
MULAPADU VILLAGE, KRISHNA DISTRICT, REP. BY ITS
MANAGING PARTNER, SRI NIMMAGADDA RAMESH, S/O
HANUMANTHA RAO, AGED ABOUT 52 YEARS.

.. PETITIONER

And

UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
MINISTRY OF FINANCE, 4TH FLOOR, A-WING, SHASTRI
BHAWAN, NEW DELHI-110001 AND TWO OTHERS

.. RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 29.01.2026

**THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY
AND
THE HON'BLE SRI JUSTICE TUHIN KUMAR GEDELA**

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 Reports/Journals?	Yes/No
3.	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

CHEEKATI MANAVENDRANATH ROY, J

TUHIN KUMAR GEDELA, J

*** THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY
AND
THE HON'BLE SRI JUSTICE TUHIN KUMAR GEDELA**

+ WRIT PETITION No. 11644 of 2023

% DATE: 29.01.2026

M/s. BALAJI READY MIX CONCRETE,
TRILOCHANAPURAM, MULAPADU VILLAGE, KRISHNA
DISTRICT, REP. BY ITS MANAGING PARTNER, SRI
NIMMAGADDA RAMESH, S/O HANUMANTHA RAO,
AGED ABOUT 52 YEARS.

.. PETITIONER

Vs.

\$ UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF FINANCE, 4TH FLOOR,
A-WING, SHASTRI BHAWAN, NEW DELHI-110001, AND
TWO OTHERS

.. RESPONDENTS

! Counsel for the petitioner : Dr. M.V.K. Moorthy for
Mr. M.V.J.K. Kumar

^Counsel for respondents : Mr. B.V.S. Chalapathi Rao
Y.V. Anil Kumar

< Gist:

➤ Head Note:

? CASES REFERRED:

1. MANU/UC/0390/2024 : 2024(90) G.S.T.L.242
2. (2018) 3 SCC 782
3. (2018) 4 SCC 669

APHC010220402023



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

[3558]

THURSDAY, THE TWENTY NINETH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY
AND
THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA
WRIT PETITION No.11644 of 2023

Between:

1. M/s. BALAJI READY MIX CONCRETE, TRILOCHANAPURAM,
MULAPADU VILLAGE, KRISHNA DISTRICT, REP. BY ITS
MANAGING PARTNER, SRI. NIMMAGADDA RAMESH, S/O
HANUMANTHA RAO, AGED ABOUT 52 YEARS

...PETITIONER

AND

1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
MINISTRY OF FINANCE, 4TH FLOOR, A-WING, SHASTRI
BHAWAN, NEW DELHI-110001.
2. THE JOINT COMMISSIONER (CT), OFFICE OF THE
COMMISSIONER CENTRAL TAX, GST BHAVAN, KANNAVARI
THOTA, GUNTUR-522004.
3. THE ADDITIONAL COMMISSIONER (CT), OFFICE OF THE
COMMISSIONER CENTRAL TAX, GST BHAVAN, KANNAVARI
THOTA, GUNTUR-522004.

...RESPONDENT(S):

Counsel for the Petitioner:

1.M V J K KUMAR

Counsel for the Respondent(S):

1.B V S CHALAPATI RAO

2.Y V ANIL KUMAR (Central Government Counsel)

The Court made the following:

**THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY
AND
THE HON'BLE SRI JUSTICE TUHIN KUMAR GEDELA**

WRIT PETITION No.11644 of 2023

O R D E R: (*Per Hon'ble Sri Justice Cheekati Manavendranath Roy*)

Challenge in this writ petition is to the order dated 27.03.2023 bearing No.GUN-GST-000-JC-78/2022-2023-GST passed by the Joint Commissioner (CT), Guntur, whereby he has levied tax on the value of the material that was supplied free of cost to the petitioner by its contractees/service recipients for the manufacture of site mix/ready mix concrete.

2. Heard Dr. M.V.K. Moorthy, learned counsel for the petitioner, and Mr. B.V.S. Chalapathi Rao, learned Senior Standing Counsel for CBIC, for the respondents.

3. Brief overview of the facts leading to the *l/s* in this writ petition may be stated as follows:

(i) The petitioner is a partnership firm engaged in rendering the services of supplying site mix/ready mix concrete. The petitioner is a taxable person in terms of the registration certificate issued under the provisions of the Central Goods and Services Tax Act, 2017 (for short, 'the CGST Act').

(ii) M/s. BGR Energy Systems Limited and M/s. RVR Projects Private Limited have placed orders with the petitioner for supply of site mix/ready mix concrete at their sites in Ibrahimpatnam and Tatakuntla of Krishna District. The said site mix/ready mix concrete is to be prepared by the petitioner by using various components. Cement, admixture and waterproofing material are also the relevant

components to be used in preparation of the said site mix/ready mix concrete. The contractees, M/s. BGR Energy Systems Limited and M/s. RVR Projects Private Limited, have supplied the said three components i.e., cement, admixture and waterproofing material to the petitioner free of cost to use the same in preparing the site mix/ready mix concrete. The cost of the other components used in preparing the site mix/ready mix concrete was borne by the petitioner. By utilizing the said materials supplied free of cost by the contractees along with the other components cost of which was borne by the petitioner, the petitioner has completed the manufacture of the site mix/ready mix concrete and supplied the same.

(iii) The total value of the materials supplied free of cost to the petitioner by M/s. BGR Energy Systems Limited and M/s. RVR Projects Private Limited worked out to Rs.19,83,01,024/- . While paying the tax under the Act on the value of the taxable supplies made by it, the petitioner did not include the said value of the materials supplied to it free of cost by the aforesaid two companies. On the ground that the petitioner has undervalued the cost of the site mix/ready mix concrete supplied by it by excluding the value of the said materials received by it free of cost, which resulted in short payment of tax, the Joint Commissioner (CT) has initiated investigation and ultimately, by the impugned order, he has levied tax of Rs.3,56,94,184/- on the value of the above three components supplied to the petitioner free of cost by the service recipients.

4. Aggrieved thereby, the petitioner is before this Court by way of filing this writ petition, questioning the legal validity of the impugned order in imposing tax on the value of the said material supplied to it free of cost.

5. Therefore, whether the value of the material i.e., cement, admixture and waterproofing material, which is supplied free of cost to the petitioner, is exigible to tax or not is the short question that arises for our determination in this writ petition.

6. The legal position in this regard is not *res integra* and the same has been well settled by the Apex Court.

7. Before considering the legal position, be it noted here itself that the fact that the contractees/service recipients, Ms/. BGR Energy Systems Limited and M/s. RVR Projects Private Limited have supplied the three components, namely cement, admixture and waterproofing material, which are the essential components required for the purpose of manufacturing the site mix/ready mix concrete, free of cost to the petitioner, is absolutely not disputed in this writ petition and it is an incontrovertible fact. Learned Senior Standing Counsel appearing for the respondents fairly conceded that it is a fact that the said material has been supplied free of cost to the petitioner.

8. Now, it is relevant to note at the very outset that the Central Board of Indirect Taxes and Customs, GST Policy Wing, Department of Revenue, Ministry of Finance, Government of India, has issued Circular bearing No.47/21/2018-GST in F.No.CBEC-20/16/03/2017-GST, clarifying certain issues under the GST laws. Considering certain representations received seeking clarification on certain issues under the GST laws, the said Circular was issued. One of the clarifications sought is relating to the issue whether the moulds and dies owned by the original equipment manufacturers that are sent free of cost to a component manufacturer is leviable to tax or not and whether the reverse input tax credit is required to be imposed or not. Answering the same, it is clarified that as moulds and dies are owned by the

original equipment manufacturer and as they are provided to a component manufacturer free of cost, it does not constitute a supply, as there is no consideration involved in the transaction and that there is no requirement for reversal of input tax credit availed on such moulds and dies by the original equipment manufacturer. It is further clarified that while calculating the value of the supply made by the component manufacturer, the value of moulds and dies provided by the original equipment manufacturer to the component manufacturer on free of cost basis shall not be added to the value of supply, as the cost of moulds and dies was not to be incurred by the component manufacturer and it does not merit inclusion in the value of supply in terms of Section 15(2)(b) of the CGST Act.

9. Thus, as per the above clarification given in the said Circular, it is obvious that when certain components, which are required for manufacture of a product, are supplied free of cost to the service provider or manufacturer, the value of the same is not eligible to tax. In other words, it is made clear that the value of the material that is supplied free of cost for manufacture of a product that is ordered is not eligible to tax.

10. A similar issue as to whether the value of the material supplied free of cost to the service provider by the service recipient is eligible to tax or not came up for consideration before the High Court of Uttarakhand in the case of **New Jai Hind Transport Service v. Union of India**¹. In the said case, diesel was supplied free of cost to the petitioner therein, who was rendering transport services, by the service recipient, as per the agreement entered into between them. Considering the clarification issued in the aforesaid Circular and the

¹ MANU/UC/0390/2024 : 2024(90) G.S.T.L.242

law enunciated by the Apex Court in **Commissioner of Service Tax v. Bhayana Builders (P) Limited**² and **Union of India v. Intercontinental Consultants and Technocrafts Pvt. Ltd.**³, wherein it is clearly held that the value of the materials/goods supplied free of cost by the service recipient to the service provider is not includable in the value of service, the High Court of Uttarakhand held that no tax can be levied on the fuel supplied free of cost to the petitioner therein and the value of free fuel cannot be added to the value of taxable supply.

11. In the judgment rendered in the case of **Commissioner of Service Tax v. Bhayana Builders (P) Limited** (2 supra), the Apex Court has considered the issue whether the value of materials/goods supplied free of cost by the service recipient to the service provider/ assessee is to be included to arrive at the ‘gross amount’ charged by the service provider for valuation of taxable service. Having examined both the original and amended provision of Section 67 of the Finance Act, which deals with the valuation of taxable services for charging service tax, the Apex Court held as under at para 13 of the judgment:

“A plain meaning of the expression ‘the gross amount charged by the service provider for such service provided or to be provided by him’ would lead to the obvious conclusion that the value of goods/material that is provided by the service recipient free of charge is not to be included while arriving at the ‘gross amount’ simply, because of the reason that no price is charged by the Assessee/service provider from the service recipient in respect of such goods/materials...”

²(2018) 3 SCC 782

³(2018) 4 SCC 669

12. Thus, the legal position is very clear from the conspectus of law enunciated in the above referred judgments that the value of the material which is supplied free of cost is not exigible to tax and no tax can be levied on it.

13. Contrary to the said settled legal position, the Joint Commissioner (CT) has imposed tax on the value of the material that was supplied free of cost to the petitioner, by the impugned order. Therefore, the impugned order is clearly unsustainable under law and the same is liable to be set aside.

14. *In fine*, the writ petition is allowed. The impugned order dated 27.03.2023 passed by the Joint Commissioner (CT), levying tax on the value of the material supplied free of cost to the petitioner, is hereby set aside.

15. This Court, by interim order dated 06.05.2024, directed that no further coercive action shall be taken pursuant to the impugned order, subject to the petitioner depositing 15% of the disputed amount within three weeks. The amount deposited in terms of the said interim order shall be refunded to the petitioner.

As a sequel, interlocutory applications, if any pending, in this case shall stand closed. There shall be no order as to costs.

JUSTICE CHEEKATI MANAVENDRANATH ROY

JUSTICE TUHIN KUMAR GEDELA

Date: 29.01.2026

Note:- LR Copy to be marked.
(B/o) IBL

**THE HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY
AND
THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA**

WRIT PETITION No.11644 of 2023



Dt: 29.01.2026

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