IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 4TH DAY OF JUNE 2024 / 14TH JYAISHTA, 1946

WP(C) NO. 31559 OF 2019

PETITIONER:

M/S M.TRADE LINKS
FA TOWER, K.K.ROAD,KADAVANTHRA, ERNAKULAM, REPRESENTED BY NIYAS AHAMMED, MANAGING PARTNER.

BY ADVS.
SMT.MEERA V.MENON

RESPONDENTS:

1 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY OF FINANCE (DEPARTMENT OF REVENUE), NORTH BLOCK, NEW DELHI-110001.

2 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
GST POLICY WING, NORTH BLOCK, NEW DELHI-110001, REPRESENTED BY PRINCIPAL COMMISSIONER (GST).

3 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, TAXES DEPT., GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695001.

BY ADV SREELAL N. WARRIER, SC, CENTRAL BOARD OF EXCISE & CUSTOMS

SRI. MUHAMED RAFIQ-SPL.GP, SRI.P.R. SREEJITH -SC, GSTN,

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08.11.2023, ALONG WITH WP(C).5995/2022, 21545/2022 AND CONNECTED CASES, THE COURT ON 04.06.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 4TH DAY OF JUNE 2024 / 14TH JYAISHTA, 1946

WP(C) NO. 25891 OF 2020

PETITIONER:

PUTHANANGADI INDUSTRIES
VI/70, INDUSTRIAL DEVELOPMENT PLOT, CHAMBANNOOR P.O., ANGAMALI, ERNAKULAM-683573, REPRESENTED BY ITS MANAGING PARTNER TITTO THOMAS.

BY ADVS.
K.P.PRADEEP
SHRI.HAREESH M.R.
SRI.T.T.BIJU
SMT.T.THASMI

RESPONDENTS:

1 THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY(TAXES), GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, KERALA-695001.

2 COMMISSIONER OF KERALA STATE GST,
KERALA STATE GST DEPARTMENT, TAX TOWERS, KILLIPALAM, KARAMANA P.O., THIRUVANANTHAPURAM, KERALA-695002.

3 STATE TAX OFFICER,
ANGAMALY, KERALA STATE GOODS AND SERVICE TAX DEPARTMENT, ANGAMALY P.O., ERNAKULAM-683572.

4 CHIEF COMMISSIONER OF CENTRAL TAXES,
((CGST) AND CENTRAL EXCISE), CENTRAL REVENUE BUILDINGS, I.S.PRESS ROAD, COCHIN, ERNAKULAM-682018.

5 GOODS AND SERVICE TAX COUNCIL,
GOVERNMENT OF INDIA, OFFICE OF THE GST COUNCIL SECRETARIAT, 5TH FLOOR, TOWER II, JEEVAN BHARTI BUILDING, JANPATH ROAD, CONNAUGHT PLACE, NEW DELHI-110001, REPRESENTED BY ITS ADDITIONAL SECRETARY.

6 GOODS AND SERVICES TAX NETWORK,
EAST WING, 4TH FLOOR, WORLD MARK-1, AEROCITY, NEW DELHI-110037, REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.

7 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI-110001.

8 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS-DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI-110001, REPRESENTED BY ITS CHAIRMAN.

9 MR.LIJU JOSE,
ANNA PLASTICS, 10/585 A, THATHAPILLY, MANNAM, NORTH

LEGAL Tax

PARAVUR, ERNAKULAM-683520.

BY ADVS.

SRI.P.R.SREEJITH, SC, CENTRAL BOARD OF EXCISE AND CUSTOMS

ADV SREELAL N. WARRIER, SC, CENTRAL BOARD OF EXCISE & CUSTOMS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08.11.2023, ALONG WITH WP(C).31559/2019 AND CONNECTED CASES, THE COURT ON 04.06.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 4TH DAY OF JUNE 2024 / 14TH JYAISHTA, 1946

WP(C) NO. 26515 OF 2021

PETITIONER:

MKHK TECHSTREAM PRIVATE LIMITED
1ST FLOOR. 1/3459 Q M.T.I COMPLEX, KANNUR ROAAD, WESTHILL, KOZHIKODE-673 005 .REPRESENTED BY ITS MANAGING DIRECTOR, HARIS IBRAHIM

BY ADVS.
K.P.ABDUL AZEES
AKHIL SURESH
T.ARCHANA

RESPONDENTS:

1 INFINITE TECHNOLOGY SOLUTIONS
MERLIN INFINITE, 10TH FLOOR, PLOT NO 51, BLOCK DN, SECTOR-V, BIDHAANAGAR, IN THE DISTRICT OF NORTH 24 PARGANAS WITHIN STATIONS ELECTRONICS COMPLEX SALT LAKE CITY, KOLKATTA-700091

2 UNION OF INDIA
REPRESENTED BY REVENUE SECRETARY, NORTH BLOCK, NEW DELHI-110 001

3 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, NEW DELHI-110 001

4 STATE OF KERALA,
REPRESENTED BY SECRETARY, TAXES DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM -695 001.

5 STATE TAX OFFICER,
1ST CIRCLE, STATE GST COMPLEX, KOZHIKODE-673 004

BY ADVS.
SRI. MUHAMED RAFIQ-SPL.GP
ADV SREELAL N. WARRIER, SC, CENTRAL BOARD OF EXCISE & CUSTOMS.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08.11.2023, ALONG WITH WP(C).31559/2019 AND CONNECTED CASES, THE COURT ON 04.06.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 4TH DAY OF JUNE 2024 / 14TH JYAISHTA, 1946

WP(C) NO. 5995 OF 2022

PETITIONER:

M/S.LALUKKAS MOBILES
VI/1227, PAMPADY, KOTTAYAM - 686502, REPRESENTED BY ITS PROPRIETOR, SRI. BYJOO PUTHANPARAMPIL SUKUMARAN.

BY ADVS.
AJI V.DEV
ALAN PRIYADARSHI DEV
S.SAJEEVAN

RESPONDENTS:

1 THE ASSISTANT COMMISSIONER
STATE GOODS & SERVICES TAX DEPARTMENT, 2ND CIRCLE, KOTTAYAM - 686001.

2 UNION OF INDIA
REPRESENTED BY ITS SECRETARY (REVENUE), MINISTRY OF FINANCE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI - 110001.

3 THE CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS
REPRESENTED BY ITS CHAIRMAN, DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI - 110001.

4 THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TAXES, SECRETARIAT, THIRUVANANTHAPURAM - 695001.

BY ADV SREELAL N. WARRIER, SC, CENTRAL BOARD OF EXCISE & CUSTOMS
SRI. MUHAMED RAFIQ-SPL.GP, SRI.P.R. SREEJITH -SC, GSTN,

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08.11.2023, ALONG WITH WP(C).31559/2019 AND CONNECTED CASES, THE COURT ON 04.06.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 4TH DAY OF JUNE 2024 / 14TH JYAISHTA, 1946

WP(C) NO. 21545 OF 2022

PETITIONER:

M/S. ULTRAPRIME CEMENTS INDIA PVT. LTD.,
23/22-B, PATTASSERIL, BHS ROAD, TRIPUNITHURA - 682 301,
ERNAKULAM DISTRICT, REPRESENTED BY ITS MANAGING DIRECTOR
ARUN JIMMY.

BY ADV TOMSON T.EMMANUEL

RESPONDENTS:

1 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS ,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NEW DELHI -
110 023, REPRESENTED BY ITS UNDER SECRETARY.

2 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF TAXES,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

3 COMMISSIONER OF STATE TAX
STATE GOODS AND SERVICE TAX DEPARTMENT, 9TH FLOOR, TAX
TOWER, KILLIPALAM, KARAMANA P.O., THIRUVANANTHAPURAM - 695
001.

4 STATE TAX OFFICER
STATE GST DEPARTMENT, 1ST CIRCLE, THRIPUNITHURA - 682 301.

5 THE COMMISSIONER OF CUSTOMS (IMPORTS)
OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOM HOUSE,
WILLINGTON ISLAND, COCHIN - 682 009.

6 THE DEPUTY COMMISSIONER
CUSTOM HOUSE, WILLINGTON ISLAND, COCHIN - 682 009.

7 THE DIRECTOR(ICD)
CENTRAL BOARD OF EXCISE AND CUSTOMS, ROOM NO.49, NORTH
BLOCK, NEW DELHI.

BY ADV SMT.PREETHA S. NAIR, SC, CENTRAL BOARD OF EXCISE
AND CUSTOMS
ADV SREELAL N. WARRIER, SC, CENTRAL BOARD OF EXCISE &
CUSTOMS.
SRI. MUHAMED RAFIQ-SPL.GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08.11.2023, ALONG WITH WP(C).31559/2019 AND CONNECTED CASES, THE COURT ON 04.06.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 4TH DAY OF JUNE 2024 / 14TH JYAISHTA, 1946

WP(C) NO. 27854 OF 2022

PETITIONER:

YOHANAN THYPARAMPIL EASOW,
VI/445, THYPARAMBIL HOUSE, KEEKOZHUR, PIN - 689672
BY ADVS.
K.S.HARIHARAN NAIR
HARIMA HARIHARAN
G.REMADEVI
RAJATH R NATH

RESPONDENTS:

1 STATE TAX OFFICER,
OFFICE OF THE STATE TAX OFFICER (WC), SGST DEPT, MINI CIVIL STATION, PATHANAMTHITTA, PIN - 689645

2 UNION OF INDIA
REPRESENTED BY SECRETARY, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI, PIN - 110001
BY ADV SREEJITH P. R, SC, GSTN
SRI. MUHAMED RAFIQ-SPL.GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08.11.2023, ALONG WITH WP(C).31559/2019 AND CONNECTED CASES, THE COURT ON 04.06.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 4TH DAY OF JUNE 2024 / 14TH JYAISHTA, 1946

WP(C) NO. 24327 OF 2022

PETITIONER/S:

P.J. GEORGE(PROPRIETOR)
M/S JANATHA AGENCIES, ALAPPATT PALATHINGAL HOUSE,
IRINJALAKKUDE, THRISSUR., PIN - 680121
BY ADV P.N.DAMODARAN NAMBOODIRI

RESPONDENTS:

1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, NEW DELHI., PIN - 110023

2 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF TAXES,
SECRETARIAT, THIRUVANATHAPURAM., PIN - 695001

3 COMMISSIONER
STATE GOODS AND SERVICE TAX DEPARTMENT,9TH FLOOR, TAX
TOWER, KILLIPALAM, KARAMANA, P.O., THIRUVANATHAPURAM,
PIN - 695001

4 STATE TAX OFFICER
STATE GST DEPARTMENT, O/O STATE GOODS AND SERVICES TAX
DEPARTMENT, IRINJALAKUDA, THRISSUR, PIN - 680121

BY ADV MALINI K. MENON, CGC
SRI. MUHAMED RAFIQ-SPL.GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08.11.2023, ALONG WITH WP(C).31559/2019 AND CONNECTED CASES, THE COURT ON 04.06.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 4TH DAY OF JUNE 2024 / 14TH JYAISHTA, 1946

WP(C) NO. 36612 OF 2022

PETITIONER:

SALAHUDHEEN
KAPPAKASSERIL STORES, NEAR PARK JUNCTION, KAYAMKULAM - 690502, ALAPPUZHA DISTRICT., PIN - 690502

BY ADV A.KRISHNAN

RESPONDENTS:

1 STATE TAX OFFICER
STATE GOODS & SERVICE TAX DEPARTMENT, MINI CIVIL STATION, KAYAMKULAM, ALAPPUZHA DISTRICT, PIN - 690502

2 JOINT COMMISSIONER APPEALS II
STATE GOODS & SERVICE TAX DEPARTMENT, KOLLAM, PIN - 691002

3 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY OF FINANCE (DEPARTMENT OF REVENUE), NORTH BLOCK, NEW DELHI, PIN - 110001

4 CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS,
GST POLICY WING, NORTH BLOCK, NEW DELHI - 110 001, REPRESENTED BY PRINCIPAL COMMISSIONER (GST), PIN - 110001

5 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT, TAXES DEPT., GOVT. SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

BY ADVS.
SRI. MUHAMED RAFIQ-SPL.GP
SREELAL N. WARRIER, SC, CENTRAL BOARD OF EXCISE & CUSTOMS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08.11.2023, ALONG WITH WP(C).31559/2019 AND CONNECTED CASES, THE COURT ON 04.06.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 4TH DAY OF JUNE 2024 / 14TH JYAISHTA, 1946

WP(C) NO. 24677 OF 2023

PETITIONER:

CHALLIYIL VIJAYAN SHAN
II, 568, PARAMBIKKULANGARA, METHALA, THRISSUR, PIN - 680669

BY ADVS.
K.N.SREEKUMARAN
P.J.ANILKUMAR (A-1768)
N.SANTHOSHKUMAR

RESPONDENTS:

1 ASSISTANT COMMISSIONER (WC & LT)
WORKS CONTRACT, STATE GOODS & SERVICE TAX DEPARTMENT
POOTHOLE, THRISSUR, PIN - 680004

2 DEPUTY COMMISSIONER
ARREAR RECOVERY, TAX PAYER SERVICES, STATE GOODS & SERVICE TAX DEPARTMENT, POOTHOLE, THRISSUR, PIN - 680004

3 COMMISSIONER OF STATE GOODS & SERVICE TAX DEPARTMENT
TAX TOWER, 9TH FLOOR, KILLIPPALAM, KARAMANA-P.O, THIRUVANANTHAPURAM-, PIN - 695002

4 STATE OF KERALA REPRESENTED BY ADDITIONAL CHIEF SECRETARY (TAXES)
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

5 UNION OF INDIA, REPRESENTED BY ITS SECRETARY
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI, PIN - 110001

SRI. MUHAMED RAFIQ-SPL.GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08.11.2023, ALONG WITH WP(C).31559/2019 AND CONNECTED CASES, THE COURT ON 04.06.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 4TH DAY OF JUNE 2024 / 14TH JYAISHTA, 1946

WP(C) NO. 37039 OF 2023

PETITIONER/S:

M/S. MALL OF JOY PVT LIMITED,
AGED 42 YEARS
9/590-39 NEAR SAKTHAN STAND THRISSUR REPRESENTED BY ITS' DIRECTOR, SHRI. TENSON. T.T, PIN - 680001

BY ADVS.
A.KUMAR
P.J.ANILKUMAR
G.MINI(1748)
P.S.SREE PRASAD

RESPONDENTS:

1 UNION OF INDIA
THROUGH ITS SECRETARY (REVENUE), MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI G.P.O., PIN - 110001

2 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY (TAXES), DEPARTMENT OF FINANCE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

3 ASSISTANT COMMISSIONER
OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE THRISSUR DIVISION, THRISSUR, PIN - 680021

4 THE SUPERINTENDENT,
CENTRAL TAX AND CENTRAL EXCISE THRISSUR DIVISION, THRISSUR, PIN - 680021

BY ADVS.
SRI. MUHAMED RAFIQ-SPL.GP
ADV SREELAL N. WARRIER, SC, CENTRAL BOARD OF EXCISE & CUSTOMS.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08.11.2023, ALONG WITH WP(C).31559/2019 AND CONNECTED CASES, THE COURT ON 04.06.2024 DELIVERED THE FOLLOWING:

JUDGMENT **'CR'**

[W.P(C) Nos. 31559/2019, 25891/2020, 26515/2021,5995/2022,21545/2022, 27854/2022, 24327/2022, 36612/2022, 24677/2023, 37039/2023]

In the present batch of writ petitions, challenge has been made to Sections 16(2)(c) and 16(4) of the Central Goods and Services Tax Act and State Goods and Services Act, 2017.

Background:

2. It took 13 long years, i.e., 2004-2017, for Goods and Services Tax to finally arrive in India, and a new tax regime could see the light of the day with effect from 01.07.2017. The Kelkar Committee used the word 'GST' for the first time in a formal document, i.e., the Executive Summary of the Kelkar Committee report. The Kelkar Committee proposed that the Union and the States should concurrently tax the consumption of almost all goods and services in the economy, and it should be based on the principles of Value Added Tax (for short 'the VAT'). All existing legislation taxing goods and services with cascading effects should be withdrawn. The GST would subsume existing indirect taxes including central excise and service tax.

2.1 'A White Paper on State-Level Value Added Tax' ('the white paper') was published by the Empowered Committee of the

State Finance Ministers on 17.01.2005. The 'White Paper' discussed features such as Input Tax Credit ('the ITC' for short), multiplicity of rates and taxes, etc., and provides uniform taxes and rates. In the budget speech for the Financial Year 2006-2007, the then Finance Minister announced a large consensus on a national goods and services tax. An empowered committee was constituted to prepare a road map for a National GST. In the budget speech of the Union Finance Minister 2009-2010, GST was considered as a dual tax structure consisting of central GST and State GST, legislated and administrated by the Central and States, respectively.

3. The 13th Finance Commission also made recommendations on Central and State GST. The Commission on Central – State Relations 2010, headed by former Chief Justice of India, Madan Mohan Punchi J, broadly agreed with the suggestions and the recommendations of the 13th Finance Commission. The Central-State relation Commission recommended the concurrent levy of dual GST by the Central and the States on a common tax base.

4. The Constitution (115th Amendment) Bill 2011 was introduced in the Lok Sabha to provide the legal and constitutional structure for rolling out GST and empower the Central and States to levy dual GST on a common tax base. However, before the

Standing Committee report could be considered, the 15th Lok Sabha was dissolved, and the Bill lapsed.

5. The second attempt was made by introducing the 122nd Amendment Bill in 2014, the said Bill was passed on 08.08.2016, received the Presidential assent and became the Constitution (101st Amendment) Act 2016.

6. Article 246-A was inserted, providing the establishment of the Goods and Services Tax Council, which came into force on 12.09.2016 to provide a constitutional mandate for legislation of the GST Act. The remaining Sections of the Constitution (101st Amendment) Act 2016 came into force with effect from 16.09.2016.

7. The President of India Constituted the Goods and Services Tax Council (GST Council) on 15.09.2016. The GST Council was to make recommendations to the Union and the States *inter-alia* on model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-state trade and commerce and principles that govern the place of supply. The GST Council prepared the model GST law, model IGST law, and GST compensation law. With some modifications, those model GST laws prepared by the GST Council became the draft for the Central Goods and Services Tax Bill, the Integrated Goods and Services

Tax Bill, the Union Territory Goods and Services Tax Bill, the Goods and Services Tax (Compensation to States) Bill and State Goods and Services Tax Bill. These Bills were debated and passed by the Lok Sabha, and thus, the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act came into life.

8. The GST laws have been enacted to overcome the difficulties of the multiple tax regimes and to get away from the tariff and non-tariff barriers such as entry tax, check post, etc., which would hinder the free flow of trade throughout the Country. The earlier tax regimes of the States would divide the country into separate economic spheres, and a larger number of taxes would create high compliance costs for the taxpayers besides cascading effects on the value of goods to the consumers. Under the new tax regime, all earlier taxes, such as sales tax and other taxes, would get subsumed in a single tax called the Goods and Services Tax, which would be levied on the supply of the goods or services or both at each stage of supply starting from manufacture or import until the last retail level. The GST Act confers the power upon the Central Government to levy goods and services tax on the supply of goods, services or both which take place within a State. In the Statement of Objects and Reasons of Bill, it has been said that the

GST regime would reduce the cost of production and inflation in the economy, thereby making the Indian trade industry more competitive, domestically as well as internationally. Seamless transfer of input tax credit from one station to another in the chain of value addition would incentivise tax combines by taxpayers. GST would broaden the tax base, resulting in better tax combined with the help of Robots Information Technology Infrastructure. In essence of GST has been contemplated as tax on value addition. Cascading tax effects are sought to be avoided by a continuous chain of set-offs from original suppliers to retailers.

9. 'One India, One market and One tax' is the mantra of the GST regime. The structure of GST is of a destination-based consumption tax with input tax credit of the tax paid on goods or services at each stage available in the next stage of value addition for avoiding cascading effects irrespective of the destination, be it an inter-state supply or intra-state supply.

10. The flow of ITC along with the supply chain of registered persons by removing the cascading effect on one hand and the tax collection by the self-assessment method in every tax period, on the other hand, is to happen simultaneously in every financial year. Section 12 provides the taxing event. Section 12(1) specifies that the liability to pay tax on goods shall arise at the time of supply either be the date of issue of invoice by the supplier

or the last date, which is required under Section 31 to issue the invoice with respect to the supply on the date on which the supplier receives the payment with respect to the supply. Section 13 provides that the liability to pay tax on services shall arise at the time of supply which may be the date of issue of invoice by the supplier or, if the invoice is issued within the period prescribed under Section 31 or the date of receipt of payment whichever is earlier, or the date of provision of service if the invoice is not issued within the time period prescribed under Section 31 or the date of receipt of payment or the date on which the recipient shows the receipt of services in his books of account. Section 15 provides that the value of the supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both, provided the recipients and the supplier are not related, and the price is the sole consideration for the supply.

Statutory Prescription:

11. As is evident from the Statement of Objects and Reasons of the GST Bill, pre-GST tax regimes on the supply chain of goods and services had the biggest drawback of the cascading effect of taxes as the right to set-off was not available under pre-GST tax regimes prevailing in the Central and the States. Input

Tax Credit appears to be an essential part of the GST regime. The GST Act provides for Input Tax Credit in four stages.

1) Entitlement to input tax credit under Section 16 of the Act subject to the conditions/restrictions prescribed.

2) Claiming input tax credit and provisional credit in the electronic credit ledger under Sections 41(1), 43A and 49(2).

3) Utilisation and making payment of the input tax credit under Section 41(2) and Section 49(4).

4) Refund of the balance if any under Section 54.

Section 16 which provides for eligibility and conditions for taking input tax credit reads as under-:

Section 16. Eligibility and conditions for taking input tax credit.-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2)Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed

1[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

2[**Explanation**.- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

3[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

(c) subject to the provisions of 4[section 415[***]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be[paid by him along with interest payable under section 50], in such manner as may be prescribed:

Providedalso that the recipient shall be entitled to avail of the credit of input tax on payment made by him 10[to the supplier] of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the6[thirtieth day of November] following the end of financial year to which such invoice or7[****] debit note pertains or furnishing of the relevant annual return, whichever is earlier.

8[**Provided** that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said

> section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section till the due date for furnishing the details under sub-section (1) of said section for the month of March 2019.]"

12. Each registered person is allotted three ledgers: (1) an electronic cash ledger, (2) an electronic credit ledger, and (3) an electronic liability ledger. The electronic cash ledger shows the cash available for settling the tax and related liabilities; the electronic credit ledger shows the input tax credit available to the registered person, and the electronic liability ledger shows the registered person's tax and any other liability. Admissible input tax is credited to the taxable person's electronic credit ledger. This amount represents the actual tax paid by the taxable person to his supplier, which in turn is paid to the Government, and subsection 4 of Section 49 enables the taxable person to pay his output tax utilising the balance available in the electronic cash ledger. In effect the tax already paid by the taxable person is allowed to be set off against the output tax liability.

13. The input tax credit is not an absolute right but is an entitlement subject to conditions and restrictions under the provisions of the Act and is to be availed in a specified manner.

14. Section 16(2) prescribes four conditions to avail the input tax credit

a) Possession of tax invoice, debit note or other prescribed tax payment document.

b) Receipt of goods or services or both

c) Actual payment of taxes for supply

d) Furnishing of the return

These four conditions are cumulative and not alternative. Clause (b) of Sub-section 2 mandates the receipt of goods or services for claiming the input tax credit. Clause (c) of Section 2 mandates the payment of tax to the Government by cash or by utilizing the input tax credit. The input tax so utilized must be admissible in respect of the supply. The utilization of input tax credit is under Section 41 or Section 43A as may be applicable.

15. Filing of returns is prescribed under Chapter IX of the CGST Act. Section 37 of the CGST Act provides for filing of the return in the prescribed form by the seller effecting outward supply. Section 37(1) of the CGST Act mandates furnishing electronically the details of outward supplies of goods or services or both effected during the tax period on or before the 10th day of the month succeeding the said tax period. Such details are to be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed. Rule 59 of the GST prescribes FORM GSTR-1. The details of the inward supplies are to be furnished by the recipient of the supply in FORM GSTR-

2. On the basis of the details already furnished, a dealer is required to furnish monthly returns in FORM GSTR-3 and GSTR-3B. A dealer is eligible for the input tax credit under Section 16 of the Act in respect of purchases effected from registered dealers, who have already collected tax from the seller dealer. The details of such inward supplies are to be uploaded by the dealer in FORM GSTR-2. The supplier is bound to upload the details of sales effected by him to the purchaser dealer in FORM GSTR-1. The purchaser dealer would file the monthly returns in FORM GSTR-3 by taking credit of the input tax credit available pursuant to FORM GSTR-2 filed by him. Only the net liability after deducting the input tax credit is required to be satisfied by the purchaser. Section 16(2)(c) restricts the claim of input tax by a purchasing dealer to the extent of the tax charge against the supply of goods has been paid to the Government by the supplier of goods. If the supplier dealer does not remit the tax collected from the purchasing dealer, the latter is denied the benefit of the input tax credit.

16. Rule 36 of the GST prescribes the documentary requirements and conditions for claiming the input tax credit. Rule 36 of the GST Act reads as under:

> "(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;
(c) a debit note issued by a supplier in accordance with the provisions of section 34;
(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1)of rule 54.
(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document,
2[**Provided** that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.]
(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.
3[(4)No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub- section (1) of section 37 unless,-
*the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1**or using the invoice furnishing facility; and
*the details of 4[input tax credit in respect of] such invoices or debit notes have been communicated to the registered person in **FORM GSTR-2B** under sub-rule (7) of rule 60."

17. Thus, if a purchasing dealer has documents in its possession as mentioned in Rule 36, he may avail the input tax credit in respect of invoices/debit notes, the details of which are to be furnished under Section 37(1) provided that the tax of such invoices and debit notes has been furnished by the supplier in the statement of output supplies in FORM GSTR-1 or using revise furnishing facility; and the details of input tax credit in respect of

such invoices and debit notes has been communicated to the registered persons in FORM GSTR -2B.

Submissions on behalf of the petitioners:

18. The petitioners have submitted that the petitioners who were registered dealers under the provisions of the CGST Act and KSGST Act, 2017 are being denied the claim of input tax credit despite they are in possession of valid tax invoice, proof of payment of value of goods along with GST components to the respective suppliers and receipt of the goods. It is submitted that in some cases respective supplier had remitted the tax (GST) but not reflected in their return GSTR due to some technical reasons. Another category of petitioners is those who have received the goods or services and have valid tax invoices, proof of payment of the value of goods along with the GST component to the respective suppliers, but the respective suppliers had not remitted the GST on the supply made by them to the petitioners. The third category of petitioners are those who are in possession of an invoice but have no clear proof of payment of consideration or tax towards the inward supply and might not have received goods in their possession. The first out of the three categories of the petitioners, who are recipients of the goods supplied to them by the supplier dealers, their case is covered in Circular No.183/15/2022-GST

dated 27.12.2022 issued by the Central Board of Indirect Taxes and Customs.

19. It is submitted on behalf of the petitioners that the GSTR-2A is an auto-populated, dynamic, read-only document containing details of inward supplies based on details of outward supplies filed by the purchasing dealer. FORM GSTR-2A is only a facilitator for making a confirmed decision while doing self-assessment. Non-performance or non-operability of FORM GSTR-2A or, for that matter, the other forms should be of no avail because a registered person is obliged to submit a return on the basis of such self-assessment in the Form prescribed manually on an electronic platform. Non-availability of the payment of tax in GSTR-2A cannot impact the entitlement of the taxpayers to avail the input tax credit on the self-assessment basis in consonance with the provisions of Section 16 of the GST Act. It is further submitted that the CBIC in its press release dated 18.10.2018, has clarified that furnishing of output details in FORM GSTR-1 by the corresponding supplier(s) and the facility to view the same in FORM GSTR-2A by the recipients is in the nature of taxpayer facilitation and does not impact the entitlement of taxpayer to avail ITC on self-assessment basis in consonance with the provisions of Section 16 of the Act. It is therefore, submitted that the claim for input tax credit, for which the recipient is otherwise

eligible, should not be denied merely on the difference between GSTR-2A and GSTR-3B.

20. It is also submitted that Section 155 of the GST Act causes a burden upon the recipient of goods or services to prove the genuineness of the ITC claimed by him. Section 155 of the GST Act prescribes that "Where any person claims that he is eligible for an input tax credit under this Act, the burden of proving such claim shall lie on such person."

21. The submission is that if the recipient dealer has in his possession, documents as mentioned in Rule 36 i.e., valid tax invoice, proof of payment of value of goods along with GST component to the respective supplier and the actual receipt of goods, it should be considered that he has discharged the burden under Section 155 regarding the genuineness of the ITC claim by him. The recipient dealer cannot be burdened to ensure that the supplier of goods and services has paid the tax and such a condition would be absolutely impossible for the recipient dealer to comply with.

22. The maxim *lex non cogit ad impossibilia* means that law does not compel a man to do anything in vain or impossible or do something which he cannot possibly perform. It is within the power of the State to collect and recover taxes, and this duty

cannot be passed on to the recipient dealer, if the supplier dealer does not pay the tax though collected from the recipient dealer.

23. It is further submitted that there could be two possible situations which may arise in the case of claim of ITC by the purchaser dealer:

(i) Though the recipient dealer has in his possession all the documentary evidence as provided under Rule 36 to prove the eligibility of the claim of ITC, but supplier dealer has omitted to pay the output tax, and the Government fails to recover the tax from the supplier dealer, in such a situation, though the recipient dealer has paid the tax on inward supplies received from the supplier dealer but the recipient dealer would not be entitled to claim the input tax credit. The recipient dealer has no means to force the supplier to make the payment and therefore, the doctrine of impossibility would be applicable in such a situation; and (ii) where the revenue is able to recover the tax from the supplier dealer along with the interest applicable and penalty under Sections 73 or 74 of the GST Act, however, the recipient dealer would be denied the claim of input tax credit as the said tax would not get reflected in GSTR-2A. This situation would lead to unjust enrichment of the Government as on the same taxable transaction, the Government would collect tax from the recipient dealer and also from the supplier along with interest and penalty, as there is

no provision for refunding the amount collected from the recipient in cases where the department successfully recovers the unpaid tax from the supplier who had defaulted. It is therefore, submitted that Section 16(2)(c) is in violation of Article 19(1)(g) of the Constitution of India. It is further submitted that this provision either be declared unconstitutional or read down and should be held that GSTR 2A is an auto-populated dynamic document based on GSTR 1 filed by the supplier dealer. GSTR-2A is a read-only document and the recipient dealer does not have any means to edit or modify the data in it, therefore, any missing invoice details in GSTR-2A due to the supplier dealer failing to furnish the correct details or otherwise should not be a basis for denying the input tax credit to a recipient dealer if his claim is genuine and *bona fide* and he has relevant documents in his possession to prove his claim as the recipient dealer has no means to compel the suppliers to file their returns on the statutory form.

24. It is submitted on behalf of the petitioners that by invoking the provisions of Section 16(2)(c) of the GST Act, to deny input tax credit to the *bona fide* purchaser dealers, the respondents would be treating both the purchaser dealers who collude with the supplier dealers to claim false credit of ITC and innocent and *bona fide* purchaser dealers who have paid the tax to the supplier dealers equally. Section 16(2)(c) confers unchecked

powers on the respondent authorities to treat *bona fide* and genuine purchaser dealers and guilty purchasers alike. This equal treatment of *bona fide* or innocent purchasers and guilty purchasers is violative of Article 14 of the Constitution of India. It is further submitted that denial of ITC to a *bona fide* purchaser dealer who is the recipient of the goods because of the default of the supplier dealer in not making the payment of GST, though the supplier dealer has collected it from the recipient of the goods would tantamount shifting the incidence of tax from supplier to the recipient. Denying of ITC to the *bona fide* purchaser dealer for default of supplier dealer over whom the purchaser dealer has no control, is an arbitrary and irrational exercise of powers, and such a provision is an infarction of the equality clause enshrined under Article 14 of the Constitution of India.

25. It is further submitted that the claim of ITC is a right of the recipient dealer and not a concession given by the taxing authorities under the statute. The input tax credit under the GST Act is the property of the recipient dealer, and denying the credit for default of the supplier dealer would be violative of Article 300 A of the Constitution of India, which provides that no person shall be deprived of his property, save by the authority of law.

26. The GST regime has been brought in to provide a uniform tax on the supply of goods and services across the country

and to avoid cascading effects on such supply. The ITC is the very basis of the GST regime. The tax structure under the GST is heavily dependent on ITC being available to the recipient dealer. The recipient dealer would depend heavily on the credit available to him under the Act for discharging his outward tax liability. If the eligible tax credit is blocked or denied or it is made to reverse credit already taken, it affects the business operation of the recipient dealer. It is the submission of the Counsel for the petitioners that Section 16(2)(c) is a violation of Article 19(1)(g) of the Constitution of India, inasmuch as the denial of eligible input tax credit affects the business operation of the recipient dealer. It is submitted that Section 16(2) (c) of the GST imposes an unreasonable and onerous condition and gives unequal treatment to the *bona fide* recipient of the goods and services. The section does not provide any measure for compliance by the supplier dealer for making payment collected from the recipient dealer, and therefore, the said provision falls foul of Articles 14 and 19 of the Constitution of India.

27. It has also been submitted on behalf of the petitioners that furnishing of outward details in GSTR-1 by the corresponding supplier dealers and the facility to view the same in GSTR-2A by the recipient dealer are in the nature of facilitation and should not have an impact upon the ability of the recipient dealer to avail ITC

on self-assessment basis as is the general mandate of Section 16 of the Act. In the alternative, it is submitted that the provision of Section 16(2)(c) may be read down and if the recipient dealer sufficiently establishes that he has paid the tax to the supplier and the default is on the part of the supplier dealer, the ITC should not be denied to the recipient dealer and the action should be taken against the supplier dealer who has defaulted in posting the tax collected from the recipient dealer. In the absence of any finding about the recipient dealer's mala fide intention, connivance or wrongful association with the supplier, the eligible ITC should not be denied to the recipient dealer on account of the fraudulent conduct of the supplier dealer. If the recipient dealer is in possession of the requisite documents to substantiate the claim of eligibility for ITC, it should be considered that the recipient dealer has discharged the burden of proof under Section 155 of the GST Act.

28. Section 16(2)(c) requires the payment of taxes to the Government to be eligible for availing the credit of input tax, subject to the provisions under Section 41. Section 41(1) provides that every registered person shall be entitled to avail the credit of eligible input tax, 'as self-assessed', in his return. Section 41(2) provides that when the supplier fails to pay the tax payable, the input tax availed by the registered persons shall be reversed along

with interest. Proviso to Section 41 provides that once the supplier makes the payment of tax, payable to the Government, the registered person can re-avail the same.

29. The only requirement to avail ITC is the payment of tax by the supplier. The language used by the legislation if closely examined, the underlying intention of the legislature is that the ITC under the GST Act is in the nature of right, inasmuch as Section 16(1) which is the enabling provision guarantees the registered persons to take credit for input tax paid by him on the supply of goods or services or both received by him. The language of Section 16(1) makes it clear that the input tax credit is a matter of right. This entitlement to ITC follows from complying with the conditions and is subject to the restrictions contained in Section 49 of the Act. Section 49 makes it clear that the ITC, 'as self-assessed in the return,' shall be credited to the electronic credit ledger of the registered person in accordance with Section 41. From reading the provisions of Sections 16(1), 41 and 49, it would be clear that the ITC is nothing but the right of the recipient dealer. Under Section 16(1) registered person 'shall be entitled' to take credit of ITC. This phrase would show the mandatory effect of the provision. Entitlement means rights of certain benefits and privileges. The submission is that the ITC is a matter of right and not a concession. Denial of ITC on a mismatch with the figure

mentioned in the auto-populated documents in FORM GSTR-2A is unjustified. Authorities must conduct an enquiry and should verify the documents in possession of the purchaser or the recipient dealer to ascertain the *bona fide* of such a dealer in claiming the ITC on supplies received from the supplier dealer. Section 16(2) begins with a non-obstinate clause and prescribes certain restrictions and conditions for availing ITC by the recipient dealer. If the supplier dealer after collecting the tax from the recipient dealer has not paid the same to the Government, the recipient dealer cannot be held liable for such conduct of this supplier dealer, and if the recipient dealer in his self-assessed returns has claimed the ITC for which such dealer has documentary evidence to support the same, denial of the rightful claim of ITC would run against the very scheme of the GST regime as provided under the GST Act. It is further submitted that the Central Board of Indirect Tax and Customs realised this difficulty and issued Circular No. F&C 49/21/2016-GST and Circular No.59/33/2018-GST dated 04.09.2018 giving clarification to refund related issues. The circular states that the refund claim shall be accompanied by a printout of FORM GSTR-2A of the claimant for the relevant period for which the refund is claimed. It is further stated that the proper officer shall treat FORM GSTR-2A as evidence itself. However, while FORM GSTR-2A does not contain the details of all invoices

related to the ITC availed, the proper officer should call for such invoices if he deems it necessary for the examination of the claim for refund; the same is the case where the ITC is sought to be set off against the other levies.

30. On behalf of the petitioners, it is submitted that Section 16(4) is a procedural provision, and by recourse to the procedural provision, the substantive right of the taxpayer, i.e., the claim of ITC on the inward supply, cannot be defeated. Input Tax Credit is the core concept of the GST regime as it avoids the cascading effect of taxes and ensures that tax is collected in the State where goods, services, or both are consumed.

31. Filing of returns with late fees and interest cures the defect of late filing. Once a return has been filed with a late fee, by applying the provisions of Section 16(4) of limitation, the substantial claim of the dealer should not be defeated regarding ITC, which is otherwise admissible to him under the provisions of the Act. Once the returns are accepted with the late fee, the dealer should be eligible for the ITC. Once the delay is regularised, such returns are to be construed to be filed within the due date. Section 47 of the Act provides for the filing of returns with late fees, and if a dealer files the return beyond the due date with late fees, such returns should be accepted without applying the rigour of limitation prescribed under Section 16(4) of the Act.

32. It is submitted that the provisions of Section 16(4) of the Act are arbitrary in nature and hence violative of Articles 14 and 19(1)(g) of the Constitution of India. The assessee cannot be made to suffer by disallowing ITC on account of the failure on the part of the Department to notify the FORM GSTR-2 and GSTR-3 respectively. It is also submitted that the retrospective amendment to Rule 61 of the CGST Rules, 2017 is also unconstitutional, being violative of Article 14 of the Constitution. Similarly, retrospective amendment to Rule 61(5) of the Rules is also unconstitutional, being violative of Article 279A of the Constitution of India.

33. Delay in making the entries within the time fixed should not be the basis for denying the benefits of ITC. It is further submitted that ITC is a facility of credit, and it is in the nature of vested rights. The credit earned under the GST Act is the property of the taxable person, and therefore, the denial of ITC would be in violation of Article 300A of the Constitution of India. This substantial benefit cannot be denied due to the procedural lapse of mere non-disclosure in GSTR-3B within the due date. Since, the details of ITC are already available in GSTR-2A, which is available with the Department prior to the due date prescribed under Section 16(4), and the availment of ITC would be a mere disclosure in GSTR-3B, therefore, the substantial benefit cannot be denied due to procedural lapse of mere non-disclosure in GSTR-3B

within the due date. Denying of ITC to a dealer and levying tax, interest and penalty for not filing the return within the stipulated time under Section 16(4) of the Act would lead to significant financial setbacks for the registered suppliers/recipients of goods and services. This also results in double taxation in the form of collecting tax from the purchaser and supplier on the same goods or services due to procedural error. The legislative intent behind inserting Section 16(4) can never be to take away the ITC which is made eligible by following the broad scheme of the law. It will never be the intent of the legislature to take away the claim or the benefit from one hand and give it to another. The purpose of Section 16(4) is to ensure that the ITC should be taken in a timely manner within the specified time limit in the Books of Accounts of the registered tax person. Section 16(4) of the Act does not permit to avail ITC relating to the preceding financial year in case of delayed filing of the subsequent year's September month GSTR-3B. Considering the intricacies, and complexity associated with return filing during the initial years of GST, Technical glitches, frequent amendments, the careful process followed in ascertaining eligible ITC, knowledge level of the taxpayer in understanding the flow of credit through a dynamic return GSTR 2A and other related factors should be considered, and therefore, if the returns have been filed beyond the time prescribed with late fees, the

dealers should not be denied of his claim for ITC as reflected in GSTR 2A.

34. Sri. Dr K.P. Pradeep has submitted that Section 16(4) providing a time limit to claim the ITC by purchasing dealer/recipient dealer is arbitrary and unreasonable. It is settled law that even the provision of a taxing statute or even the taxing statute in its entirety can be tested for its constitutionality in the exercise of the power of judicial review by a Constitutional court. If there is a manifest arbitrariness in the provision itself or the provision is unjust or discriminatory in nature, the said provision can be struck down as being violative of the Constitution. If a taxing statute violates the principle of equality or is discriminately unreasonable and arbitrary, it would be violative of Articles 14 and 19(1)(g) of the Constitution of India. The condition that unless the return in Form 3B is filed within the stipulated time, the recipient dealer would not be entitled to ITC is arbitrary, unjust, and liable to be struck down.

35. It is also submitted that the supplier dealer acts as an agent of the Government to collect tax from the recipient dealer. The recipient dealer would pay the tax to the supplier dealer while receiving the supply of goods or services from him, and the supplier dealer collects tax on behalf of the Government to be deposited by him with the Government. It is submitted that though

the tax has been collected by the Government through the supplier dealer, the ITC would be disallowed to the recipient dealer on the ground that he could not file the return in GSTR-3B on time and did not claim the ITC within the time specified under Section 16(4). It is also submitted that it amounts to double taxation; the recipient dealer would have already paid the tax on the supply received to the Government through the supplier dealer, but if he, for any reason, has not filed the return on GSTR-3B claiming ITC on time, he would have to pay entire tax with interest and penalty. It is, therefore, submitted that such a condition of claiming ITC by filing GSTR-3B on time is unreasonable and arbitrary against the spirit of the GST regime.

36. It is further submitted that the objective of implementation of the GST regime by introducing Article 246A and enacting the GST Acts is not simply to generate revenue and collect tax by providing modes of levy and collection. The main objective is to avoid cascading effects on the supply chain of goods and services and ease the taxing administration. The provision of Section 16(4) runs contrary to the said objective of the legislation and, in effect, is punitive. Section 16(4) is in contradiction with the policy framework under the Constitution, particularly Articles 246A, 286, 366(12A) and (26A).

37. Dr. Pradeep Kumar, learned counsel for the petitioner, also submits that Section 39 provides for the furnishing of returns within the prescribed time. However, under Section 39(6), the Commissioner may, by notification, extend the time limit for furnishing the returns for a particular class of registered persons as may be specified, for reasons to be recorded in writing.

38. Section 16(4), however, provides for a statutory stipulation of a time limit for filing the return in GSTR -3B in claiming the ITC. Section 44 of the Act provides for filing the annual return for every financial year on or before the 31st day of December following the end of such financial year. However, the time limit prescribed under Section 16(4) is 30th November, and it is not subject to any change. It also provides a rider that the claim should be made before 30th November or before the date of furnishing the relevant annual return, whichever is earlier. By reading the provision of Sections 39,41,44 and 50, which permit relaxation in furnishing returns, permits filing returns with late fees and payment of tax with interest on the late period. The provision under Section 16(4) mandating submission of a claim for ITC within a particular time should be read as a directory and not mandatory.

39. In the alternative, Dr Pradeep Kumar submits that by Sections 100 of the Finance Act, 2022, Act 6 of 2022, the due date

for furnishing of return under Section 39 in the month of September has been substituted with 30th day of November in Section 16(4). It is submitted that the said substitution should apply retrospectively from 01.07.2017 to 30.11.2022, as it is only a procedural aspect. The amendment has been introduced to ease the difficulties pointed out. In several cases which are pending before the Court, the claim was made before 30th November, but in the relevant period, it was 20th October, which was the due date for furnishing the return under Section 39 for the month of September. It is submitted that if the retroactivity is given to the amended provision, the registered person can overcome the present difficulties. Learned counsel for the petitioners also submitted that this court may read down Section 16(4) to give effect to the amended provision of providing the 30th day of November for the due date for furnishing the return under Section 39 for the month of September with effect from 01.07.2017, considering the peculiar nature of difficulties in initial period of implementation of the GST regime.

40. The liability to tax arises at the time of supply. Although, the due date for filing the return can vary according to the notified dates. Return means to disclose the liability as per the books of account. The actual availment of credit happens in the books of account, and it is merely disclosed through return. It is,

therefore, submitted that the availment of ITC is not dependent on the filing of GSTR-3B. If an assessee can prove with evidence that the credit was availed in the books of account within the time limit prescribed in Section 16(4), claim the ITC would be in compliance with Section 16(4). The filing of return in GSTR-3B is, therefore, only a condition precedent for allowing the claim of ITC, which has been claimed in the books of account.

Submissions of the Respondents: -

41. On behalf of the respondents, it is submitted that under the GST laws, the tax collected has to be assigned to the jurisdiction where consumption takes place. The ITC, therefore, crosses a State during inter-state supplies. The GST Act prescribes the conditions, restrictions, time limit and the manner for availing ITC. These conditions, restrictions etc along with other provisions form the legal fulcrum that balances three requirements:

a) granting of ITC for removing cascading effect.

b) Achieving collection of Tax by self-assessment method for each financial year; and

c) ITC transfer compliance to the destination state on inter-state- supplies- (through the IGST mechanism where the Centre collects tax equivalent to (CGST and SGST).

42. An inter-state supplier in the originating / exporting State uses his CGST / SGST credits for payment of IGST collected

from the recipient. The recipient based in the destination State will discharge his output tax liability (CGST+SGST) by claiming credit for the IGST he paid to the inter-state supplier in the originating State. The Centre and originating State have an obligation to transfer the CGST and SGST component utilized by the inter-state supplier to the IGST Account to make it available for the destination State. This obligation of the Central and State Governments is prescribed under Section 53 of the CGST Act which would read as under:

> "Transfer of Input Tax Credit:-On utilisation of input tax credit availed under this Act for payment of tax dues under the Integrated Goods and Services Tax Act in accordance with the provisions of sub-section (5) of section 49, as reflected in the valid return furnished under sub-section (1) of section 39, the amount collected as central tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the central tax account to the integrated tax account in such manner and within such time as may be prescribed."

43. In the absence of Section 16(2)(c) in a case where the inter-state supplier defaults in making payment of tax (SGST+CGST collected) and the interstate supplier is allowed to take credit based on his invoice, the originating State Government will have to transfer amounts it never received in the tax periods in a financial year to the destination States. This would cause loss to the State inasmuch as the originating State would be required

to transfer the amount without having received it, and this scenario, in the absence of Section 16(2)(c), would completely upset the entire tax scheme under the GST laws.

44. It is further submitted that granting tax credit is an integral part of the computation and collection of tax. Tax collection is an important element of budget allocation and estimation of the Union and State Governments. Section 16 of the Act and Rules made thereunder provide conditions, restrictions, time-limit and manner for availing ITC, which is a self-monitoring and self-policing provision. This is for the registered person to request the supplier dealer for documentation and tax payment compliance in order to claim ITC. If the supplier dealer fails to deposit the tax collected from the recipient dealer, it would break the tax chain and the ITC in such a situation cannot be allowed as the State could not have received the tax, and therefore, there would be no question of making payment of the tax where the State has not received the tax.

45. Learned counsel appearing for the CBIC has submitted that a new provision of Section 16(2) (aa) has been introduced with effect from 01.01.2022 providing for communication for matching of recipient's invoice with the supplier's and outward supply via GSTR 2A/2B. Section 38 stands substituted with effect from 01.10.2022 with provision for auto-generated statement

GSTR-2B, indicating the eligible and ineligible credit in respect of inward supply. Section 41 is also substituted providing for reversal and re-availing of credit. Prior to these amendments, Section 41 provided that the supplier could take only eligible ITC as self-assessed credit in his return, and that amount would be credited on a provisional basis to the electronic credit ledger, which can be utilized for payment of self-assessed output tax. The manner of crediting is provided under Section 49(2) of the Act.

46. Prior to the 01.01.2022 amendment, the eligible credit had to be determined by the taxpayer based on the supplier's GSTR 1 reflected in GSTR-2A and by verifying his books of account and the supplier's GSTR-3B return filed online. To complete this process and avail credit in respect of inward supplies for a financial year, a recipient had a maximum of 18 months to a minimum of 6 months' time under Section 16(4) of the Act as it stood prior to 01.01.2022. For getting the invoice/debit note uploaded by the supplier and tax paid, a maximum of 20 months to a minimum of 8 months after that is available with effect from 01.01.2022. The time limit for availing ITC in GST laws cannot be said to be a restriction. The estimation of budgetary allocation has to be taken by the Central and State Governments every year, and they are required to pass a budget. There cannot be any uncertainty regarding tax collection, budgetary allocation and

estimation of the Central and State Governments. Therefore, the time frame makes it a reasonable mechanism and cannot be said to be in violation of any of the rights of the petitioner as submitted by them. It is further submitted that the time limit for availing the ITC in the GST laws is not a new provision. Different VAT legislations and CENVAT Credit Rules provided time limits to claim eligible ITC.

47. To overcome the initial difficulties at the initial stage of implementation of the GST regime and the large-scale mismatch of outward supply reflected in recipients, GSTR-2A with ITC availed in GSTR-3B returns, the CBIC has issued Circular Nos.183/15/2022 and 193/05/2023, considering that GSTR 2A was not available during the inception of GST. The said circulars cover the period from the inception of the GST regime till the insertion of Section 16(2)(aa) with effect from 01.01.2022. ITC can be claimed and availed by the recipient for the *bona fide* scenarios listed in those circulars on submitting proof of actual payment to the Government by his supplier.

48. Section 16(1) of the CGST is the enabling provision. The said provision is subjected to conditions and restrictions in the manner provided under Section 49 of the CGST Act. It is further submitted that the ITC is not a right of a registered dealer, but it is a concession extended under the statute, which is evident from

Section 49(2) of the CGST Act. Section 16(2) places restrictions on eligibility for ITC, whereas Section 16(4) is the restriction on time for availing ITC. Section 16(2) cannot be read to restrict other restricting provisions, i.e., Sections 16(3) and 16(4).

49. In view of the aforesaid, it is submitted that neither Section 16(2)(c) nor Section 16(4) are infarction of Article 14 and 19(1)(g) nor unworkable as contended. It is, therefore, submitted that the writ petitions are devoid of merit and substance, which are liable to be dismissed.

50. Mr Mohammed Rafiq, the learned Special Government Pleader (Taxes), has submitted that the sales tax, though, is an indirect tax on the consumers, but the incidence of tax is on the sale of goods, which falls squarely on the dealer. It may not be necessary for the dealer to have passed the incidence of tax on sale to the purchaser. Therefore, the contention raised in the writ petition is that by denying the ITC under the provisions of Section 16(2) (c) and 16(4) of the Act, the levy loses its character as an indirect tax, has no merit and is to be reflected.

51. It is further submitted that the ITC enables dealers to set off tax paid on purchase. But this is not a right of the dealer. This is a concession provided under the provisions of the Act in order to avoid a cascading effect on the value chain of the goods and services supplied. It is submitted that it would always be open

to the rule-making authority to provide for abridgement or curtailment of a concession. In support of the said submission, the learned Special Government Pleader has placed reliance on the judgments in the case of ***Godrej & Boyce Mfg. Co.(P) Ltd. & others V. CST & others [(1992) 3 SCC 624]*** and Division Bench judgmNent of the Bombay High Court in ***Mahalaxmi Cotton Ginning Pressing & Oil Industries v. State of Maharashtra [2012 SCC OnLine Bom 733]***. An entitlement to set off is the creation of the statute under the terms and conditions provided by the legislation, which are required to be strictly observed. A registered person cannot claim an entitlement to set off as an absolute right. A dealer would not be entitled to claim set off unless the conditions precedent are met, which are prescribed in the statute.

52. Exemptions, concessions and exceptions are to be treated on par and must be strictly construed. ITC is not a matter of right. To claim the entitlement of ITC, the burden of proof is on the assessee. The assessee must establish the claim for the concession or benefit. Entitlement to ITC is neither a fundamental right nor a Constitutional right. Such entitlement is always subject to statutory prescription and can be regulated by the statute providing conditions and limitations. In support of the said submission, the learned Special Government Pleader has placed

reliance on the judgment in ***Union of India & others V. VKC Footsteps (India) (P) Ltd. [(2022) 2 SCC 603]***

53. It is submitted that the heading of Section 16 is the eligibility and conditions for taking ITC. Section 16(1) provides for entitlement to take input tax credit. It is couched as a general provision which entitles a dealer to take ITC, whereas Section 16(2) provides conditions/restrictions for such entitlement. Subsection (2) is couched with a non-obstante clause, by virtue of which it overrides anything contained in the said Section. The statutory prescription is clear and unambiguous from the negative language employed "Notwithstanding anything contained in the Section, no registered person shall be entitled to the credit of any input in respect of any supply of goods or services or both to him unless,.."

54. Clauses (a) to (d) of subsection (2) of Section 16 are limitations and restrictions placed for availing the concession/entitlement of ITC under Section 16(1). Clause (c) to Subsection (2) of Section 16 is a mandate and emphatic that no registered person shall be entitled to the credit to the ITC in respect of any supply of goods or services or both to him unless the tax charged in respect of such supply has been actually paid to the Government. Section 155 of the Act casts a burden of proof in relation to the claim of ITC on the registered person. Learned

Government Pleader submits that Section 16 is a code by itself which provides for entitlement as well as conditions/ restrictions to claim for ITC which are provided under Clauses (a) to (d) of Section 16(2). The legislative intent is very clear from the phrase employed in Section 16(2)(c); "actually paid to the Government" and thus, the claim/entitlement to ITC under Section 16(1) would be allowable only to the extent of tax, if it has been actually paid into the treasury in respect of the goods/services supplied to the dealer.

55. The learned Special Government Pleader has placed reliance on the judgment in the case of ***Astha Enterprises v. The State of Bihar [CWC No. 10395 of 2023]*** and ***State of Karnataka v. Ecom Gill Coffee Trading (P) Ltd. [2023 SCC OnLine SC 248]*** to submit that condition for availing ITC has been specified in Clause (a) to (d) of Section 16(2) are required to be satisfied together and in isolation for availing the ITC. The burden is always on the purchaser dealer to prove the claim for ITC. There should be credit available in the credit ledger of the purchaser dealer to claim input tax; otherwise, the claim would get frustrated, and the claim of ITC cannot be sustained when the supplier dealer has not paid the tax amount to the Government despite collection from the purchasing dealer.

56. The learned Government Pleader has submitted that there is no force in the arguments of the counsels for the petitioners that Section 16(2)(c) is in violation of the equality clause as enshrined in Article 14 of the Constitution of India. The concession bestowed under Section 16(1) is subject to the conditions/restrictions as provided in the Section. The ITC, being a concession/entitlement, can always be subjected to limitations and restrictions as the legislature may think it proper. The restriction placed under Section 16(2)(c) is to ensure the payment of tax by the supplier to the Government and restrictions as to the time for such availment as contemplated under Section 16(4) are applicable to all dealers, and therefore, there is no substance in the submissions of the counsel for the petitioners that there is a violation of Article 14 of the Constitution of India. The conditions/restrictions for availing the ITC or claiming of concession to the ITC are applicable to all registered taxpayers to claim the concession of the ITC, and therefore, it cannot be said that there is a violation of Article 14 of the Constitution of India. Learned Government Pleader also places reliance on the judgment of the Division Bench of this Court in ***Nahasshukoor v. Assistant Commissioner [WA. No.1853 of 2023:2023: KER: 69725 decided on 3rd November 2003]*** and ***State of Himachal Pradesh v. Goel Bus Service [2023 SCC OnLine SC 46].***

57. A legislation or provision in the statute can be challenged only on establishing manifest arbitrariness or unreasonableness besides legislative incompetence and in-violation of rights guaranteed under Part-III of the Constitution of India. There is no manifest arbitrariness or unreasonableness in providing the conditions for availing the concession of ITC by a registered person on supplies of goods or services or both received by him from another registered dealer. ***[Sharaya Bano & others v. Union of India; (2017) 9 SCC 1]***

58. Challenge to the Constitutional validity of Section 16(4) of the CGST Act, 2017 has been unsuccessful before the Division Bench decisions of the High Court of Patna and the High Court of Andhra Pradesh in ***Gobinda Construction & others v. Union of India & others [CWC No. 9108 of 2021, decided on 8th September 2023]*** and ***Thirumalakonda plywoods v. Assistant Commissioner of State tax [2023 SCC OnLine AP 1476]***. It is therefore submitted that the issue of whether Section 16(4) of the Act is constitutionally valid or not is no longer *res integra*. It is further submitted that the legislative wisdom in prescribing a cutoff date for filing the return in claiming the ITC cannot be interfered with inasmuch as the said prescription is neither capricious nor whimsical. The time limit prescribed in Section 16(4) is applicable universally to all registered persons. The

contention that by prescribing a cut-off date for availing the benefit, some of the registered persons may be adversely affected cannot be a ground to challenge the provision as it cannot be said that such a prescription is in violation of Article 14 of the Constitution of India. Discrimination resulting from fortuitous circumstances arising out of the particular situation in which some of the taxpayers find themselves is not hit by Article 14, if the legislation, as such, is of general application and does not single them out for harsh treatment. Advantages or disadvantages to individual assessees are incidental and inevitable and are inherent in every taxing statute. It has to draw a line somewhere and some cases necessarily fall on the other side of the line. In support of the said submission, the learned Special Government Pleader has placed reliance on ***Khandige Sham Bhat v. AITO [AIR 1963 SC 591] and the State of Bihar and others v. Bihar Pensioners Samaj [(2006) 5 SCC 65].***

59. Heard Ms. Meera V Menon, Dr K P Pradeep, Mr. K P Abdul Azeez, Mr. Aji V Dev (Sr), Mr. Tomson T Emmanuel, Mr. K S Hariharan Nair, Mr. P N Damoodaran, Mr. A Krishnan, Mr. K N Sreekumaran, Mr. A Kumar (Sr) and Ms. G Mini, learned Counsel for the petitioners; Mr. Mohammed Rafiq learned Special Government Pleader for the State; and Mr. P R Sreejith, learned Senior Standing Counsel for the CBIC.

Issues:

60. Having considered the rival submissions of the learned Counsel representing the petitioners, the Central Government, the State Government, and the CBIC, the following issues arise for determination in this batch of writ petitions:

I) What are the grounds on which a taxing Statute can be held to be unconstitutional?

II) What is the nature of the claim to Input Tax Credit under the scheme of the GST Act and the Rules made thereunder?

III) Whether Section 16(2)(c) and Section 16(4) of the CGST/SGST Act infringe the Constitutional provisions and are unsustainable?

Discussion:

Issue No. I: What are the grounds on which a taxing Statute can be held to be unconstitutional?

61. Firstly, a tax can be valid if it is within the competence of the legislature imposing it. Secondly, it is for the public purpose; thirdly, it does not violate fundamental rights. Article 246A has been inserted by way of the Constitution (One Hundred and First Amendment) Act 2016, which paved the way for legislation of Central Goods and Services Act and State Goods and Services Act, which reads as follows:

"246A. Special provision with respect to goods and services tax.

> "(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

> (2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce. Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council."

62. Thus, the Central Legislature and the State Legislature have been given concurrent power to enact laws to impose a tax on the supply of goods or services. GST legislation has been enacted under Article 246A, which empowers the Central and State legislatures to enact such a law. In view of the said provision, it cannot be said that the CGST/SGST Act has been enacted by the Legislature with no competence. It is also not the contention of the petitioners that the tax on the supply of goods and services is not for public purposes.

63. The taxing statute can be declared unconstitutional if it infringes the fundamental rights guaranteed under Part III of the Constitution of India including Article 14. However, in view of the inherent complexity of fiscal adjustment of diverse elements, a larger discretion has to be permitted to the Legislature for classification so long as there is no transgression of the fundamental principles underlying the doctrine of classification. The Legislature must enjoy a wide and flexible power to enable the Legislature to adjust its system of taxation in all proper and reasonable ways. The Legislature has much wider elbow room in picking and choosing places, objects, persons, methods and even rates of taxation so long as it is done reasonably. A taxing statute cannot be said to be invalid on the grounds of

discrimination merely because other objects could have been taxed but are not taxed by the legislature. Similarly, the mere fact that the tax is more on some goods/persons or categories is no grounds to hold the provisions invalid.

64. A Constitutional Bench of the Supreme Court in ***Vivian Joseph Ferreira v. Municipal Corporation of Greater Bombay [AIR 1972 SC 845]*** has culled down the principles emanating from several previous decisions to hold a tax to be a valid tax. Paragraphs 14 to 16 of the said decision, which are relevant, are extracted hereunder:

> "14. The question of validity of taxing statutes has arisen before this Court in a number of cases. The principle emerging from them is that in order that a tax may be valid, it is firstly within the competence of the legislature imposing it, secondly that it is for a public purpose, and thirdly that it does not violate the fundamental rights guaranteed by Part III of the Constitution. The taxing statute is as much subject to Art.14 as any other statute, 1961 (3) SCR 77: (AIR 1961 SC 552), Raja Jagannath v. U. P. 1963 (1) SCR 220: (AIR 1962 SC 1563) East India Tobacco Co. v. Andhra Pradesh 1963 (1) SCR 404: (AIR 1962 SC 1733). Khandige Sham Bhatt v. Agricultural Income Tax Officer, 1963 (3) SCR 809: (AIR 1963 SC 591) and State of Andhra Pradesh v. Nalla Raja Reddy, 1967 (3) SCR 28: (AIR 1967 SC 1458). But in view of the inherent complexity of fiscal adjustment of diverse elements a larger discretion has to be permitted to the Legislature for classification so long as there is no transgression of the fundamental principles underlying the doctrine of classification of 1963 (3) SCR 809: (AIR 1963 SC 591). These principles are that the classification must be based on an intelligible differentia which distinguishes persons or objects grouped together from others left out of the group, and that differentia must have a rational nexus with the object of the statute. So long as these principles are properly followed in classifying persons or objects for taxation, the power to classify must be wide and flexible so as to enable the Legislature to adjust its system of taxation in all proper and reasonable ways. (see 1963 (3) SCR 809: (AIR 1963 SC 591)).
> 15. It is well recognised that a Legislature does not have to tax everything in order to tax something. It can pick and choose districts, objects, persons, methods and even rates of taxation

> as long as it does so reasonably (Willis Constitution Law of the United States, 587). A taxing statute is not invalid on the ground of discrimination merely because other objects could have been but are not taxed by the legislature. (Ravi Varma v. Union of India 1969 (3) SCR 827: (AIR 1969 SC 1094).) When a statute divides the objects of tax into groups or categories, so long as there is equality and uniformity within each group the tax cannot be attacked on the ground of its being discriminatory, although due to fortuitous circumstances or a particular situation some included in a class or group may get some advantage over others, provided of course they are not sought out for special treatment: (1963 (3) SCR 809: (AIR 1963 SC 591). Likewise the mere fact that a tax falls more heavily on some in the same group or category is by itself not a ground for its invalidity, for then hardly any tax, for instance, sales tax and excise tax, can escape such a charge. (Twyford Tea Co. Ltd. v. State of Kerala 1970 (3) SCR 383: (AIR 1970 SC 1133).)
> 16. Definitions of taxation imply that a legislature can impose a tax for public purposes only. A tax for purposes other than public purposes would constitute taking of property without due process of law within the meaning of the Fourteenth Amendment in the United States. It would be objectionable in this country by reason of Art.31 (1) of the Constitution. (Cooley on Taxation (4th ed.), Vol.1, 381, 382) Taxation, however, is, nonetheless, for public purpose even if particular persons receive more benefit from the use of the tax proceeds than others. (Ibid 392)."

65. Levy of taxes, the solemn function, is an attribute of sovereignty. It is an unavoidable necessity. No Government can run without tax collection. The tax cannot constitute imposing regulatory restrictions on free trade and commerce. The tax is a compulsory collection by the State to support its welfare activities. Article 265 of the Constitution of India provides that no tax shall be levied or collected except by the authority of law. Therefore, there can be no levy or collection of tax by the exercise of the executive power.

66. In ***State of West Bengal v Kesoram Industries Limited & others [(2000) 1 SCC 710]***, it was held that the power of taxation is

an inherent attribute of sovereignty emanating from necessity. The same view was expressed in ***Yadlapati Venkateswarlu v. State of Andhra Pradesh & another [1992 Supp (1) SCC 74]***.

67. Mr. Thomas Mclntyre Cooley, in his famous Treatise 'The Law of Taxation', stated that 'taxation' is a mode of raising revenue for the public purpose, and the power of taxation is an essential and inherent attribute of Sovereignty, belonging as a matter of right to every independent Government. It is a power inherent to the sovereign State to recover a contribution of money or other property in accordance with some reasonable rule of apportionment from the property or occupation within its jurisdiction for the purpose of defraying public expenses.

68. In ***Smt Ujjam Bai v. State of Uttar Pradesh [1962 AIR 1621]*** the Supreme Court summed up the aspects of valid taxation as follows:

> "(1)A tax will be valid only if it is authorised by a law enacted by a competent legislature (Article 265 of the Constitution of India).
> (2) A law which is authorized as aforesaid must further be not repugnant to any of the provisions of the Constitution. Thus, a law which contravenes Article 14 of the Constitution will be bad.
> (3) A law which is made by a competent legislature and which is not otherwise invalid, is not open to attack under Article 31(1) of the Constitution.
> (4) A law which is ultra vires either because the legislature has no competence over it or it contravenes, some constitutional inhibition has no legal existence, and any action taken thereunder will be an infringement of Article 19(1)(g) of the Constitution and it would amount to a colourable piece of legislation.
> (5) where assessment proceedings are taken without the authority of law, or where the proceedings are repugnant to rules of natural justice, there is an infringement of the right guaranteed under Article 19(1)(f) and Article 19(1)(g) of the Constitution."

The majority judgment of the above case sums up the Constitutional limitations on the power of the State legislature to levy taxes or enact legislation if the field is reserved for them under the relevant entries of List II and III of the Seventh Schedule.

69. The power to levy tax is a sovereign power controlled only by the Constitution, and any limitation on that power must be express one. Unless and until the Court finds or arrives at a conclusion that the Constitution itself has expressly prohibited legislation on the subject either absolutely or conditionally, the power of the Central/State to enact legislation within its legislative competence is a plenary power.

70. In the case of ***State of Karnataka v.M/s. M K Agro Tech Private Limited [(2017) 16 SCC 210]*** it has been held that taxing statutes are to be interpreted literally, and further, it is the legislature's domain as to how the tax credit is to be given and under what circumstances.

In paragraph 32, the Supreme Court observed as under:

> "32. Fourthly, the entire scheme of the KVAT Act is to be kept in mind and Section 17 is to be applied in that context. Sunflower oil cake is subject to input tax. The legislature, however, has incorporated the provision, in the form of Section 10, to give tax credit in respect of such goods which are used as inputs/raw material for manufacturing other goods. Rationale behind the same is simple. When the finished product, after manufacture, is sold, VAT would be again payable thereon. This VAT is payable on the price at which such goods are sold, costing whereof is done keeping in view the expenses involved in the manufacture of such goods plus the profits which the manufacturer intends to earn. Insofar as costing is concerned, element of expenses incurred on raw material would be included. In this manner, when the final product is sold and the VAT paid, component of raw material would be included again. Keeping in view this objective, the legislature has intended to give tax credit to some extent. However, how much tax credit is to be given

> and under what circumstances, is the domain of the legislature and the courts are not to tinker with the same."

Considering the decisions and discussions, it can be said that both Central and State legislation have the power to enact the CGST/SGST Act, and the Constitution prescribes no limitation for enacting such legislation. Therefore, these legislations are valid legislations.

Issue No.II:What is the nature of the claim to Input Tax Credit under the scheme of the GST Act and the Rules made thereunder?

71. The Input Tax Credit is in the nature of a benefit or concession extended to the dealer under the statutory scheme. Even if it is held to be an entitlement, this entitlement is subject to the restrictions as provided under the Scheme or the Statute. The claim to Input Tax Credit is not an absolute right, but it can be said that it is an entitlement subject to the conditions and restrictions as envisaged in Sections 16(2) to 16(4), Section 43, and Rules made thereunder.

72. In the case of ***Godrej & Boyce Manufacturing Company Pvt. Ltd & others v. Commissioner of Sales Tax & others [(1992) 3 SCC 624],*** the Supreme Court, while dealing with Rules 41 and 41A of the Bombay Sales Tax Rules 1959, held that the rule-making authority would be empowered to provide for abridgement or curtailment while extending a concession.

In paragraph 9 of the said judgment, the Supreme Court held as follows:

> "9. Sri Bobde appearing for the appellants reiterated the contentions urged before the High Court. He

submitted that the deduction of one per cent, in effect, amounts to taxing the raw material purchased outside the State or to taxing the sale of finished goods effected outside the State of Maharashtra. We cannot agree. Indeed, the whole issue can be put in simpler terms. The appellant (manufacturing dealer) purchases his raw material both within the State of Maharashtra and outside the State. Insofar as the purchases made outside the State of Maharashtra are concerned, the tax thereon is paid to other States. The State of Maharashtra gets the tax only in respect of purchases made by the appellant within the State. So far as the sales tax leviable on the sale of the goods manufactured by the appellant is concerned, the State of Maharashtra can levy and collect such tax only in respect of sales effected within the State of Maharashtra. It cannot levy or collect tax in respect of goods which are despatched by the appellant to his branches and agents outside the State of Maharashtra and sold there. In law (apart from Rules 41 and 41-A) the appellant has no legal right to claim set-off of the purchase tax paid by him on his purchases within the State from out of the sales tax payable by him on the sale of the goods manufactured by him. It is only by virtue of the said Rules which, as stated above, are conceived mainly in the interest of public - that he is entitled to such set-off. It is really a concession and an indulgence. More particularly, where the manufactured goods are not sold within the State of Maharashtra but are despatched to out State branches and agents and sold there, no sales tax can be or is levied by the State of Maharashtra. The State of Maharashtra gets nothing in respect of such sales effected outside the State. In respect of such sales, the rule-making authority could well have denied the benefit of set-off. But it chose to be generous and has extended the said benefit to such out-State sales as well, subject, however to deduction of one per cent of the sale price of such goods sent out of the State and sold there. We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of set-off is itself a boon or a concession. It was open to the rule-making authority to provide for a small abridgement or curtailment while extending a concession. Viewed from this angle, the argument that providing for such deduction amounts to the levy of tax either on purchases of raw material effected outside the State or on sale of manufactured goods effected outside the State of Maharashtra appears to be beside the point and is unacceptable. So is the argument about apportioning the sale price with reference to the proportion in which raw material was purchased within and outside the State."

73. In the case of ***India Agencies (Regd.) v. Additional Commissioner of Commercial Taxes [(2005) 2 SCC 129]*** while dealing with Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957, which requires a provision for furnishing original Form C to claim concessional rate of tax under Section 8(1) of the Central Sales Tax Act 1956 held that the said requirement under the rule is mandatory and without producing the specific documents, the dealer could not be entitled to claim benefits.

In paragraph 13 of the said judgment, the Supreme Court held as follows:

> "13. Under the Central Sales Tax (Karnataka) Rules, 1957, the dealer is required to submit along with his return the original of the prescribed forms. As could be seen from the rule extracted above, a registered dealer who claims that he has made a sale to another registered dealer is required to attach the original of the declaration forms on the certificate in the prescribed form received by him from the prescribed dealer along with his return filed by him. We have already extracted Section 13 of the Central Sales Tax Act, which deals with the power of the Central Government to make rules, the form and the manner for furnishing declaration under sub-section (8) of Section 8. Sub-section (3) of Section 13 provides that the State Government may make rules not inconsistent with the provisions of the Central Sales Tax Act, 1956 and the rules made under sub-section (1) to carry out the purposes of the Act. In exercise of the powers conferred by sub-sections (3), (4) and (5) of Section 13 of the Central Sales Tax, 1956, the Government of Karnataka made the Central Sales Tax (Karnataka) Rules, 1957. Under Rule 6(b)(ii) of the Karnataka Rules, the State Government has prescribed the procedures to be followed and the documents to be produced for claiming concessional rate of tax under Section 8(4) of the Central Sales Tax Act. Thus, the dealer has to strictly follow the procedure and Rule 6(b)(ii) and produce the relevant materials required under the said rule. Without producing the specified documents as prescribed thereunder a dealer cannot claim the benefits provided under Section 8 of the Act. Therefore, we are of the opinion that the requirements contained in Rule 6(b)(i) of the Central Sales Tax (Karnataka) Rules, 1957 are mandatory. Sections

> 12(1), (2) and (3) of the Central Sales Tax (R&T) Rules, 1957 provide that the registered dealer is required to file the declaration and the certificate referred to in Section 8(4) in Form C and D respectively. Form C is a declaration divided into three parts. All the three parts are identical, the first part of the form being the counter foil and the second part being the duplicate and the third part being the original. The counter foil is to be retained by the purchasing dealer. The original is to be filed before the Assessing Officer by the selling dealer to claim the concessional rate. The duplicate is to be retained by the selling dealer. If the C Form or the original part of it is lost whilst in the custody of the purchasing dealer or in transit, the purchasing dealer shall have to furnish an indemnity bond for the same as fixed by the authority concerned. If the original part of C Form is lost by the selling dealer whilst it is in his custody or in transit, the selling dealer shall furnish an indemnity bond as fixed by the authority concerned and follow the procedure prescribed under Rule 12(3)."

74. In the case of ***Jayam & Co. v.Assistant Commissioner & Another [(2016) 15 SCC 125]***, while interpreting the provisions of Sections 19(20), 3(2) and 3(3) of the Tamil Nadu Value Added Tax Act 2006, it has been held that the Input Tax Credit is a form of concession provided by the legislature. It is not admissible to all kinds of sales, and certain specified sales are specifically excluded.

75. In ***ALD Automotive (P) Limited v. Commercial Tax Officer [(2019) 13 SCC 225],*** considering the earlier decisions, the Supreme Court has held that input tax credit is admissible only as per the conditions of the Tamil Nadu Value Added Tax Act 2006. In paragraph 43, the Supreme Court observed as under:

> "43. Section 19(11) thus allowed an extended period for input credit which if not claimed in any month can be claimed before the end of the financial year or before the 90 days from the date of purchase whichever is later. The provision of Section 19(11) is thus an additional benefit given to dealer for claiming input credit in extended period. The use of the word "shall make the claim" needs no other interpretation."

76. In ***Union of India & others V. VKC Footsteps (India) (P) Limited [(2022) 2 SCC 603],*** while considering the issue with respect to the refund of additional ITC, the Rule limited the refund of unutilised ITC to input goods alone.

Upholding the aforesaid rule, the Supreme Court held in paragraphs 88 and 90 as under:

> "88. The jurisprudential basis furnishes a depiction of an ideal state of existence of GST legislation within the purview of a modern economy, as a destination-based tax. But there can be no gain saying the fact that fiscal legislation around the world, India being no exception, makes complex balances founded upon socio-economic and concession of ITC is available on certain conditions, and observed as under:
> "11. From the aforesaid scheme of Section 19 the following significant aspects emerge:
> (a) ITC is a form of concession provided by the legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.
> (b) Concession of ITC is available on certain conditions mentioned in this section.
> (c) One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect, evidencing the amount of input tax."
> Their Lordships further held that it is a trite law that whenever concession is given by a statute the conditions thereof are to be strictly complied with in order to avail such concession, and observed in paragraph 12 as under:
> "12. It is trite law that whenever concession is given by statute or notification, etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the "dealers" to get the benefit of ITC but it is a concession granted by virtue of Section 19. As a fortiori, conditions specified in Section 10 must be fulfilled. In that hue, we find that Section 10 makes original tax invoice relevant for the purpose of claiming tax. Therefore, under the scheme of the VAT Act, it is not permissible for the dealers to argue that the price as indicated in the tax invoice should not have been taken into consideration but the net purchase price after discount is to be the basis. If we were dealing with any other aspect dehors the issue of ITC as per Section 19 of the VAT Act, possibly the arguments of Mr Bagaria would have assumed some relevance. But, keeping provided. If the

legislature has intended that the equivalence between goods and services should be progressively realised and that for the purpose of determining whether refund should be provided, a restriction of the kind which has been imposed in clause (ii) of the proviso should be enacted, it lies within the realm of policy.

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90. GST legislation in India is the product of hard constitutional and legislative work which stretched over several decades. Our fiscal regime is yet to arrive at an ideological position of one bundle for goods and services based on a single rate structure. Broadly speaking, goods and services are taxed at 5%, 12%, 18% and 40%. As on date, there is an absence of uniformity in rates and it is the multiplicity of rates which has given rise to an inverted duty structure. Registered persons with unutilised ITC may conceivably form one class but it is not possible to ignore that this class consists of species of different hues. Given these intrinsic complexities, the legislature has to draw the balance when it decides upon granting a refund of accumulated ITC which has remained unutilised. In doing so, Parliament while enacting sub-section (3) of Section 54 has stipulated that no refund of unutilised ITC shall be allowed other than in the two specific situations envisaged in clauses (i) and (ii) of the first proviso. Whereas clause (i) has dealt with zero-rated supplies made without the payment of tax, clause (ii), which governs domestic supplies, has envisaged a more restricted ambit where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies. While the CGST Act defines the expression "input" in Section 2(59) by bracketing it with goods other than capital goods, it is true that the plural expression "inputs" has not been specifically defined. But there is no reason why the ordinary principle of construing the plural in the same plane as the singular should not be applied. To construe "inputs" so as to include both input goods and input services would do violence to the provisions of Section 54(3) and would run contrary to the terms of Explanation I which have been complexities and diversities which permeate each society. The form which a GST legislation in a unitary State may take will vary considerably from its avatar in a nation such as India where a dual system of GST law operates within the context of a federal structure. The ideal of a GST framework which Article 279-A(6) embodies has to be progressively realised. The doctrines which have been emphasised by the counsel during the course of the arguments furnish the underlying rationale for the enactment of the law but cannot furnish either a valid basis for judicial review of the legislation or make out a ground for invalidating a validly enacted law unless it infringes constitutional parameters. While adopting the constitutional framework of a GST regime, Parliament in the exercise of its constituent power has

had to make and draw balances to accommodate the interests of the States. Taxes on alcohol for human consumption and stamp duties provide a significant part of the revenues of the States. Complex balances have had to be drawn so as to accommodate the concerns of the States before bringing them within the umbrella of GST. These aspects must be borne in mind while assessing the jurisprudential vision and the economic rationale for GST legislation. But abstract doctrine cannot be a ground for the Court to undertake the task of redrawing the text or context of a statutory provision. This is clearly an area of law where judicial interpretation cannot be ahead of policy making. Fiscal policy ought not be dictated through the judgments of the High Courts or this Court. For it is not the function of the Court in the fiscal arena to compel Parliament to go further and to do more by, for instance, expanding the coverage of the legislation (to liquor, stamp duty and petroleum) or to bring in uniformity of rates. This would constitute an impermissible judicial encroachment on legislative power. Likewise, when the first proviso to Section 54(3) has provided for a restriction on the entitlement to refund it would be impermissible for the Court to redraw the boundaries or to expand the provision for refund beyond what the legislature has by a proprietorship firm namely, M/s Jain Brothers through its Proprietor Mr. Amit Jain."

77. Thus, from the aforesaid decisions and discussions, the nature of the claim for ITC by the dealer is in the nature of concession or entitlement, which is not an absolute right and is subject to the conditions and restrictions as per the scheme of the GST legislation. This Court, therefore, does not find substance in the submissions of the learned Counsel for the petitioners that Section 16(1) of the GST Act provides an absolute right to claim Input Tax Credit and conditions in sub-section (2) of Section 16 cannot take away the right conferred under sub-section (1) of Section 16.

Issue No.III Whether Section 16(2)(c) and Section 16(4) of the CGST/SGST Act infringe the Constitutional provisions and are unsustainable?

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78. The Supreme Court in ***Reserve Bank of India v. Peerless General Finance and Investments Co. Ltd & Others [(1987) 1 SCC 424]*** in paragraph 37 has held that the text and context of a taxing statute cannot be construed in isolation. The context and scheme of the Statute give meaning, and therefore, the same has to be taken into consideration while interpreting a Statute.

Paragraph 37 of the said judgment is extracted hereunder:

> "37. We would also like to query what action of Reserve Bank of India and the Union of India are taking or proposing to take against the mushroom growth of 'finance and investment companies' offering staggeringly high rates of interest to depositors leading us to suspect whether these companies are not speculative ventures floated to attract unwary and credulous investors and capture their savings. One has only to look at the morning's newspaper to be greeted by advertisements inviting deposits and offering interest at astronomic rates. On January 1, 1987, one of the national newspapers published from Hyderabad, where one of us happened to be spending the vacation, carried as many as ten advertisements with 'banner headlines', covering the whole of the last page, a quarter of the first page and conspicuous spaces in other pages offering fabulous rates of interest. At least two of the advertisers offered to double the deposit in 30 months, 2000 for 1000, 10,000 for 5000, they said. Another advertiser offered interest ranging between 30 per cent to 38 per cent for periods ranging between six months to five years. Almost all the advertisers offered extra interest ranging between 3 per cent to 6 per cent if deposits were made during the Christmas-Pongal season. Several of them offered gifts and prizes. If the Reserve Bank of India considers the Peerless Company with eight hundred crores invested in government securities, fixed deposits with National Banks etc. unsafe for depositors, one wonders what they have to say about the mushroom non-banking companies which are accepting deposits, promising most unlikely returns and what action is proposed to be taken to protect the investors. It does not require much imagination to realise the adventurous and precarious character of these businesses. Urgent action appears to be called for to protect the public. While on the one hand these schemes encourage two vices affecting public economy, the desire to make quick and easy money and the habit of excessive and wasteful consumer spending, on the other hand the investors

> who generally belong to the gullible and less affluent classes have no security whatsoever. Action appears imperative."

79. The Goods and Services Tax laws came into force in 2017, having the way for One India, One Market, One Tax. It is a destination-based consumption tax with ITC available on payment of tax on supply of goods or services at each stage available in the next stage of value addition, removing cascading effect irrespective of the destination, be it an intra-state or inter-state supply. The dual VAT system with uniform rates, simultaneous levy by the Centre and the States, and a unique IGST model ensures this destination-based tax compliance in all parts of India. The GST system minimises the disadvantages of entirely independent (erstwhile State VAT laws) and completely centralised systems. The flow of ITC, along with the supply chain of registered persons, ensures removing the cascading effect on one hand and the tax collection by a self-assessment method in every tax period on the other hand. It has to happen simultaneously in a financial year.

80. In ***Willowood Chemicals v Union of India [2018 58 GSTR 310 (Guj)]***, it has been held that granting tax credit cannot be allowed to linger on indefinitely, for it would impact revenue collection for each financial year and budgetary allocations and, in rem, revenue deficit. Paragraphs 30 and 35 of the said judgment are extracted hereunder:

> "30. Issue can be looked at from slightly different angle. Granting tax credit is an integral part of computation and collection of tax. Tax collection is an important element of budgetary allocations and estimation of the Union and the States. Such

> consideration of tax credits at such large scale cannot be allowed to linger on indefinitely which would have a direct effect on the tax collection, estimates and budgetary allocations and in turn, revenue deficit.
>
> xxx xxx xxx
>
> 35. Thus, in the economic matters of such vast scale, the wider considerations of the State exchequer, while interpreting a statutory provisions cannot be kept out of purview. Quite apart from independently finding that the time-limit provisions contained in sub-rule (1) of rule 117 of the CGST Rules is not ultra vires the Act or the powers of the rule-making authority, interpreting such powers as merely directory would give rise to unending claims of transfer of credit of tax on inputs and such other claims from old to the new regime. Under the new GST laws, the existing tax structure was being replaced by the new set of statutes, through an exercise which was unprecedented in the Indian context. The claims of carry forward of the existing duties and credits during the period of migration, therefore, had to be within the prescribed time. Doing away with the time-limit for making declarations could give rise to multiple large-scale claims trickling in for years together after the new tax structure is put in place. This would besides making the task of matching of the credits impractical if not impossible, also impact the revenue collection estimates. It is in this context that the Supreme Court in the case of Mafatlal Industries Ltd. [1998] 111 STC 467 (SC) ; [1997] 5 SCC 536, after rejecting the contention that a person can move proceedings for recovery of tax paid upon success of some other person before the Tribunal or court in getting such tax collection declared illegal, was further influenced by the fact that any such situation could lead to utter chaos, if the claims are large. Under the circumstances, we do not find any substance in the petitioners' challenge to rule 117(1) of the CGST Rules as well as GGST Rules."

81. When the ITC is not an absolute right but is an entitlement subject to the conditions and restrictions prescribed under the Statute, the conditions, restrictions and time limit specified by law form the fulcrum on which the grant of ITC and tax collection for each financial year are balanced. The Scheme of the Act also provides that only tax collected and paid to the government could be given as input tax credit. When the Government has not received the tax, a dealer cannot be

given an input tax credit. It may be seen that under the various State VAT laws, the twin requirements were provided for granting ITC: (a) it was aimed to remove the cascading effect, and (b) collection of Tax for each financial year. The State legislations had to balance this linear bar. Under the VAT law, the ITC did not cross the originating State. The Central Sales Tax levied on inter-state sale of goods was assigned to the original State.

82. Under the GST regime, the tax collected has to be assigned to the jurisdiction where the consumption takes place. The ITC, therefore, crosses a State during inter-State supplies. Now, the scheme of the Act prescribes the conditions, restrictions, time limit, and the manner for availing the ITC and all together form the legal fulcrum that balances three requirements:

(a) granting of ITC for removing cascading effect,

(b) achieving collection of tax by self-assessment method for each financial year, and

(c) ITC transfer compliance to the destination State on inter-state supplies through the IGST mechanism where the Centre collects tax equivalent to CGST + SGST.

An inter-State supplier in the originating/exporting State uses his CGST/SGST credit for payment of IGST collected. The recipient based in the destination State will discharge his output tax liability (CGST + SGST) by claiming credit for the IGST he paid to the inter-state supplier in the originating State. Now, the Central and the originating State

have an obligation to transfer the CGST and SGST component utilised by the inter-state supplier to the IGST account so as to make it available for the destination State. Section 53 of the CGST/SGST Act prescribes the statutory obligation of the Central and the State Governments in this regard, which reads as follows:

> "Section 53: Transfer of Input Tax credit On utilisation of input tax credit availed under this Act for payment of tax dues under the Integrated Goods and Services Tax Act in accordance with the provisions of sub-section (5) of section 49, as reflected in the valid return furnished under sub-section (1) of section 39, the amount collected as central tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the central tax account to the integrated tax account in such manner and within such time as may be prescribed." (State laws have Section 53 parallel provision)

83. Considering the aforesaid scenario, without Section 16(2)(c) where the inter-state supplier's supplier in the originating State defaults payment of tax (SGST+CGST collected) and the inter-state supplier is allowed to take credit based on their invoice, the originating State Government will have to transfer the amounts it never received in the tax period in a financial year to the destination States, causing loss to the tune of several crores in each tax period.

84. In my view, this renders the whole GST laws and schemes unworkable. Therefore, as contended, the conditions cannot be said to be onerous or in violation of the Constitution, and Section 16(2)(c) is neither unconstitutional nor onerous on the taxpayer.

85. The collection of tax by self-assessment and the Recovery Provisions on default are two different arms. The

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respondents cannot contend that the conditions, restrictions, and time limits for ITC and time-bound tax collection in a financial year can be substituted or replaced with recovery actions against defaulters, the outcome of which is uncertain and not time-bound.

86. Section 16 of the CGST Act and Rules made thereunder provide conditions, restrictions, time limits and manners for availing the Input Tax Credit, which is a self-monitoring and self-policing provision. In order to claim ITC, each registered person has a reason and incentive to request documentation and tax payment compliance from the person behind him in the value-added tax chain to ensure that the ITC chain is not broken. A new provision, Section 16(2)(aa), stands introduced with effect from 01.01.2022, providing for communication of the matching of the recipient's invoice with suppliers and outward supply *via* GSTR 2A/2B. With effect from 01.10.2022, Section 38 stands substituted with a provision for auto-generated statement GSTR 2B, indicating eligible and ineligible credits in respect of the inward supply. Section 41 is also substituted providing for reversal and re-availing of credit. Prior to that, the unamended Section 41, now substituted, provided that the supplier can take only eligible input tax as self-assessed in his return, and that amount would be credited on a provisional basis to the electronic credit ledger and

can be utilized for payment of self-assessed output tax. The manner of crediting was also provided under Section 49(2).

87. Prior to the 01.01.2022 amendment in the CGST/SGST Act, the eligible credit had to be determined by the taxpayer based on the supplier's GSTR 1 reflected in GSTR 2A and by verifying his books of account and supplier's GSTR 3B return filed online. This procedure has been explained by the Supreme Court in the case of ***(Union of India v. Bharti Airtel and others, [2022) 4 SCC 328]***.

Paragraphs 33 to 35 of the said judgment, which is extracted hereunder: --

> "33. As per the scheme of the 2017 Act, it is noticed that registered person is obliged to do self-assessment of ITC, reckon its eligibility to ITC and of OTL including the balance amount lying in cash or credit ledger primarily on the basis of his office record and books of accounts required to be statutorily preserved and updated from time to time. That he could do even without the common electronic portal as was being done in the past till recently pre-GST regime. As regards liability to pay OTL, that is on the basis of the transactions effected during the relevant period giving rise to taxable event. The supply of goods and services becomes taxable in respect of which the registered person is obliged to maintain agreement, invoices/challans and books of accounts, which can be maintained manually/electronically. The common portal is only a facilitator to feed or retrieve such information and need not be the primary source for doing self assessment. The primary source is in the form of agreements, invoices/challans, receipts of the goods and services and books of accounts which are maintained by the assessee manually /electronically. These are not within the control of the tax authorities. This was the arrangement even in the pre-GST regime whilst discharging the obligation under the concerned legislation(s). The position is no different in the post GST regime, both in the matter

> of doing self assessment and regarding dealing with eligibility to ITC and OTL. Indeed, that self assessment and declarations would be any way subject to verification by the tax authorities. The role of tax authorities would come at the time of verification of the declarations and returns submitted/filed by the registered person.
>
> 34. Section 16 of the 2017 Act deals with eligibility of the registered person to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. The input tax credit is additionally recorded in the electronic credit ledger of such person under the Act. The "electronic credit ledger" is defined in Section 2(46) and is referred to in Section 49(2) of the 2017 Act, which provides for the manner in which ITC may be availed. Section 41(1) envisages that every registered person shall be entitled to take credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.
>
> 35. As aforesaid, every assessee is under obligation to self-assess the eligible ITC under Section16(1)and 16(2) and "credit the same in the electronic credit ledger" defined in Section 2(46) read with Section 49(2) of the 2017 Act. Only thereafter, Section 59 steps in, whereunder the registered person is obliged to self-assess the taxes payable under the Act and furnish a return for each tax period as specified under Section 39 of the Act. To put it differently, for submitting return under Section 59, it is the registered person who has to undertake necessary measures including of maintaining books of accounts for the relevant period either manually or electronically. On the basis of such primary material, self-assessment can be and ought to be done by the assessee about the eligibility and availing of ITC and of OTL, which is reflected in the periodical return to be filed under Section 59 of the Act."

88. To complete the process and avail credit in respect of inward supplies for a financial year, a recipient has a maximum of 18 months to a minimum of 6 months under Section 16(4) of the Act as it stood prior to 01.01.2022 for getting his invoice/debit note uploaded by the supplier of the tax paid and maximum 20 months to minimum 8 months after that. The time frame made it a

reasonable mechanism for availing ITC in GST Laws. This time limit is not a new phenomenon for availing the ITC. The different VAT legislations and CENVAT Credit Rules provided time limits to claim eligible ITC Under Rule 4 of the Cenvat Credit Rules, 2004, where a one-year limit was prescribed for ITC. The GST Laws, in fact, prescribe a larger time limit.

89. Subsection 2 of Section 16 begins with the *non-obstante clause* and further says, "no registered person shall be entitled to the credit of any input tax.....". Sub-section (2) of Section 16 is in double negative format, and the conditions provided are restrictive conditions and not conditions of eligibility, as held by the Supreme Court in the case of ***VKC Footsteps (India) P Ltd (supra)***.

Paragraphs 86 and 87 of the said judgment which are relevant are extracted hereunder:-

> 86. The above submissions demonstrate the scholarship which has been brought to bear upon the controversy by Counsel appearing on behalf of the assessees. The above aspects of the statutory provisions Section 54(3) must be juxtaposed together with all the features of the statutory provision including Explanation-1 which have been adverted to earlier. The analysis earlier indicates why on a reading of the provision as a whole, clauses (i) and (ii) of the first proviso are restrictions and not mere conditions of eligibility. It is not possible for the Court to restrict the ambit of clause (ii) of the proviso, based on a circular which has been issued by the Ministry of Finance on 31 December 2018. In substance, the argument boils down to an effort to lead this Court to hold that in spite of the language which has been used in clause (ii) of the first proviso (where the credit is accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies), input services must be read into the term "inputs". The assessees argue that the Departmental understanding, as reflected in the circular, should be

the basis of interpreting a statutory provision. Such an exercise would be impermissible, when its effect is to expand the area of refund contemplated by the first proviso to cover input services in addition to input goods despite statutory language to the contrary. Sub-Section (3) of Section 54 begins, in its main part, with the stipulation that a registered person may **claim refund** of any 'unutilised ITC at the end of any tax period'. Whether we construe the first proviso as an exception or in the nature of a fresh enactment, the clear intent of Parliament was to confine the grant of refund to the two categories spelt out in clauses (i) and (ii) of the first proviso. That clauses (i) and (ii) are the only two situation in which a refund can be granted is evident from the opening words of the first proviso which stipulates that "**no refund of unutilised input tax credit shall be allowed in cases other than**". What follows is clauses (i) and (ii). The intent of Parliament is evident by the use of a double negative format by employing the expression "no refund" as well as the expression "in cases other than". In other words, a refund is contemplated in the situations provided in clauses (1) and (ii) and no other. To put it differently, the first proviso can be recast, without altering its meaning to read that a refund of unutilised ITC shall be allowed only in the cases governed by clauses (i) and (ii). Clause (i) deals with zero rated supplies without payment of tax. Explanation-1 to Section 54 clarifies that the expression 'refund' includes refund of tax paid on zero rated supplies on goods or services or both, or on inputs or input services used in making such zero-rated supplies. On the other hand, in the case of deemed exports, Explanation-1 refers to a refund of tax on the supply of goods. Likewise in regard to domestic supplies Governed by clause (ii) of the first proviso, the expression 'refund' means refund of unutilized ITC as provided under sub-section (3). With clear language which has been adopted by Parliament while enacting the provisions of Section 54 (3), the acceptance of the submissions which has been urged on behalf of the assessee would involve a judicial re-writing of the provision which is impermissible in law. Clause (ii) of the proviso when it refers " on account of " clearly intends the meaning which can ordinarily be said to imply ' because of or due to'. When proviso (ii) refers to " rate of tax", it indicates a clear intent that a refund would be allowed where and only if the inverted duty structure has arisen due to the rate of tax on input being higher than the rate of tax on output supplies. Reading the expression 'input' to cover input goods and input services would lead to recognizing an entitlement to refund, beyond what was contemplated by Parliament.

87. We must be cognizant of the fact that no constitutional right to being asserted to claim a refund, as there cannot be. Refund is a matter of a statutory prescription. Parliament was within its

> legislative authority in determining whether refunds should be allowed of unutilised ITC tracing its origin both to input goods and input services or, as it has legislated, input goods alone. By its clear stipulation that a refund would be admissible only where the unutilised ITC has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies, Parliament has confined the refund in the manner which we have described above. While recognizing an entitlement to refund, it is opened to the legislature to define the circumstances in which refund can be claimed. The proviso to Section 54(3) is not a condition of eligibility (as the assesses's counsel submitted) but a restriction which must governed the grant of refund under Section 54(3). we therefore, accept the submission which has been urged by Mr. N. Venkataraman, learned ASG.

90. Thus, the *non-obstante clause* in the negative sentence in Section 16(2) restricts the eligibility under Section 16(1) for entitlement to claim ITC. Section 16(2) is the restriction on eligibility and Section 16(4) is the restriction on the time for availing ITC. These provisions cannot be read to restrict other restrictive provisions, *i.e.*, Section 16(3) and 16(4). If Section 16(2) is read in the manner as contended by the learned counsel for the petitioners, i.e., once the conditions under Section 16(2) are met, the timeline provided for availing the input tax credit under Section 16(4) is arbitrary and unsustainable and cannot be accepted.

91. Few High courts have upheld the constitutional validity of Section 16(2) (c) and 16(4). The Andhra Pradesh High Court in ***Thirumalakonda Plywoods v. Assistant Commissioner [2023 SCC Online AP 1476]*** in paragraph 19 as held as under: -

"19. When analyzed, Section 16(2) shall not appear to be a provision which allows input tax credit, rather ITC enabling provision is Section 16(1). On the other hand, Section 16(2) restricts the credit which is otherwise allowed to only such cases where conditions prescribed in it are satisfied. Therefore, Section 16(2) in terms only overrides the provision which enables the ITC i.e., Section 16(1). This is evident from the manner in which Section 16(2) is couched. The non obstante clause in Section 16(2) is followed by a negative sentence "no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless". This negative sentence pellucidly tells that unless the conditions mentioned in Section 16(2) are satisfied, no credit will be eligible. This stipulation manifests that Section 16(2) is not an enabling provision but a restricting provision. What it restricts is the eligibility which was otherwise given U/s 16(1).

(a) It should be noted, when a non obstante clause is a mere restricting provision, an interpretation that the other restricting provisions will not have effect or that the restricting provision will restrict other restricting provisions cannot be accepted for the reason that there is no contradiction between the restricting clause followed by non obstante and other restricting provisions.

In R.S. Raghunath's case (supra-21) the Apex Court held thus:

"11. Xxxx. The non-obstante clause is sometimes appended to a section or a rule in the beginning with a view to give the enacting part of that section or rule in case of conflict, an overriding effect over the provisions or act mentioned in that clause. Such a clause is usually used in the provision to indicate that the said provision should prevail despite anything to the contrary in the provision mentioned in such non-obstante clause.

" Hence unless such clear inconsistency is established, overriding effect cannot be given over other provisions. In the present case both Section 16(2) and (4) are two different restricting provisions, the former providing eligibility conditions and the later imposing time limit. However, both these provisions have no inconsistency between them. In R.S. Raghunath, the Apex Court further observed thus:

"But the non-obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the

> Legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules.
>
> " Further, the influence of a non obstante clause has to be considered on the basis of the context also in which it is used. Therefore, Section 16(4) being a non-contradictory provision and capable of clear interpretation, will not be overridden by non obstante provision U/s 16(2). As already stated supra 16(4) only prescribes time restriction to avail credit. For this reason, the argument that 16(2) overrides 16(4) is not correct. Thus, in substance Section 16(1) is an enabling clause for ITC; 16(2) subjects such entitlement to certain conditions; Section 16(3) and (4) further restrict the entitlement given U/s 16(1). That being the scheme of the provision, it is out of context to contend that one of the restricting provisions overrides other two restrictions. The issue can be looked into otherwise also. If really the legislature has no intention to impose time limitation for availing ITC, there was no necessity to insert a specific provision U/s 16(4) and to further intend to override it through Section 16(2) which is a futile exercise."

92. Section 16(1) is subject to Section 49 and Section 16(2)(c) is subject to Section 41. Eligible ITC is self-assessed in the GSTR 3B return, and only then it is credited to the electronic credit ledger, which can be utilised for payment of tax. The Supreme Court in ***Union of India v. Bharati Airtel and others (supra)*** has explained the procedure for availing the input tax credit under the GST laws. [As has been extracted in paragraph 86 of this judgment].

93. The Patna High Court in ***Gobinda Construction and others v. Union of India and others [MANU/BH/1260/2023]***, after placing reliance on the judgment in ***Jayam, ALD (supra)*** has upheld the constitutional validity of Section 16(4) and held that

the concession/claim to ITC is not an absolute legal right. Paragraphs 22 to 30 of the said judgment are extracted hereunder:-

> "22. In the background of the above noted discussions, we need to examine first as to whether or not, the language of Section 16 of the CGST/BGST Act suffers from any ambiguity. Sub-section (1) of Section 16 , which provides for ITC, states that every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both to them, which are used or intended to be used in accordance with the furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person. This entitlement of ITC is, however, subject to :-
> (a) such conditions and restrictions as may be prescribed and,
> (b) in the manner specified in Section 49
> 23. Sub-section (2) of Section 16 is a non obstante clause and clearly states that no registered person shall be entitled to the credit of input tax in respect of any supply of goods or services or both unless he fulfills the requirements and satisfies the existence of other conditions prescribed in Clauses (a) to (d) thereof.
> 24. Sub-section (3) of Section 16 contemplates yet another circumstance when ITC on tax component cannot be allowed, i.e., where the registered person has claimed depreciation on the tax component of cost of capital goods and plant and machinery under the provisions of the Income Tax Act, 1961.
> 25. Lastly comes the offending clause which is under challenge i.e. sub-section (4) of Section 16 of the CGST/BGST Act, which, in no unambiguous terms, provides that a registered person shall not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after 30th day of November (post amendment), following the end of financial year to which such invoices or debit note pertain or furnishing of the relevant annual return, whichever is earlier. The language of Section 16 of the CGST/BGST Act suffers from no ambiguity and clearly stipulates grant of ITC subject to the conditions and restrictions put thereunder.
> 26. At the cost of repetition, we note here that ITC is not unconditional and a registered person becomes entitled to ITC only if the requisite conditions stipulated therein are fulfilled and the restrictions contemplated under sub-section (2) of Section 16 do not apply. One of the conditions to make a registered person entitled to take ITC is prescribed under sub-section (4) of Section16. The right of a registered person to take ITC under sub-section (1) of Section 16 of the Act becomes a vested right only if the conditions to take it are fulfilled, free of restrictions prescribed under sub-section (2) thereof. In order to invoke Article 300-A of the

Constitution by a person, two circumstances must jointly exist :-
(i) Deprivation of property of a person
(ii) Without sanction of law
27. We have briefly dealt with what the expression 'property' connotes as explained in case of ***Jilubhai Nanbhai Khachar (supra)***, paragraph 42 of which reads thus :-
"42. Property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it, and to exclude everyone else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property. The exclusive right of possessing, enjoying, and disposing of a thing is property in legal parameters. Therefore, the word 'property' connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status. Property, therefore, within the constitutional protection, denotes group of rights inhering citizen's relation to physical thing, as right to possess, use and dispose of it in accordance with law. In Ramanatha Aiyar's The Law Lexicon, Reprint Edn., 1987, at p. 1031, it is stated that the property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have. The term property has a most extensive signification, and, according to its legal definition, consists in free use, enjoyment, and disposition by a person of all his acquisitions, without any control or diminution, save only by the laws of the land. In Dwarkadas Shrinivas case [1950 SCC 833 : 1950 SCR 869 : AIR 1951 SC 41] this Court gave extended meaning to the word property. Mines, minerals and quarries are property attracting Article 300-A.
28. Upon close reading of sub-section (1) of Section 16 of the CGST/ BGST Act, we are of the view that the provision under sub-section (4) of Section 16 is one of the conditions which makes a registered person entitled to take ITC and by no means sub-section (4) can be said to be violative of Article 300-A of the Constitution of India.
29. We are not convinced with the submissions advanced on behalf of the petitioners to read down the provision of sub-section (4) of Section 16 of the CGST/ BGST Act since we see neither any reason nor a necessity to do it. We have mentioned in the beginning, the situations which may require reading down a statutory provision. There is always a presumption of constitutional validity of a legislation, with the burden of showing the contrary, lying heavily upon someone who challenges its validity.
30. Submissions have been advanced on behalf of the petitioners that sub-section (4) of Section 16 imposes unreasonable and disproportionate restriction on the right to freedom of trade and profession guaranteed under Article 19(1)(g) of the Constitution and is, therefore, violative of

> Article 302 of the Constitution and is in teeth of Article 13 of the Constitution. This argument is founded on the ground of absence of any rationale behind fixation of a cut-off-date for filing of return. We do not find any merit in the submissions so advanced, which deserves to be outrightly rejected."

94. Another Division Bench of Patna High Court in ***Aastha Enterprises v. State of Bihar & others [MANU/BH/1034/2023]*** has held that Section 16(2)(c) is constitutionally valid. The claim of the ITC would be admissible only if the supplier pays the tax. It has been said that in the concession, there is no question of double taxation. The seller and the purchaser have an independent contract without the jurisdiction of the Government, and if the seller dealer fails to remit the tax collected from the purchaser dealer to the Government, the purchaser dealer would have an independent right to recover from the supplier. The Government can also finally recover from the seller dealer the amount unpaid by him after collecting from the purchaser dealer.

Paragraphs 11 to 14 of the said judgment have been held as under:

> "11. It is true that Input Tax Credit is a concept introduced in the tax regime, all over the country for the purpose of avoiding the cascading effect of taxes. The benefit of such credit being availed by a purchasing dealer who sells or manufactures goods, using raw materials on which tax has been paid is a benefit or concession conferred under the statute as has been held in ALD. Automobile Private Limited. Necessarily, the conditions for such availment of credit has to be scrupulously followed failing which there can be no benefit conferred on the assessee. The benefit is one conferred by the statute and if the conditions prescribed in the statute are not complied; no benefit flows to the claimant.

12. The contention of double taxation does not impress us especially since the claim is denied only when the supplier who collected tax from the purchaser fails to pay it to the Government. Taxation as has been held is a compulsory extraction made for the purpose of public good, by the welfare State and without the levy being paid to the Government; there can be no claim raised of the liability to tax having been satisfied and hence there is no question of double taxation.

13. The further contention raised by the assessee is also one of the statute having provided measures to recover the collected tax, which the selling dealer fails to pay to the Government. The mere fact that there is a mode of recovery provided under the statute would not absolve the liability of the tax payer to satisfy the entire liability to the Government. The purchasing dealer being the person who claims Input Tax Credit could only claim the Input Tax benefit if the supplier who collected the tax from the purchaser has paid it to the Government and not otherwise. The Government definitely could use its machinery to recover the amounts from the selling dealer and if such amounts are recovered at a later point of time, the purchasing dealer who paid the tax to its supplier could possibly seek for refund. However, as long as the tax paid by the purchaser to the supplier, is not paid up to the Government by the supplier; the purchaser cannot raise a claim of Input Tax Credit under the statute. We have to notice that the word 'Input Tax Credit' itself postulates a situation where the purchasing dealer has a credit in the ledger account maintained by it with the Government. The said credit can only arise when the supplier pays up the tax collected from the purchaser. The mere production of a tax invoice, establishment of the movement of goods and receipt of the same and the consideration having been paid through bank accounts would not enable the Input Tax Credit; unless the credit is available in the ledger account of the purchasing dealer who is an assessee.

14. The seller and purchaser have an independent contract without the junction of the Government. The statute provides for a levy of tax on goods and services or both, supplied by one to the other which can be collected but the dealer who collects it has also the obligation to pay it up to the State. The statutory levy and the further benefit of Input Tax Credit conferred on the purchasing dealer depends not only upon the collection by the seller but also the due payment by the seller to the Government. When the supplier fails to comply with the statutory requirement, the purchasing dealer cannot, without credit in his account claim Input Tax Credit and the remedy available to the purchasing dealer is only to proceed for recovery against the seller. Even if such recovery from the supplier is effected by the purchasing dealer; the State would be able to recover the tax amount collected and not paid to the exchequer, from the selling dealer since the rigor of the provisions for recovery on failure to pay up, after collecting tax, enables the Government so to do."

95. The Supreme Court in the case of ***Mahalaxmi Cotton Ginning Pressing and Oil Industries vs. The State of***

Maharashtra and others [MANU/MH/0620/2012], while interpreting Section 48(5) of Maharashtra Value Added Tax Act, 2002, and upholding its constitutionality held that set off is impermissible without any tax being received into the Government treasury. It has been held that set off would be available where the tax has been deposited in the treasury and to that extent, the entitlement to set-off is created by the statute, in terms of which the set-off is granted under the legislation must be strictly observed.

96. Subsection 48 of the Maharashtra Value Added Tax Act, 2002 would read as under:

> **"48. Set-off, refund, etc.:-**
> (1) The State Government may, by rules, provide that,-
> (a) in such circumstances and subject to such conditions and restrictions as may be specified in the rules, a set-off or refund of the whole or any part of the tax,-
> (i) paid under any earlier law in respect of any earlier sales or purchases of goods treated as capital assets on the day immediately preceding the appointed day or of goods which are held in stock on the appointed day by a person who is a dealer liable to pay tax under this Act, be granted to such dealer;or.
> (ii) paid in respect of any earlier sale or purchase of goods under this Act be granted to the purchasing dealer; or
> (iii) paid under the Maharashtra Tax on Entry of Motor Vehicles into the Local Areas Act, 1987 (Mah. XLII of 1987) be granted to the dealer purchasing or importing motor vehicles; or
> (iv) paid under the Maharashtra Tax on Entry of Goods into the Local Areas Act, 2002, be granted to the dealer;
> (b) for the purpose of the levy of tax under any of the provisions of this Act, the sale price may in the case of any class of sales be reduced to such extent, and in such manner, as may be specified in the rules.
> (2) No set-off or refund as provided by any rules made under this Act shall be granted to any dealer in respect of any purchase made from a registered dealer after the appointed day, unless the claimant

dealer produces a tax invoice, containing a certificate that the registration certificate of the selling dealer was in force on the date of sale by him and the due tax, if any, payable on the sale has been paid or shall be paid and unless such certificate is signed by the selling dealer or a person duly authorised by him.

(3) Subject to the provisions contained in subsection (4), where no tax has been charged separately under any earlier law, the rate of tax applicable for the purposes of calculating the amounts of set off, or refund in respect of any earlier sale or purchase of goods, or for the purposes of reduction of sale or purchase price for levy of tax, shall be the rate setout against the goods in the relevant Schedule under any earlier law.

(4) Where, under any notification issued under this Act or as the case may be, any earlier law, any sale or purchase of goods has been exempted from the payment of whole of sales tax or purchase tax, then, for the purposes of sub-section (3), the rate of tax applicable shall be nil; and where it is exempted from payment of any part of sales tax (or purchase tax), the rate of tax applicable shall be the rate at which the payment of tax is to be made by virtue of such exemption.

(5) For the removal of doubt it is hereby declared that, in no case the amount of set-off or refund on any purchase of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under this Act or any earlier law, into the Government treasury except to the extent where purchase tax is payable by the claimant dealer on the purchase of the said goods effected by him :

Provided that, where tax levied or leviable under this Act or any earlier law is deferred or is deferrable under any Package Scheme of Incentives implemented by the State Government, then the tax shall be deemed to have been received in the Government Treasury for the purposes of this sub-section.

(6) Where at any time after the appointed day, a dealer becomes entitled to a refund whether under any earlier law or under this Act, then such refund shall first be applied against the amount payable, if any, under any earlier law or this Act and the balance amount, if any, shall be refunded to the dealer."

97. Paragraph 38 of the judgment of ***Mahalaxmi Cotton Ginning Pressing (supra)*** is extracted hereunder: -

38. Section 48(5) uses the expression "actually paid" into the Government treasury. The words "actually paid" must receive their ordinary and natural meaning. A set off under Section 48(5) would be

> allowable only to the extent of the tax, if any, that has been actually paid into the treasury in respect of the purchase tax paid on the same goods. The use of the word "actually" in conjunction with the word "paid" leaves no manner of doubt about the legislative intent. A set off is available where tax has been deposited in the treasury and to the extent of the tax deposited. Where no tax has been deposited in the treasury, there is no tax actually paid in respect of which a set off can be granted. In State of Madhya Pradesh vs. Indore Iron and Steel Mills Pvt. Ltd.,18 MANU/SC/0637/1998: AIR 1998 SC 3050 the Supreme Court considered the provisions of a notification issued under the Madhya Pradesh General Sales Tax Act, 1958 which contained a condition that the goods "had suffered entry tax"under a particular enactment before they were purchased by the registered dealer. Interpreting the words "suffered entry tax", the Supreme Court held that it is only where the entry tax had actually been paid that the exemption would arise:
>
> In our view, the words of the said notification under the State Sales Tax Act are so clear that they leave no doubt whatsoever and cannot be subjected to any construction but one, namely, that only goods upon which entry tax under the Entry Tax Act has been paid are entitled to the exemption thereunder. There has to be actual payment.The impact of the entry tax upon the goods for which the exemption is sought has to be felt; only then is the exemption available. The use of the word "suffered" makes this plain.
>
> There is no reason for the Court to depart from the plain and ordinary meaning of the words "actually paid", when used in the context of Section 48(5).

98. In ***Willowood Chemicals vs. Union of India [2018 (58) GSTR 310 (Guj)],*** in Paragraphs 30 and 35, it has been held that conditions restrictions and time limit are crucial for granting ITC and collection of tax of each financial year, otherwise, it would impact revenue collection, budgetary allocation and *in rem* revenue deficite. [Paragraphs 30 and 35 of the said judgment are extracted in paragraph 79 of this judgment.]

Conclusion:

99. The Government had realized the difficulty in the initial roll out of the GST regime under the CGST/SGST Act and considered that GSTR 2A was not available initially in the Finance years, 2017-2018 and 2018-2019, during the implimentation of GST. In order to resolve all *bona fide* claims and mistakes, Circular No.183/15/2022- GST dated 27.12.2022 and Circular No. 193/05/2023- GST dated 17.07.2023 have been issued. Circulars cover the period from the introduction of GST till Section 16(2)(aa) was introduced with effect from 01.01.2022. The ITC can be availed by the recipient for the *bona fide* scenarios listed in those Circulars on submitting proof of payment to the Government by the supplier. Therefore, if, during the pendency of these writ petitions, the petitioners who could have got the benefits of these Circulars and could not avail the benefits within the time limit prescribed, may approach the appropriate GST authority within a period of thirty days from today to avail the benefit of the aforesaid Circulars, if the same is/are applicable to their case. The GST authorities will examine the claim of the individual dealer by applying the provisions of the Circulars, and it will grant applicable relief to eligible dealers.

100. Prior to the amendment in Section 39 by the Finance Act 2022, the date for furnishing the return under Section 39 was

30th September. Considering the difficulties in the initial stage of the implementation of the GST regime, its understanding, and compliance, the Legislature effected the amendment and extended the time for filing the return for September to 30th November in each succeeding Financial Year. The amendment is only procedural to ease the difficulties initially faced by the dealers / taxpayers. Therefore, where for the period from 01.07.2017 till 30.11.2022, if a dealer has filed the return after 30th September and the claim for ITC was made before 30th November, the claim for ITC of such dealer should also be processed if he is otherwise entitled to claim the ITC. It has been pointed out in several cases which are pending before this Court that the claim was made before 30th November of the succeeding Financial Year, but the relevant period was 20th October, which was the extended date for furnishing the return under Section 39 for the month of September. Therefore, if a person has furnished the return for the month of September till 30th November, their claim should also be considered and processed and should not be rejected if the dealer did not furnish the return for the month of September on or before 20th October. This amendment being procedural has to be given retrospective effect and, therefore, it is provided that it should be treated that the time limit for furnishing the return for the month of September is 30th November in each Financial Year with effect

from 01.07.2017, considering the peculiar nature of difficulties in the initial period of implementation of the GST regime. So far as the challenge to the constitutional validity of Section 16(2)(c) and Section 16(4) is concerned, the same is rejected.

Result:

101. The liberty is granted to the petitioners, who can claim the benefit of the two Circulars, namely, Circular No. 183/15/2022-GST dated 27.12.2022 and Circular No. 193/05/2023- GST dated 17.07.2023 to make their claim within one month from today before the appropriate authority who shall examine the claim of the individual dealer and process the claim.

101.1 The time limit for furnishing the return for the month of September is to be treated as 30th November in each financial year with effect from 01.07.2017, in respect of the petitioners who had filed their returns for the month of September on or before 30th November, and their claim for ITC should be processed, if they are otherwise eligible for ITC.

The writ petitions are hereby disposed of. All Interlocutory Applications as regards interim matters stand closed.

Sd/-

DINESH KUMAR SINGH
JUDGE

SJ

APPENDIX OF WP(C) 31559/2019

PETITIONER EXHIBITS

EXHIBIT P1	**COPY OF NOTIFICATION NO.49/2019 ISSUED BY THE 1ST RESPONDENT DATED 09.10.2019.**

APPENDIX OF WP(C) 25891/2020

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF THE FORM GSTR 3B FROM JULY, 2017 TO MARCH, 2018 FOR GSTIN 32AADFP6131E1ZR.
EXHIBIT P2	TRUE COPY OF THE FORM GSTR 9 FOR 2017-18 FOR GSTIN 32AADFP3161E1ZR.
EXHIBIT P3	TRUE COPY OF THE NOTICE DATED 8.7.2020 IN FORM GST ASMT 10 FOR 2017-18 FOR GSTIN 32AADFP6131E1ZR.
EXHIBIT P4	TRUE COPY OF THE REPLY DATED 27.07.2020 IN FORM GST ASMT 11 FOR 2017-18 FOR GSTIN 32AADFP6131E1ZR.
EXHIBIT P5	TRUE COPY OF THE REPLY DATED 27.07.2020 IN FORM GST DRC-01A FOR 2017-18 FOR GSTIN 32AADFP6131E1ZR.
EXHIBIT P6	TRUE COPY OF THE GSTR 2A FOR 2017-18 FOR GSTIN 32AADFP6131E1ZR.
EXHIBIT P7	TRUE COPY OF THE PURCHASE LEDGER OF ANNA PLASTICS FOR 2017-18 WITH RELEVANT INVOICES.
EXHIBIT P8	TRUE COPY OF THE LEDGE ACCOUNT OF THE 9TH RESPONDENT WITH THE PETITIONER.
EXHIBIT P9	TRUE COPY OF THE DETAILS OF 9TH RESPONDENT WITH GSTIN 32AFCPJ0127N1ZS IN GST NETWORK.
EXHIBIT P10	TRUE COPY OF THE RELEVANT PROVISIONS OF SECTION 16 IN CENTRAL GOODS AND SERVICE TAX ACT, 2017.
EXHIBIT P11	TRUE COPY OF THE CIRCULAR NO.F.NO.CBEC-20/06/14/2019-GST DATED 11.11.2019 ISSUED BY THE GOVERNMENT OF INDIA.
EXHIBIT P12	TRUE COPY OF THE NOTIFICATION NO.49/2019-CENTAL TAX DATED 09.10.2019 ISSUED BY THE GOVERNMENT OF INDIA.
EXHIBIT P13	TRUE COPY OF THE INTERIM ORDER IN WPC NO. 31559 OF 2019 DATED 14-10-2022
EXHIBIT P14	TRUE COPY OF THE NOTICE DATED 22-06-2023 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER

APPENDIX OF WP(C) 26515/2021

PETITIONER EXHIBITS

EXHIBIT P1	THE TRUE COPY OF DISTRIBUTION AGREEMENT DATED 31.1.2018, ENTERED INTO BETWEEN PETITIONER AND FIRST RESPONDENT
EXHIBIT P2	THE TRUE COPY OF REGISTRATION CERTIFICATE DATED 18.7.2018 OF THE FIRST RESPONDENT
EXHIBIT P3	THE TRUE COPY OF SHOW CAUSE NOTICE NO 32AAICM8997RIZA/2018-18 DATED 6.7.2021 ISSUED BY STATE TAX OFFICER FIRST CIRCLE STATE GOODS AND SERVICE TAX DEPARTMENT KOZHIKODE
EXHIBIT P4	THE TRUE COPY OF RECEIPT OF COMPLAINT DATED 20.10.2021, FILED BY THE PETITIONER AGAINST THE FIRST RESPONDENT
EXHIBIT P5	THE TRUE COPY OF NOTIFICATION NO 49/2019-CENTRAL TAX DATED 9.10.2019 ISSUED BY GOVERNMENT OF INDIA, MINISTRY OF FINANCED CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
EXHIBIT P6	THE TRUE COPY OF NOTIFICATION NO 75/2019-CENTRAL TAX DATED DATED 26.12.2019 ISSUED BY GOVERNMENT OF INDIA, MINISTRY OF FINANCE, CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

APPENDIX OF WP(C) 5995/2022

PETITIONER EXHIBITS

EXHIBIT P1	A TRUE COPY OF THE NOTICE IN FORM GST ASMT -10 DATED 30.07.2020.
EXHIBIT P2	A TRUE COPY OF THE REPLY FILED BY THE PETITIONER DATED 20.07.2021.
EXHIBIT P3	A TRUE COPY OF THE ASSESSMENT ORDER U/S. 73 DATED 01.02.2022.
EXHIBIT P3(A)	A TRUE COPY OF THE PROCEEDINGS OF ASSESSMENT DATED 31.1.2021.
EXHIBIT P3(B)	A TRUE COPY OF THE NOTICE OF DEMAND IN FORM GST DRC - 07.
ANNEXURE A	A COPY OF JUDGMENT IN THE STATE OF KARNATAKA VS. M/S. ECOM GILL COFFEE TRADING PRIVATE LIMITED (2023 (3) TMI 533 SC)
ANNEXURE B	A COPY OF JUDGMENT IN SUNCRAFT ENERGY [P] LTD AND ANR VS. THE ASSISTANT COMMISSIONER, STATE TAX, BALLYGUNGE CHARGE AND OTHERS (MAT 1218 OF 2023 DATED: 02.08.2023)
ANNEXURE C	A COPY OF JUDGMENT IN COMMISSIONER OF CENTRAL EXCISE, JALANDHAR VS. KAY KAY INDUSTRIES, (2013 (8) TMI 772 - SC)
ANNEXURE D	A COPY OF JUDGMENT IN ARISE INDIA LTD. VS. COMMISSIONER OF TRADE AND TAXES [TS-314-HC2017(DEL)-VAT],

APPENDIX OF WP(C) 21545/2022

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF GSTR 3B MONTHLY ONLINE RETURNS SUBMITTED FOR THE PERIOD APRIL 2021 TO SEPTEMBER 2021.
EXHIBIT P2	TRUE COPY OF NOTICE IN GST ASMT-10 DATED 24/12/2021 ISSUED TO PETITIONER BY 4TH RESPONDENT.
EXHIBIT P3	TRUE COPY OF REPLY DATED 27/12/2021 SUBMITTED BEFORE 1ST RESPONDENT AGAINST EXT.P2 NOTICE.
EXHIBIT P3A	TRUE COPY OF LETTER DATED 22/02/2022 SUBMITTED BEFORE 4TH RESPONDENT ALONG WITH E-MAIL RECEIVED FROM CUSTOMS DEPARTMENT.
EXHIBIT P4	TRUE COPY OF INTIMATION IN FORM GST DRC-01A DATED 16/05/2022 ISSUED BY 4TH RESPONDENT, ALLEGING EXCESS INPUT TAX CREDIT AVAILED BY PETITIONER BY SCRUTINY OF GSTR 3B RETURN WITH GSTR 2A FOR THE PERIOD APRIL TO SEPT. 2021.
EXHIBIT P5	TRUE COPY OF REPLY DATED 24/06/2022 SUBMITTED BEFORE 4TH RESPONDENT AGAINST EXT.P4 INTIMATION, ALONG WITH SUPPORTING DOCUMENTS.
EXHIBIT P6	TRUE COPY OF THE PRESS RELEASE DATED 04/05/2018 ISSUED BY THE CBIC.
EXHIBIT P7	TRUE COPY OF THE PRESS RELEASE DATED 18/10/2018 ISSUED BY THE CBIC.
EXHIBIT P8	TRUE COPY OF THE CIRCULAR BEARING NO.123/42/2019-GST DATED 11/11/2019 ISSUED BY THE MINISTRY OF FINANCE, GOVERNMENT OF INDIA.
EXHIBIT P9	TRUE COPY OF THE JUDGMENT OF THE HON'BLE MADRAS HIGH COURT IN WP(MD) 2127/2021 (M/S.D.Y. BEATHEL ENTERPRISES VERSUS THE STATE TAX OFFICER (DATA CELL), (INVESTIGATION WING) COMMERCIAL TAX BUILDINGS, TIRUNEVELI).

APPENDIX OF WP(C) 27854/2022

PETITIONER EXHIBITS

EXHIBIT P1	COPY OF FORM GSTR 3B DATED 07-02-2020 FILED BY THE PETITIONER FOR THE MONTH DECEMBER, 2018
EXHIBIT P1(A)	COPY OF FORM GSTR 3B DATED 07-02-2020 FILED BY THE PETITIONER FOR THE MONTH JANUARY, 2019
EXHIBIT P1(B)	COPY OF FORM GSTR 3B DATED 07-02-2020 FILED BY THE PETITIONER FOR THE MONTH FEBRUARY, 2019
EXHIBIT P1(C)	COPY OF FORM GSTR 3B DATED 28-02-2020 FILED BY THE PETITIONER FOR THE MONTH MARCH, 2019
EXHIBIT P2	COPY OF THE NOTIFICATION NO. 52/2020-CENTRAL TAX DATED 24-06-2020 ISSUED BY THE 2ND RESPONDENT
EXHIBIT P3	COPY OF THE NOTIFICATION NO. 19/2021-CENTRAL TAX DATED 01-06-2021 ISSUED BY THE 2ND RESPONDENT
EXHIBIT P4	COPY OF THE NOTIFICATION NO. 33/2021-CENTRAL TAX DATED 29-08-2021 ISSUED BY THE 2ND RESPONDENT
EXHIBIT P5	COPY OF NOTICE IN FORM DRC-01A DATED 19-07-2022 ISSUED BY THE 1ST RESPONDENT
EXHIBIT P6	COPY OF THE INTERIM ORDER IN WP(C) NO. 10824/2022 DATED 29-03-2022 PASSED BY THE HON'BLE HIGH COURT OF KERALA

APPENDIX OF WP(C) 24327/2022

PETITIONER EXHIBITS

EXHIBIT- P1	TRUE COPY OF THE NOTICE FORM GST ASMT-10 DATED 29/6/2020 ISSUED U/S 61 OF THE ACT,2017 BY THE 4TH RESPONDENT
EXHIBI - P2	TRUE COPY OF THE SHOW CAUSE NOTICE 32AACFJ5865CDIZN/2017-18 DATED 28/6/2021 IN GST DRC -01 ISSUED BY THE 4TH RESPONDENT
EXHIBIT- P3	TRUE COPY OF THE REPLY DATED 27/11/2021 SUBMITTED BY THE PETITIONER THROUGH THE ONLINE PORTAL
EXHIBIT- P4	TRUE COPY OF THE ORDER U/S/ 73 DATED 1/6/2022 ALONG WITH FORM GST DRC -07 ISSUED BY THE 4TH RESPONDENT
EXHIBIT -P5	TRUE COPY OF THE CIRCULAR BEARING NO. 123/42/2019- GST DATED 11/11/2019 ISSUED BY THE MINISTRY OF FINANCE, GOVERNMENT OF INDIA
EXHIBIT- P6	TRUE COPY OF CIRCULAR NO. 122/41/2019-GST DATED 5/11/2019 ISSUED BY THE CENTRAL BOARD OF DIRECT TAXES AND CUSTOMS.
EXHIBIT-P7	TRUE COPY THE CIRCULAR NO. 8/2020 DATED 4/8/2020 ISSUED BY COMMISSIONER OF STATE TAX
EXHIBIT -P8	TRUE COPY OF THE JUDGMENT OF THE HONOURABLE MADRAS HIGH COURT IN W.P.(MD) 2127/2019 (M/S D. Y. BEATHEL ENTERPRISES VERSUS THE STATE TAX OFFICER , (DATA CELL), (INVESTIGATION WING) COMMERCIAL TAX BUILDING,TIRUNELVELI). DATED 24/2/2021
EXHIBIT -P9	TRUE COPY OF THE PRESS RELEASE DATED 4/5/2018 ISSUED BY THE CBIC
EXHIBIT- P10	TRUE COPY OF THE PRESS RELEASE DATED 18/10/ 2018 ISSUED BY THE CBIC
EXHIBIT- P11	TRUE COPY OF THE INTERIM ORDER IN W.P.C. NO. 15802/2022 OF THE HONOURABLE HIGH COURT OF KERALA DATED 13/5/2022

APPENDIX OF WP(C) 36612/2022

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE ORDER DT.31.12.2021 ISSUED BY 1ST RESPONDENT ,FINANCIAL YEAR 2017-2018 .REF.NO. Z13212210069351**
EXHIBIT P2	**TRUE COPY OF THE APPELLATE ORDER DT.29.06.2022 OF THE 2ND RESPONDENT IN APPEAL NO.GST(ALPY) 66/2022.**

APPENDIX OF WP(C) 24677/2023

PETITIONER EXHIBITS

EXHIBIT 1	TRUE COPY OF THE RECOVERY NOTICE BEARING NO.AR/GST/ 32AKPPS5038M1ZL/27/2023-24 DATED 16.6.2023 ISSUED BY THE 2ND RESPONDENT.
EXHIBIT-P2	TRUE COPY OF THE RECOVERY NOTICE BEARING NO.AR/GST/ 32AKPPS5038M1ZL/28/2023-24 DATED 16.6.2023 ISSUED BY THE 2ND RESPONDENT.
EXHIBIT-P3	TRUE COPY OF THE ASSESSMENT ORDER NO.32AKPPS5038M1ZL/2017-18/2022-23 DATED 4.11.2022 ALONG WITH FORM GST DRC 07 DATED 4.11.2022 UPLOADED IN THE GST PORTAL ISSUED BY THE 1ST RESPONDENT.
EXHIBIT-P4	TRUE COPY OF THE ASSESSMENT ORDER NO.32AKPPS5038M1ZL/2018-19/2022-23 DATED 4.11.2022 ALONG WITH FORM GST DRC 07 DATED 4.11.2022 UPLOADED IN THE GST PORTAL ISSUED BY THE 1ST RESPONDENT.
EXHIBIT-P5	TRUE COPY OF THE ASSESSMENT ORDER NO.32AKPPS5038M1ZL/2019-20/2022-23 DATED 4.11.2022 ALONG WITH FORM GST DRC 07 DATED 4.11.2022 UPLOADED IN THE GST PORTAL ISSUED BY THE 1ST RESPONDENT.
EXHIBIT-P6	TRUE COPY OF ORDER DATED 10.11.2022 IN W.P.(C) 24243/2022 PASSED BY THIS HON'BLE COURT.

APPENDIX OF WP(C) 37039/2023

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF THE SHOW CAUSE NOTICE DATED 13/03/2023 IN DRC 01A
EXHIBIT P2	TRUE COPY OF THE REPLY DATED 18.5.2023
EXHIBIT P3	TRUE COPY OF THE SHOW CAUSE NOTICE DATED 07/08/2023
EXHIBIT P4	TRUE COPY OF THE REPLY DATED 4/09/2023
EXHIBIT P5	THE COPIES OF THE INVOICES (TAX INVOICES) OF THE SUPPLIER DULY CHARGING GST ON THE RENTAL AMOUNTS
EXHIBIT P6	TRUE COPY OF THE STATEMENT SHOWING DETAILS OF PAYMENTS MADE TO THE SUPPLIER
EXHIBIT P7	TRUE COPY OF THE BANK STATEMENT EVIDENCING THE PAYMENTS MADE TO THE SUPPLIER DATED:13/09/2023