**IN THE HIGH COURT OF ORISSA : CUTTACK.**

**W.P.(C) No. 33278 of 2020**

*with*

**W.P.(C) No. 24499 of 2020**

*and*

**W.P.(C) No. 32166 of 2021**

(Applications under Article 226/227
of the Constitution of India, 1950)

Vedanta Limited, Jharsuguda ... Petitioner

AFR

***VERSUS***

Union of India
through its Secretary (Revenue)
Ministry of Finance
Department of Revenue
Government of India, New Delhi
and Others … Opposite parties

**Advocates appeared in the case:**

| | | |
|---|---|---|
| ***For the Petitioner*** | : | M/s. Puneet Agrawal and Prasanta Kumar Nayak, Advocates |
| ***For the Opposite Parties*** | : | M/s. Prasanna Kumar Parhi, Deputy Solicitor General of India and Radheyshyam Chimanka, Senior Standing Counsel (CGST & Central Excise) |

**CORAM:**
**THE CHIEF JUSTICE**
**JUSTICE MURAHARI SRI RAMAN**

**JUDGMENT**
**04.01.2023**

***MURAHARI SRI RAMAN, J.—***

***1.*** Craving to question the propriety of Orders dated 13.08.2020, 10.09.2020 and 13.11.2020 passed by Assistant Commissioner, GST & Central Excise, Jharsuguda Division returning the applications filed manually claiming supplementary refund of unutilized input tax credit pertaining to Compensatory Cess on inputs used in relation to zero-rated supplies made during the periods September, 2017; October, 2017; November, 2017; December, 2017; January, 2018; July, 2018 to September, 2018; and November, 2018 to February, 2020, as computed by the petitioner unit-wise, it insisted for invocation of Article 226 of the Constitution of India in W.P.(C) No.33278 of 2022 with the following prayers:

> *"In light of the aforementioned submissions, it is most humbly prayed before this Hon'ble Court that this Hon'ble Court be pleased to:*
>
> *(a) Issue appropriate writ, order or direction to quash and set aside Circular No. 125/44/2019-GST dated 18.11.2019 for being ultra-vires the parent Act. (Annexure-4); and/or*
>
> *(b) Issue appropriate writ, order or direction to set aside impugned order dated 13.08.2020 bearing DIN No. 20200862WK00006A4EB7, impugned order dated*

*10.09.2020 bearing DIN No. 20200962WK00004JIFAA, and impugned order dated 13.11.2020 bearing DIN No. NIL (Annexure-9 Series); and/or*

*(c) Issue appropriate writ, order or direction directing the Respondent CBIC to refrain from issuing instructions interfering with the quasi-judicial powers of the adjudicating authorities; and/or*

*(d) Issue an appropriate writ, order or direction to Respondents to allow the supplementary refund applications (Annexure-8 series) on unit-wise basis as per Section 16(3) of IGST Act read with Section 54 of the CGST/SGST Act; and/or*

*(e) Alternatively, issue appropriate writ, order, or direction to Respondents to allow Petitioner to file refund application electronically on common portal for the periods September 2017 to January 2018, and August 2018, September 2018, November 2018 to February 2020; and/or*

*(f) Issue appropriate writ, order or direction to read down Rule 89(4) of CGST/SGST Rules (Annexure-1); and/ or*

*(g) Issue appropriate writ, order or direction to quash Rule 89(4) of CGST/SGST Rules for being ultra-vires the provisions of parent Act (Annexure-1); and/or*

*(h) Issue an appropriate writ, order or direction to the Respondents to issue the refund of Rs. 137.26 Cr. to the Petitioner, along with interest; and/or*

*(i) Issue writ in the nature of mandamus or any other appropriate writ, order or direction to the Respondents to forthwith rectify/correct the functionality on the GSTN portal;*

*(j) Pass any other order this Hon'ble Court may deem fit in the interest of justice and equity."*

*1.1.* With the similar prayer(s) in W.P.(C) No.24499 of 2020, the petitioner sought to quash Order dated 10.06.2020 (Annexure-9) passed by Assistant Commissioner, GST & Central Excise, Jharsuguda Division returning the application filed manually claiming supplementary refund of unutilized input tax credit pertaining to Compensatory Cess on inputs used in relation to zero-rated supplies made during the periods February, 2018 to June, 2018, as computed by the petitioner unit-wise.

*1.2.* The petitioner assailed notice dated 10.09.2021 and intimation dated 16.09.2021 issued by the Assistant Commissioner of GST & Central Excise, Jharsuguda Division extending benefit of personal hearing in the matter of consideration of application for grant of additional refund of unutilized input tax credit pertaining to the periods from April-June, 2020; August, 2020; October-December, 2020; and January, 2021 in W.P.(C) No.32166 of 2021 and made identical prayers as made in W.P.(C) No. 24499 of 2020 and W.P.(C) No. 33278 of 2022.

*1.3.* Since questions raised in these three writ petitions are akin, they are heard analogously and disposed of by this common Judgment.

***Facts of the case:***

***2.*** Pleadings contained in the writ petition and averments made therein adumbrate that the petitioner, a public limited company engaged in manufacture of aluminium products, having three

units— Aluminium Refinery at Lanjigarh with Captive Power Plant, Aluminium Smelter at Jharsuguda and Thermal Power Plant at Jharsuguda— all situated in Domestic Tariff Area bearing common GSTIN: 21AACCS7101B1Z8 under the Central Goods and Service Tax Act, 2017/the Odisha Goods and Service Tax Act, 2017 (collectively hereinafter referred to as "GST Act"), claimed to have made exports and supplied output(s) of respective units to unit located in Special Economic Zone within the State of Odisha, which has separate registration GSTIN, being treated to be independent one in terms of Section 25(5) of the GST Act.

*2.1.* The case of the petitioner-company is that the Jharsuguda unit using inputs like coal, petroleum coke, calcined alumina and coal tar pitch to bring out outputs such as aluminium ingots, aluminium billets and aluminium rods, made export supplies (zero-rated supplies) and also made supplies to persons located in Domestic Tariff Area. Likewise, while the Lanjigarh unit utilised bauxite and coal to manufacture calcined alumina, the Jharsuguda Power Plant using coal generated electricity and both of them supplied output to unit located in Special Economic Zone (zero-rated) as also persons in Domestic Tariff Area. Upon payment of Compensation Cess on the procurement of coal for use as input, the petitioner sought for refund of unutilized input tax credit on account of zero-rated supplies falling within the ambit of Section 16 of the Integrated Goods and Services Tax Act, 2017 (for brevity, "IGST Act").

*2.2.* As is required under Section 54(3) of the GST Act read with Rule 89(4) of the Central Goods and Services Tax Rules, 2017/the Odisha Goods and Services Tax Rules, 2017 (collectively be referred to as "GST Rules"), the petitioner applied for refund of unutilized input tax credit including Compensation Cess in Form RFD-01 for each month (September, 2017 to January, 2018; July, 2018 to February, 2020 except October, 2018) in respect of zero-rated supplies made by all the units taken together.

*2.3.* Though said refund as claimed was allowed by the authority concerned, when it computed unit-wise quantum of refund for the said period(s), it was found that the quantum of refund as allowed by taking into consideration all the units together was much less and, therefore, stemming on subsequent Circulars being No.125/44/2019-GST, dated 18.11.2019 and 128/47/2019-GST, dated 23.12.2019 read with Rule 97A of the GST Rules, the petitioner-company manually applied for grant of supplementary refund by setting up claim on the basis of supplies made unit-wise.

*2.4.* The Assistant Commissioner, GST & Central Excise, Jharsuguda Division has refused to entertain such manually submitted application for grant of supplementary refund. The reason for return of application so filed is stated to be the following *vide* Orders contained in Annexure-9 series to the writ petition [W.P.(C) No.33278 of 2020]:

*"The above supplementary refund application made by your company not appears to be legal and proper on the following grounds:*

*1- Para- 8 of Circular 125/44/2019 dated 18.11.2019 provide as*

> *'Applicant, after submitting a refund application under any of these categories for certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period...'*

*2- Further in para 2.2 of Circular 135/5/2020 dated 31.03.2020; it has been mentioned that Hon'ble Delhi High Court in Order dated 21.01.2020, in the case of Ms. Pitambra Books Pet Ltd, vide para 13 of the said order has stayed the rigour of paragraph 8 of Circular No. 125/44/2019-GST dated 18.11.2019 and has also directed the Government to either open the online portal so as to enable the petitioner to file the tax refund electronically, or to accept the same manually within 4 weeks from the Order.*

*3. Accordingly, CBIC, in para 2.5 of Circular 135/5/2020 dated 31.03.2020, has extended only the benefit of bunching of refund claims across the FY for filing of fresh refund claims by the claimant. The said para read as follows:*

> *'The issue has been examined and it has been decided to remove the restriction on clubbing of tax periods across Financial Years. Accordingly, circular No. 125/44/2019-GST dated 18.11.2019 stands modified to that extent i.e. the restriction on bunching of refund claims across financial years shall not apply.'*

*4- It is pertinent to mention here that you have already taken the benefit of refund for the aforesaid period as mentioned in Table-A appended hereinbefore and now claiming supplementary refund on the basis of separate unit wise calculation of the refund eligibility for the said period and under the same category, which appears to be not tenable in as much as the provisions of Section 54 of CGST Act, 2017, do not provide for filing of supplementary refund claim after filing original refund claim for the same period. Also Circular 125/44/2019-GST does not allow for the filing of supplementary refund after filing refund claim for the same period.*

*5. Moreover, your company has single GSTIN i.e. 21AACCS7101B1Z8 for all the aforesaid 3 units and statutory GST Returns such as GSTR 3B, GSTR 1, GSTR 9 etc. are also filed on consolidate basis for all the said 3 units together. Hence, filing of supplementary refund claim considering unit-wise refund eligibility does not appear to be just and proper.*

*6- As per Circular 125/44/2019-GST after 26.09.2019, all the refund claims should be filed electronically in proper Form RFD-01 w.e.f. 26.09.2019. However, you have not applied the said supplementary refund application electronically neither ARN nos. have been generated for the supplementary refund claims in terms of the above provision. As the refund application is manually filed by the party in RFD-01A without generation of ARN nos., the refund application does not appears to be proper.*

*In view of the above facts, the manual refund applications submitted to this office vide letter no. Nil dated 30.06.2020 is being returned herewith in original for your further action"*

*2.5.* Such refusal to entertain application(s) by the authority concerned brought the petitioner before this Court seeking indulgence by way of writ petitions.

***The contentions of the counsel for the petitioner:***

***3.*** Sri Puneet Agrawal, learned Advocate appearing for the petitioner submitted that apart from provision contained in Rule 97A, as inserted by virtue of the Central Goods and Services Tax (Twelfth Amendment) Rules, 2017, which enables claiming refund of unutilized input tax credit including Compensation Cess on account of zero-rated supplies falling under Section 16 of the IGST Act by making application manually, the legal right to such eligible claim emanates from the modalities specified under Section 54 read with Rule 89(4).

*3.1.* It is submitted by the counsel for the petitioner that the quantum of refund in respect of all the three units having common GSTIN taken together is less than the quantum of refund computed by taking into account each individual unit. Such difference is due to "higher ratio of eligible input tax credit to total turnover" in Thermal Power Plant-unit in comparison to other units. Therefore, the authority erred in not entertaining supplementary refund application(s) which is claimed unit-wise.

*3.2.* Referring to *VKC Footsteps India Pvt. Ltd. Vrs. Union of India, 2020 (7) TMI 726 (Guj) = (2020) 81 GSTR 66 (Guj)* it is submitted that the Government in the garb of framing rules could not restrict the effectiveness of the statutory provision conferring

right to claim refund of unutilized input tax credit including Compensation Cess. The authority, therefore, by not entertaining the claim for supplementary refund by taking into consideration unit-wise unutilized input tax credit has clearly deviated from avowed purport of Rule 89.

*3.3.* Whereas provisions of Section 54 read with Rule 89 do not prohibit claim of additional/supplementary refund of tax under same category under which already refund was claimed, the Circular being No.125/44/2019-GST, dated 18th November, 2019 could not place such restriction as the same is *ultra vires* said provisions in view of dicta laid in *CCE Vrs. Ratan Melting and Wire Industries, 2008 (12) STR 416 (SC) = (2008) 13 SCC 1*. Mr. Puneet Agrawal, learned Advocate for the petitioner would urge that owing to the restriction imposed in Circular No. 125/44/19-GST, dated 18.11.2019, to the effect that the application for refund could be filed only by way of electronic mode, being contrary to Rule 97A of the GST Rules, the petitioner has been deprived of the benefit of eligible refund of the unutilised input tax credit for the periods in question computed unit-wise. Further not allowing it to submit application electronically on the common GSTN portal for previous period has occasioned the disablement of the option for filing the refund of unutilized input tax credit.

*3.4.* Rule 92(3) mandates adherence to the principles of natural justice and manner provided for therein before denying claim for refund, which the opposite party No.6-Assistant Commissioner has failed to comply with.

***The contentions of the opponent-Revenue:***

***4.*** *Per contra*, Sri Radheyshyam Chimanka, learned Senior Standing Counsel for the CGST & Central Excise submitted that in view of the fact that the petitioner-company sought to register itself under one common GSTIN, in terms of Section 25 of the GST Act, input tax credit is available to single GSTIN allotted to all the three units. Therefore, the claim for refund of input tax credit unit-wise is impermissible, particularly so when the petitioner had applied and was allowed refund of unutilized input tax credit taking into consideration the consolidated figures of all three units.

*4.1.* The petitioner-company having chosen to retain one single registration being GSTIN 21AACCS7101B1Z8 for all the three units in terms of Section 25, furnished consolidated returns in Form GSTR-3B and Form GSTR-1 as required under Sections 37 and 39 read with Rule 59 coupled with annual return in Form GSTR-9 under Section 44 read with Rule 80; thereby it claimed input tax credit for all the three units. It is not disputed that the unit located at Special Economic Zone has a separate GSTIN. Therefore, consideration of refund application as submitted by the petitioner clubbing all these three units for the purpose of zero-rated supplies made cannot be imputed as infirm in law. The Assistant Commissioner, GST & Central Excise, Jharsuguda Division has justification in refusing to entertain the supplementary refund by changing method of computation, *i.e.,* by

taking into account each unit separately while retaining one single/common GSTIN for all the three units.

*4.2.* The GST statute recognizes claim of refund in one category in respect of any tax period identified by the GSTIN in view of Section 25(4) of the GST Act, the petitioner is, therefore, precluded from claiming separate treatment for different units for the purpose of availing benefit of refund of unutilized input tax credit.

*4.3.* By referring to paragraph 12.1 of the counter-affidavit filed by the opposite parties, the learned Senior Standing Counsel would submit that the petitioner-company filed refund application(s) by computing unutilized input tax credit including Compensation Cess in respect of all the three units bearing common GSTIN which were duly processed and considered by the Department. The petitioner was, accordingly, granted refund on the basis of claims lodged. The impugned order reflects the following fact:

> *"The refund against the aforesaid ARN Nos. had already been sanctioned and payment had been made to you."*

However, at a later point of time it has sought to agitate further claim by way of filing supplementary refund application(s) treating the three units independent of each other even as they maintained single GSTIN. Such a course being not countenanced by any provision provided under the GST Act or the rules framed

thereunder, the opposite party No.6-Assistant Commissioner rightly returned the said supplementary refund application(s).

*4.4.* Whether refund application filed manually was required to be considered by the authority concerned as posed by the petitioner *vis-à-vis* Circular No.125/44/2019-GST, dated 18.11.2019 does not arise on the facts and in the circumstances of the case inasmuch as the petitioner-company has prayed for more refund (supplementary refund) by treating each unit independent than it claimed originally by furnishing consolidated refund application(s) in respect of all the three units. The opposite party No.6-Assistant Commissioner has returned such supplementary refund application(s) being filed manually as the same is not liable to be considered in view of provisions contained in Section 54 read with formula prescribed under Rule 89(4) with reference to claim made under Section 16 of the IGST Act.

***Discussions*:**

***5.*** Undisputed fact from the respective pleading transpired that the three units of the petitioner-company, namely Lanjigarh— 2 MTPA Aluminium Refinery and Captive Power Plant; Jharsuguda 1215 MW Captive Power Plant; and Jharsuguda 2400 MW Thermal Power Plant situated within the State of Odisha, having single/common GSTIN, claimed refund of unutilized input tax credit by computing the quantum taking transactions of these three units together.

*5.1.* These three units bearing single/common GSTIN: 21AACCS7101B1Z8 having exported and supplied output(s) to Special Economic Zone unit bearing different GSTIN, claimed zero-rated supply and accordingly, claimed refund of unutilized input tax credit by making application(s) disclosing consolidated figures.

*5.2.* Section 2(23) of the IGST Act defines "zero-rated supply" by specifying that it shall have meaning assigned to it in Section 16. Section 16 *ibid.* lays down as follows:

> *"16. Zero-rated supply.—*
>
> *(1) "zero-rated supply" means any of the following supplies of goods or services or both, namely:—*
>
> *(a) export of goods or services or both; or*
>
> *(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.*
>
> *(2) Subject to the provisions of sub-section (5) of Section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.*
>
> *(3) **A registered person** making zero-rated supply shall be eligible to claim refund under either of the following options, namely:—*
>
> *(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or*

*(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied,*

*in accordance with the provisions of Section 54 of the Central Goods and Services Tax Act or the rules made thereunder"*

*5.3.* Section 54(3) of the GST Act reads as follows:

*"(3) Subject to the provisions of sub-section (10),* ***a registered person*** *may claim refund of any unutilised input tax credit* ***at the end of any tax period****:*

*Provided that no refund of unutilised input tax credit shall be allowed in cases other than—*

*(i) zero-rated supplies made without payment of tax;*

*(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:*

*Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:*

*Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies."*

*5.4.* To comprehend the aforesaid provisions with regard to claim for refund of unutilized input tax credit on account of zero-

rated supplies, the following definitions contained in Section 2 of the GST Act are required to be taken note of:

> *"(47) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under Section 11, or under Section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;*
>
> *(59) "input" means any goods other than capital goods used or intended to be used by* ***a supplier*** *in the course or furtherance of business;*
>
> *(60) "input service" means any service used or intended to be used by* ***a supplier*** *in the course or furtherance of business;*
>
> *(62) "input tax" in relation to* ***a registered person,*** *means the Central tax, State tax, Integrated tax or Union Territory tax charged on any supply of goods or services or both made to him and includes—*
>
> *(a) the integrated goods and services tax charged on import of goods;*
>
> *(b) the tax payable under the provisions of sub-sections (3) and (4) of Section 9;*
>
> *(c) the tax payable under the provisions of sub-sections (3) and (4) of Section 5 of the Integrated Goods and Services Tax Act;*
>
> *(d) the tax payable under the provisions of sub-sections (3) and (4) of Section 9 of the respective State Goods and Services Tax Act; or*
>
> *(e) the tax payable under the provisions of sub-sections (3) and (4) of Section 7 of the Union Territory Goods and Services Tax Act,*
>
> *but does not include the tax paid under the composition levy;*

*(63) "input tax credit" means the credit of input tax;*

*(78) "non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;*

*(79) "non-taxable territory" means the territory which is outside the taxable territory;*

*(84)* ***"person"*** *includes—*

*(c)* ***a company****;*

*(94)* ***"registered person"*** *means* ***a person*** *who is registered under Section 25 but does not include* ***a person*** *having a Unique Identity Number;*

*(105) "supplier" in relation to any goods or services or both, shall mean* ***the person supplying*** *the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;*

*(106) "tax period" means the period for which the return is required to be furnished;*

*(107) "taxable person" means* ***a person*** *who is registered or liable to be registered under Section 22 or Section 24;"*

*5.5.* Close scrutiny of the provisions shows that the article "a" or "the" is accompanied to terms like "person" and "registered person". Such article has significance in construing the purport of availing input tax credit and the context of refund of unutilized input tax credit. The word 'a' has varying meanings and uses. 'A' means 'one' or 'any', but less emphatically than either. It may mean 'one' where only one is intended, or it may mean any one of a great number. It is placed before nouns of the singular number, denoting an individual object or quality individualized. The

meaning depends on the context. See, *Black's Law Dictionary*. The article "A" has been given the meaning of "one of several things" in *Gujarat University Vrs. Shri Krishna Ranganath, AIR 1963 SC 703.* In *Shri Ishar Alloy Steels Limited Vrs. Jayaswals Neco Limited, (2001) 3 SCC 609* it has been stated that the article 'a' or 'an' has an indefinite effect and a generalizing force. It determines what particular thing is meant; *i.e.*, what particular thing one is to assume to be meant. The words 'a bank' is indicator of the intention of Legislature and refers to an indirect (indefinite) article.

*5.6.* When the context in which the aforesaid provisions are couched, it can safely be said that it is the registered person who can claim the refund. Since in respect of three units of the company one/single GSTIN has been assigned, for the purpose of making claims under the GST Act and rules framed thereunder, all these three units are treated to be one individual. Therefore, the petitioner-company applied for refund clubbing transactions of the three units together, which was duly considered and the petitioner availed the benefit. Subsequent thereto, it could not turn around and ask for more refund by filing further application for refund (supplementary refund) by computing the amount of refund taking into account transactions of individual unit.

***6.*** Section 54(1) of the GST Act stipulates time limit for setting up claim for refund. Said sub-section reads as under:

> *"(1) **Any person** claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may*

*make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:*

*Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of Section 49, may claim such refund in the return furnished under Section 39 in such manner as may be prescribed."*

*6.1.* Section 54(1) begins with the word "any person". The word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject-matter of the statute. The use of the word 'any' in the context it has been used in a statute may indicate that it has been used in wider sense extending from one to all. Reference may be had to *Shri Balaganesan Metals Vrs. M.N. Shanmugham Chetty, (1987) 2 SCC 707; Lucknow Development Authority Vrs. M.K. Gupta, (1994) 1 SCC 243; ACTO Vrs. Bajaj Electricals Ltd, (2008) 18 VST 436 (SC).* Dictionary meaning of the word 'any' can indicate 'all' or 'every' as well as 'some' or 'one'. Usage depends upon the context of subject-matter. The word 'any duty' should and would encompass 'all' and 'every' type of refund payable under the Act. See, *Pioneer India Electronics Pvt. Ltd. Vrs. Union of India, (2014) 26 GSTR 156 (Del).*

*6.2.* Thus understood the meaning of the word "any" in the present context, sub-section (1) of Section 54 without any ambiguity admits that three units of the petitioner-company having common GSTIN they are to be treated as one "person" in

terms of Section 25 read with clauses (84) and (94) of Section 2 of the GST Act.

*6.3.* Section 54(3) of the GST Act read with Section 16(3) of the IGST Act clarifies the position that claim for refund of unutilized input tax credit is required to be made at the end of the tax period. The term "tax period" has been defined under Section 2(106) of the GST Act to mean "the period for which the return is required to be furnished". The three units of the petitioner-company being identified and recognized as single registered person in view of common GSTIN being allotted under Section 25 of the GST Act, the refund was calculated as per formula prescribed under Rule 89(4) of the GST Rules and claimed by the petitioner itself.

*6.4.* Under such premise, it can be held that the petitioner-company cannot claim supplementary refund by computing transaction of each individual unit treating as separate entity or separate "registered person". It can further be seen that the supplementary refund application(s) being furnished after the period stipulated therein, the authority concerned has rightly refused to entertain the said application. Supplementary refund application(s) is furnished for fresh consideration based on unit-wise figures. Such a fresh consideration, after original refund application being disposed of, is not supported by any statutory provision.

*7.* For the aforesaid reasons, the contention of the counsel for the petitioner that the restriction placed by way of Circular bearing No.125/44/2019-GST, dated 18.11.2019 to the effect that manual

refund applications are not allowed is arbitrary and illogical cannot hold good inasmuch as the provisions of the statute do not envisage filing of supplementary refund application and that too taking different stance than that was taken while furnishing original refund application. At the cost of repetition it is stated that the original refund application(s) based on computation made by the petitioner-company itself by taking transactions of all the three units together was duly examined and the refund was granted. The petitioner having accepted the same, at a belated stage could not change its own version and apply for grant of supplementary refund. Therefore, the challenge made to the aforesaid Circular does not merit consideration in the present proceeding.

*7.1.* In the case of *Indian Aluminium Co. Ltd. Vrs. Thane Municipal Corporation, 1992 Supp (1) SCC 480* it has been held that:

> *"5. However, a concession has to be availed at the time when it was available and in the manner prescribed. The common dictionary meaning of the word "concession" is "the act of yielding or conceding as to a demand or argument, something conceded; usually implying a demand, claim, or request, a thing yielded, a grant". In the Dictionary of English Law by Earl Jowitt, the meaning of "concession" is given as under:*
>
> > *'Concession, a grant by a central or local public authority to a private person or private persons for the utilisation or working of lands, an industry, a railway waterworks, etc.'*
>
> *6. The expressions "rebate" and "concession" in the commercial parlance have the same concept. In*

*Halsbury's Laws of England, (4th Edn., Vol. 39, para 198) it is observed as under:*

> *'Application for rebate.—*
> *When a rating authority receives an application for a rebate it has a duty to determine whether the residential occupier is entitled to a rebate and, if so, the amount to which he is entitled; and it must request him in writing to furnish such information and evidence as it may reasonably require as to the persons who reside in the hereditament, his income, and the income of his spouse. Unless the rating authority is satisfied that the residential occupier has furnished all the information and evidence it requires, it is under no duty to grant a rebate.' ..."*

*7.2.* In the instant case, the authority concerned, having adjudicated the application for refund based on transactions of all the three units taken together as per the calculation made by the petitioner itself, had no scope for him to again entertain further claim made on the self-same transactions by computing such refund taking into consideration unit-wise figures, more so when the returns have been furnished by disclosing consolidated figures. Such fresh claim in the garb of supplementary refund would tantamount to review of decision already taken by the Assistant Commissioner-opposite party No.6 and the petitioner had already accepted such grant of refund based on claim set up on its own calculation.

***8.*** It is urged by the petitioner-company that refund of unutilized input tax credit being substantive statutory right, such

benefit could not have been denied and it is submitted that registration being a procedural requirement, such a fact should not have been taken as a shield by the department to deprive the petitioner the legitimate right to refund. Thus, it is vehemently argued that the formula prescribed under Rule 89(4) is not equitable as substantial difference is perceived between the quantum of refund as computed by taking into account transactions of three units together and individual unit-wise.

*8.1.* Section 16 of the GST Act deals with eligibility and condition for taking input tax credit. Sub-section (1) thereof speaks that "every registered person" subject to conditions and restrictions as may be prescribed is entitled to take credit of input tax charged on the supply of goods or services or both to him. The words "registered person" being defined in Section 2(94) to mean that "a person who is registered under Section 25 but does not include a person having a Unique Identity Number", the word "every" followed by "registered person" is clear indication of the fact that GSTIN as assigned to "a person", *i.e.,* common/single GSTIN assigned to the three units of the petitioner-company. Further, Section 2(107) defines the term "Registered Person" to mean a person who is registered or liable to be registered under Section 22 or Section 24. Thus, the statute makes it clear that tax shall have to be paid by every taxable person, *i.e.*, by those who are liable to be registered under the Act. In other words, even persons not registered are liable to pay taxes. However, to avail the benefit of input tax credit, taxable person is required to be a registered person.

*8.2.* The claim for refund of unutilized input tax credit as found in the provisions of Section 16(3) of the IGST Act and Section 16(1) read with Section 54(1) of the GST Act is subject to manner, condition and restriction as "prescribed". Section 2(87) of the GST Act defines the term "prescribed" to mean "prescribed by rules made under this Act on the recommendations of the Council". Section 164 of the GST Act empowers the Government to frame rules. Refund of unutilized input tax credit has been provided under Section 54. Corresponding rules are found in Rule 89 of the GST Rules, which is in conformity with the powers conferred under Section 164 of the GST Act.

*8.3.* The argument of the counsel for the petitioner that substantive right to claim refund of input tax credit could not be curtailed by procedural law is liable to be rejected. In ***TVS Motor Company Ltd. Vrs. State of Tamil Nadu and Ors., (2019) 13 SCC 403*****,** it has been observed as follows:

> *"38. Thus, this case also concerned the same provision, namely, Section 19 of the TNVAT Act, though the issue raised was not the same which has arisen for consideration in these appeals. However, while answering the aforesaid question, the ITC scheme contained in Section 19 of the TNVAT Act was gone into and discussed at length. After reproducing Section 19, attributes of this provision were taken note of in the following manner: (Jayam & Co. Vrs. Commr., (2016) 15 SCC 125, SCC pp. 134-36, paras 10-13)*
>
> > *"10. From sub-section (10) of Section 19 onwards, provisions are made to follow the procedure and fulfil the requisite conditions for availing ITC. For the purposes of this particular*

*issue, sub-section (10) is the material provision. This provision, which is couched in negative terms, categorically stipulates that such ITC would be admissible to the registered dealer and he would not be entitled to claim this credit 'until the dealer receives an original tax invoice duly filled, signed and issued by a registered dealer from where the goods are purchased …'. Further, such original tax invoice should evidence the amount of input tax. So much so, even if the original tax invoice is lost, the obligation cast on the registered dealer is to obtain duplicate or carbon copy of such tax invoice from the selling dealer and only then input tax is allowed.*

*11. From the aforesaid scheme of Section 19 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.*

*12. It is a 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 de hors 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 in view the scope of the issue, such a plea is not admissible having regard to the plain language of sections of the VAT Act, read along with other provisions of the said Act as referred to above.*

*13. For the same reasons given above, challenge to constitutional validity of sub-section (20) of Section 19 of the VAT Act has to fail.* ***When a concession is given by a statute, the Legislature has power to make the provision stating the form and manner in which such concession is to be allowed.*** *Sub-section (20) seeks to achieve that. There was no right, inherent or otherwise, vested with dealers to claim the benefit of ITC but for Section 19 of the VAT Act. That apart, we find that there were valid and cogent reasons for inserting Section 19(20). Main purport was to protect the Revenue against clandestine transactions resulting in evasion of tax. The High Court has discussed [Jayam and Co. Vrs. Commissioner, 2013 SCC OnLine Mad 2051] this aspect in detail and our task would be accomplished in reproducing those paras as we are concurring with the discussion: (Jayam and Co. Vrs. Commissioner, 2013 SCC OnLine Mad 2051, SCC OnLine Mad paras 64-69)*

*'***

*69. Constitutional validity of fiscal legislation: When there is a challenge to the constitutional validity of the provisions of a*

*statute, court exercising power of judicial review must be conscious of the limitation of judicial intervention, particularly, in matters relating to the legitimacy of the economic or fiscal legislation. While enacting fiscal legislation, the legislature is entitled to a great deal of latitude. The court would interfere only where a clear infraction of a constitutional provision is established. The burden is on the person, who attacks the constitutional validity of a statute, to establish clear transgression of constitutional principle. Observing that the law relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc., in R.K. Garg v. Union of India, (1981) 4 SCC 675 : 1982 SCC (Tax) 30, the Supreme Court held as under:***'*

***"

*8.4.* In ***Jayam & Co. Vrs. Assistant Commissioner, (2016) 96 VST 1 (SC)*** the Hon'ble Supreme Court observed that input tax credit is a form of concession provided by the Legislature which can be hedged with conditions. In ***State of Gujarat Vrs. Reliance Industries Ltd., (2018) 50 GSTR 14 (SC)*** it is laid down that the extent of tax credit to be allowed and circumstances under which it is to be allowed are the domain of the Legislature.

*8.5.* Input tax credit mechanism constitutes concession granted by the Legislature. In the absence of such a mechanism, the supplier would be liable under the charging provision of the GST Act to pay tax on the "consideration" as defined under Section 2(31). There is no independent right to claim input tax credit save and except provided under the statute with conditions and

restrictions. The entitlement to input tax credit is created by the taxing statute and emanates from the terms on which it is granted by the legislation. Such provisions must be strictly adhered to. The contention of the counsel for the petitioner that the formula prescribed under Rule 89(4) of the GST Rules would be applicable to the persons who do not maintain actual records cannot be accepted for the simple reason that the language employed in Section 54 read with Rule 89 does not contemplate such consideration. Even though the petitioner has claimed to have maintained unit-wise accounts reflecting appropriate data, as the three units of the petitioner-company situated in the State of Odisha have been assigned single/common GSTIN at the choice of the petitioner and they have filed consolidated returns for the related tax periods, for the purpose of claiming refund the said figures cannot be taken unit-wise. Therefore, no infirmity could be imputed against the Revenue Authority who has considered the original refund application(s) taking the figures of all the three units together. However, by way of filing the supplementary refund application(s), which is claimed to have been submitted manually, the petitioner has posited for consideration the claim for refund of input tax credit based on unit-wise calculation afresh. In the considered opinion of this Court such a recourse for fresh consideration of refund already granted on the basis of claim made in the original refund application is untenable.

*8.6.* In ***Godrej & Boyce Mfg. Co. Pvt. Ltd. Vrs. Commissioner of Sales Tax, (1992) 87 STC 186 (SC)*** the Supreme Court of India while considering the provisions for the grant of set-off under

Rule 41(9) of the Bombay Sales Tax Rules, 1959, explained the rationale for a set-off in the following manner:

> *"A manufacturing dealer like the appellant pays purchase tax when he purchases raw material and he is again obliged to pay the sales tax when he sells the goods manufactured by him out of the said raw material. Tax on both the transactions has the inevitable effect of increasing the price to the consumers besides adversely affecting the trade. It is for this reason that the aforesaid Rule enables the manufacturing dealer to claim set-off of the tax paid by him on the purchase of raw materials from out of the tax payable by him on the sale of goods manufactured from out of the said raw material."*

In ***Mahalaxmi Cotton Ginning Pressing and Oil Industries Vrs. State of Maharashtra, (2012) 51 VST 1 (Bom)***, the Court has observed that said Judgment of the Supreme Court enunciated that:

> *"(i) The dealer has no legal right to claim a set-off of the purchase tax paid and of input credit from the sales tax payable on the sale of goods manufactured by him;*
>
> *(ii) The entitlement to a set-off flows only out of the rules;*
>
> *(iii) The grant of a set-off is in the nature of a concession; and*
>
> *(iv) It is open to the Legislature while granting the concession to restrict or curtail the extent of the entitlement as a condition attaching to the concession."*

*8.7.* In ***ALD Automotive Pvt. Ltd. Vrs. CTO, (2019) 13 SCC 225***, it has been observed as follows:

*"34. The input credit is in the nature of benefit/concession extended to the dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the statute. Reference is made to the judgment of this Court in Godrej & Boyce Mfg. Co. (P) Ltd. Vrs. CST, (1992) 87 STC 186 (SC) = (1992) 3 SCC 624. Rules 41 and 42 of the Bombay Sales Tax Rules, 1959 provided for the set-off of the purchase tax.* ***This Court held that the rule-making authority can provide curtailment while extending the concession.*** *In para 9 of the judgment, the following has been laid down: (SCC pp. 631-32)*

> *'9. 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 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.'*

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*36. This Court had the occasion to consider the Karnataka Value Added Tax Act, 2013 in State of Karnataka Vrs. M.K. Agro Tech. (P) Ltd., (2017) 16 SCC 210 = (2018) 52 GSTR 215 (SC). This Court held that it is a settled proposition of law that taxing statutes are to be interpreted literally and further it is in the domain of the legislature as to how much tax credit is to be given under what circumstances. The following was stated in para 32: (SCC p. 223)*

*'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.'*

***

*38. This Court 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****. In para 12, the following has been laid down: (SCC pp. 134-35)*

*'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 de hors 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 in view the scope of the issue, such a plea is not admissible having regard to the plain language of sections of the VAT Act, read along with other provisions of the said Act as referred to above.' ..."*

*8.8.* In the context of ambiguity in case of exemption notification, Constitution Bench of the Honourable Supreme Court of India in the case of ***Commissioner of Customs Vrs. Dilip Kumar and Company, (2018) 9 SCC 1****,* observed as follows:

*"52. After considering the various authorities, some of which are adverted to above, we are compelled to observe how true it is to say that there exists unsatisfactory state of law in relation to interpretation of exemption clauses. Various Benches which decided the question of interpretation of taxing statute on one hand and exemption notification on the other, have broadly assumed (we are justified to say this) that the position is well settled in the interpretation of a taxing statute : It is the law that any ambiguity in a taxing statute should enure to the benefit of the subject/assessee, but any ambiguity in the exemption clause of exemption notification must be conferred in favour of the Revenue—and such exemption should be allowed to be availed only to those subjects/assesses who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and that the claimants satisfy all the conditions precedent for availing exemption. Presumably for this reason the Bench which decided Collector of Customs & Central Excise Vrs. Surendra Cotton Oil Mills & Fertilizers Co., (2001) 1 SCC 578 observed that there exists unsatisfactory state of law and the Bench which referred the matter initially, seriously doubted the conclusion in Sun Export Corpn. Vrs. Collector of Customs, (1997) 6 SCC 564 that the ambiguity in an exemption notification should be interpreted in favour of the assessee.*

*53. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.*

*54. In Govind Saran Ganga Saran Vrs. Commissioner of Sales Tax, 1985 Supp (SCC) 205, this*

*Court pointed out three components of a taxing statute, namely subject of the tax; person liable to pay tax; and the rate at which the tax is to be levied. If there is any ambiguity in understanding any of the components, no tax can be levied till the ambiguity or defect is removed by the legislature [See Mathuram Agrawal Vrs. State of Madhya Pradesh, (1999) 8 SCC 667; Indian Banks' Association Vrs. Devkala Consultancy Service, (2004) 4 JT 587 = AIR 2004 SC 2615; and Consumer Online Foundation Vrs. Union of India, (2011) 5 SCC 360.]*

*55. There is abundant jurisprudential justification for this. In the governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualising different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the Revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of*

*ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the Revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view.*

*56. In Hansraj Gordhandas Vrs. CCE and Customs, AIR 1970 SC 755 = (1969) 2 SCR 253, the Constitutional Bench unanimously pointed out that an exemption from taxation is to be allowed based wholly by the language of the notification and exemption cannot be gathered by necessary implication or by construction of words; in other words, one has to look to the language alone and the object and purpose for granting exemption is irrelevant and immaterial.*

*57. In CCE Vrs. Parle Exports (P) Ltd., (1989) 1 SCC 345, a Bench of two Judges of this Court considered the question whether non-alcoholic beverage base like Gold Spot base, Limca base and Thums Up base, were exempted from payment of duty under the Central Government Notification of March 1975. While considering the issue, this Court pointed out the strict interpretation to be followed in interpretation of a notification for exemption. These observations are made in para 17 of the judgment, which read as follows : (SCC p. 357)*

> *'17. How then should the courts proceed? The expressions in the Schedule and in the notification for exemption should be understood by the language employed therein bearing in mind the context in which the expressions occur. The words used in the provision, imposing taxes or granting exemption should be understood in the same way in which these are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. It is, however, necessary to bear in mind*

*certain principles. The notification in this case was issued under Rule 8 of the Central Excise Rules and should be read along with the Act. The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and, therefore, the exemption under the notification is as if it were contained in the Act itself. See in this connection the observations of this Court in Orient Wvg. Mills (P) Ltd. Vrs. Union of India, 1962 Supp (3) SCR 481 = AIR 1963 SC 98. See also Kailash Nath Vrs. State of U.P., AIR 1957 SC 790. The principle is well settled that when two views of a notification are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment. But in this connection, it is well to remember the observations of the Judicial Committee in Caroline M. Armytage Vrs. Frederick Wilkinson, (1878) LR 3 AC 355 (PC), that it is only, however, in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction arises. The Judicial Committee reiterated in the said decision at p. 369 of the report that in a taxing Act provisions enacting an exception to the general rule of taxation are to be construed strictly against those who invoke its benefit. While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided.'*

*58. In the above passage, no doubt this Court observed that : [CCE Vrs. Parle Exports (P) Ltd., (1989) 1 SCC 345], SCC p. 357, para 17)*

*'17. when two views of a notification are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment.'*

*This observation may appear to support the view that ambiguity in a notification for exemption must be interpreted to benefit the subject/assessee. A careful reading of the entire para, as extracted hereinabove would, however, suggest that an exception to the general rule of tax has to be construed strictly against those who invoke for their benefit. This was explained in a subsequent decision in Union of India Vrs. Wood Papers Ltd., (1990) 4 SCC 256. In para 6, it was observed as follows : (SCC p. 262)*

*'6. ... In CCE Vrs. Parle Exports (P) Ltd., (1989) 1 SCC 345, this Court while accepting that exemption clause should be construed liberally applied rigorous test for determining if expensive items like Gold Spot base or Limca base or Thums Up base were covered in the expression food products and food preparations used in Item No. 68 of First Schedule of Central Excises and Salt Act and held 'that it should not be in consonance with spirit and the reason of law to give exemption for non-alcoholic beverage basis under the notification in question'. Rationale or ratio is same. Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed construe it liberally. Since the respondent did not fall in the first clause of the notification there was no question of giving the clause a liberal construction and hold that production of goods by respondent mentioned in the notification were entitled to benefit.'*

*59. The above decision, which is also a decision of a two-Judge Bench of this Court, for the first time took a view that liberal and strict construction of exemption provisions are to be invoked at different stages of*

*interpreting it. The question whether a subject falls in the notification or in the exemption clause, has to be strictly construed. When once the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the notification by giving full play bestowing wider and liberal construction. The ratio of CCE Vrs. Parle Exports (P) Ltd., (1989) 1 SCC 345 = 1989 SCC (Tax) 84 deduced as follows : [Union of India Vrs. Wood Papers Ltd., (1990) 4 SCC 256 = 1990 SCC (Tax) 422] , SCC p. 262, para 6)*

> *'6. ... Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed, construe it liberally.'*

*60. We do not find any strong and compelling reasons to differ, taking a contra view, from this. We respectfully record our concurrence to this view which has been subsequently, elaborated by the Constitution Bench in CCE Vrs. Hari Chand Shri Gopal, (2011) 1 SCC 236.*

*61. The next authority, which needs to be referred is Mangalore Chemicals and Fertilisers Ltd. Vrs. CCT, 1992 Supp (1) SCC 21. As we have already made reference to the same earlier, repetition of the same is not necessary. From the above decisions, the following position of law would, therefore, be clear. Exemptions from taxation have a tendency to increase the burden on the other unexempted class of taxpayers. A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while doing so, a notification should be construed against the subject in case of ambiguity.*

*62. The ratio in Mangalore Chemicals and Fertilisers Ltd. Vrs. CCT, 1992 Supp (1) SCC 21 was approved by a three-Judge Bench in Novopan India Ltd. Vrs. CCE, 1994 Supp (3) SCC 606. In this case, probably for the first time, the question was posed as to whether the benefit of an exemption notification should go to the subject/assessee when there is ambiguity. The three-Judge*

*Bench, in the background of English and Indian cases, in para 16, unanimously held as follows : (SCC p. 614)*

> *'16. We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals and Fertilisers Ltd. Vrs. CCT, 1992 Supp (1) SCC 21— and in Union of India Vrs. Wood Papers Ltd., (1990) 4 SCC 256, referred to therein— represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee — assuming that the said principle is good and sound — does not apply to the construction of an exception or an exempting provision, they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State.'*

*63. In TISCO Ltd. Vrs. State of Jharkhand, (2005) 4 SCC 272, which is another two-Judge Bench decision, this Court laid down that eligibility clause in relation to exemption notification must be given strict meaning and in para 44, it was further held : (SCC pp. 289-290)*

> *'44. The principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption (see Novopan India Ltd. Vrs. CCE, 1994 Supp (3) SCC 606).'*

*64. In CCE Vrs. Hari Chand Shri Gopal, (2011) 1 SCC 236, as already discussed, the question was whether a person claiming exemption is required to comply with the*

*procedure strictly to avail the benefit. The question posed and decided was indeed different. The said decision, which we have already discussed supra, however, indicates that while construing an exemption notification, the Court has to distinguish the conditions which require strict compliance, the non-compliance of which would render the assessee ineligible to claim exemption and those which require substantial compliance to be entitled for exemption. We are pointing out this aspect to dispel any doubt about the legal position as explored in this decision.*

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*66. To sum up, we answer the reference holding as under:*

*66.1. Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*

*66.2. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.*

*66.3. The ratio in Sun Export Corpn. Vrs. Collector of Customs, (1997) 6 SCC 564 is not correct and all the decisions which took similar view as in Sun Export Corpn. Vrs. Collector of Customs, (1997) 6 SCC 564 stand overruled."*

*8.9.* In a subsequent decision being ***Ramnath & Co. Vrs. Commissioner of Income-tax, 2020 SCC OnLine SC 484*** the Hon'ble Court following ***Commissioner of Customs Vrs. Dilip Kumar and Company, (2018) 9 SCC 1,*** laid down as follows:

*"69. Obviously, the generalised, rather sweeping, proposition stated in the case of Sun Export Corpn. Vrs.*

*Collector of Customs, (1997) 6 SCC 564 as also in other cases that in the matters of taxation, when two views are possible, the one favourable to assessee has to be preferred, stands specifically disapproved by the Constitution Bench in Commissioner of Customs Vrs. Dilip Kumar and Company, (2018) 9 SCC 1 = AIR 2018 SC 3606. It has been laid down by the Constitution Bench in no uncertain terms that exemption notification has to be interpreted strictly; the burden of proving its applicability is on the assessee; and in case of any ambiguity, the benefit thereof cannot be claimed by the subject/assessee, rather it would be interpreted in favour of the revenue.*

*70. It has been repeatedly emphasised on behalf of the appellant that Section 80-O of the Act is essentially an incentive provision and, therefore, needs to be interpreted and applied liberally. In this regard, we may observe that deductions, exemptions, rebates et cetera are the different species of incentives extended by the Act of 1961. In other words, incentive is a generic term and 'deduction' is one of its species; 'exemption' is another. Furthermore, Section 80-O is only one of the provisions in the Act of 1961 dealing with incentive; and even as regards the incentive for earning or saving foreign exchange, there are other provisions in the Act, including Section 80HHC, whereunder the appellant was indeed taking benefit before the assessment year 1993-94.*

*71. Without expanding unnecessarily on variegated provisions dealing with different incentives, suffice would be to notice that the proposition that incentive provisions must receive "liberal interpretation" or to say, leaning in favour of grant of relief to the assessee is not an approach countenanced by this Court. The law declared by the Constitution Bench in relation to exemption notification, proprio vigore, would apply to the interpretation and application of any akin proposition in the taxing statutes for exemption, deduction, rebate et al., which all are essentially the form of tax incentives given by the Government to incite or encourage or support any particular activity.*

*72. The principles laid down by the Constitution Bench, when applied to incentive provisions like those for deduction, would also be that the burden lies on the assessee to prove its applicability to his case; and if there be any ambiguity in the deduction clause, the same is subject to strict interpretation with the result that the benefit of such ambiguity cannot be claimed by the assessee, rather it would be interpreted in favour of the revenue. In view of the Constitution Bench decision in Dilip Kumar & Co. (supra), the generalised observations in Commissioner of Income Tax, Thiruvananthapuram Vrs. Baby Marine Exports, Kollam, (2007) 290 ITR 323 (SC) with reference to a few other decisions, that a tax incentive provision must receive liberal interpretation, cannot be considered to be a sound statement of law; rather the applicable principles would be those enunciated in UOI Vrs. Wood Papers Ltd., (1990) 4 SCC 256, which have been precisely approved by the Constitution Bench. Thus, at and until the stage of finding out eligibility to claim deduction, the ambit and scope of the provision for the purpose of its applicability cannot be expanded or widened and remains subject to strict interpretation but, once eligibility is decided in favour of the person claiming such deduction, it could be construed liberally in regard to other requirements, which may be formal or directory in nature.*

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*75. It remains trite that any process of construction of a written text primarily begins with comprehension of the plain language used. In such process of comprehension of a statutory provision, the meaning of any word or phrase used therein has to be understood in its natural, ordinary or grammatical meaning unless that leads to some absurdity or unless the object of the statute suggests to the contrary. In the context of taxing statute, the requirement of looking plainly at the language is more pronounced with no room for intendment or presumption. In this process, if natural, ordinary or grammatical meaning of any word or phrase is available unquestionably and fits in the scheme and object of the statute, the same*

*could be, rather need to be, applied. The other guiding rules of interpretation would be the internal aides like definition or interpretation clauses in the statute itself. Yet further, if internal aides do not complete the comprehension, recourse to external aides like those of judicial decisions expounding the meaning of the words used in construing the statutes in pari materia, or effect of usage and practice etc., is not unknown; and in this very sequence, it is an accepted principle that when a word is not defined in the enactment itself, it is permissible to refer to the dictionaries to find out the general sense in which the word is understood in common parlance. In fact, for the purpose of gathering ordinary meaning of any expression, recourse to its dictionary meaning is rather interlaced in the literal rule of interpretation. This aspect was amply highlighted and expounded by the Constitution Bench of this Court in the case of Commissioner of Wealth-Tax, Andhra Pradesh Vrs. Officer-in-Charge (Court of Wards), Paigah, (1976) 105 ITR 133 as follows (at p.137 of ITR):*

> *'8. It is true that in Raja Benoy Kumar Sahas Roy's case, [1957] 32 ITR 466 (SC) this court pointed out that meanings of words used in Acts of Parliament are not necessarily to be gathered from dictionaries which are not authorities on what Parliament must have meant. Nevertheless, it was also indicated there that where there is nothing better to rely upon, dictionaries may be used as an aid to resolve an ambiguity. The ordinary dictionary meaning cannot be discarded simply because it is given in a dictionary. To do that would be to destroy the literal rule of interpretation. This is a basic rule relying upon the ordinary dictionary meaning which, in the absence of some overriding or special reasons to justify a departure, must prevail.'……"*

*8.10.* In ***Mahalaxmi Cotton Ginning Pressing and Oil Industries Vrs. State of Maharashtra, (2012) 51 VST 1 (Bom)*** it has been

succinctly stated with regard to taxation policy *vis-à-vis* claim for concession/set-off as follows:

> *"This case highlights the complexity of the issue with which both the Legislature and tax administrators must grapple in devising a tax regime governed by the Value Added Tax. The Legislature has performed a balancing exercise between the need on the one hand of ensuring the interests of the ultimate consumer by obviating a cascading tax burden and on the other hand, securing governance under rule of law principles which promote transparency and certainty while at the same time protecting the legitimate revenues of the State. The Value Added Tax regime has replaced a single point levy with a multiple point levy in which every dealer is a vital link in the levy and collection of tax. As the number of dealers has increased manifold, conventional systems of tax administration have to be replaced by web based electronic systems. The system which the administrator must devise must continuously evolve both with a view to simplify procedures and to make the process including that relating to beneficial provisions such as set off and refund objective and transparent. The Judgments of the Supreme Court, including in R.K. Garg Vrs. Union of India, (1981) 4 SCC 675, recognize the latitude which the law confers upon the Legislature and the executive to experiment with new systems in cases involving fiscal and economic policy. Systems have to evolve as experiences result in shared learning and as technology keeps abreast of changing needs."*

*8.11.* In a case where dispute involved with regard to refund of input tax credit on account of inverted duty structure *vis-à-vis* formula prescribed in Rule 89(5) of the GST Rules, the Honourable Gujarat High Court in the case of ***VKC Footsteps Pvt. Ltd. Vrs. Union of India, (2020) 81 GSTR 66 (Guj)*** read down Explanation (a) to sub-rule (5) of Rule 89. Referring to said

Judgment, the petitioner *vide* Ground No.E to the writ petition [WP(C) No.33278 of 2020] submitted that the Government by exercising rule-making power as conferred under Section 164 could not restrict benefit granted under Section 54(3) by way of promulgating Rule 89(4). Such a plea is liable to be repelled as the Hon'ble Supreme Court of India while disapproving the view of the Hon'ble Gujarat High Court expressed in ***VKC Footsteps Pvt. Ltd. Vrs. Union of India, (2020) 81 GSTR 66 (Guj)***, in the case of ***Union of India Vrs. VKC Footsteps India Pvt. Ltd., (2022) 2 SCC 603***, has been pleased to hold that it is impermissible for the Court to redraw the boundaries or to expand the provision for refund beyond what the Legislature has provided. The said Court held as follows:

> *"99. We must be cognizant of the fact that no constitutional right is 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 recognising an entitlement to refund, it is open to the Legislature to define the circumstances in which a refund can be claimed. The proviso to Section 54(3) is not a condition of eligibility (as the assessees' the counsel submitted) but a restriction which must govern the grant of refund under Section 54(3). We, therefore, accept the submission which has been urged by Mr. N. Venkataraman, learned ASG.*

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*105. Parliament engrafted a provision for refund Section 54(3). In enacting such a provision, Parliament is entitled to make policy choices and adopt appropriate classifications, given the latitude which our constitutional jurisprudence allows it in matters involving tax legislation and to provide for exemptions, concessions and benefits on terms, as it considers appropriate. The consistent line of precedent of this Court emphasises certain basic precepts which govern both judicial review and judicial interpretation of tax legislation. These precepts are:*

*105.1. Selecting the objects to be taxed, determining the quantum of tax, legislating for the conditions for the levy and the socio-economic goals which a tax must achieve are matters of legislative policy. M. Hidayatullah, C.J., speaking for the Constitution Bench in Commr. of Urban Land Tax Vrs. Buckingham & Carnatic Co. Ltd., (1969) 2 SCC 55 held : (SCC p. 67, para 10)*

> *'10. ... The objects to be taxed, the quantum of tax to be levied, the conditions subject to which it is levied and the social and economic policies which a tax is designed to subserve are all matters of political character and these matters have been entrusted to the legislature and not to the courts. In applying the test of reasonableness it is also essential to notice that the power of taxation is generally regarded as an essential attribute of sovereignty and constitutional provisions relating to the power of taxation are regarded not as grant of power but as limitation upon the power which would otherwise be practically without limit.'*

*105.2. The same principle has been reiterated in Federation of Hotel & Restaurant Assn. of India v. Union of India, (1989) 3 SCC 634, where M.N. Venkatachaliah, J. (as the learned Chief Justice then was), speaking for the Constitution Bench held : (SCC pp. 658-59, paras 46-47)*

*'46. It is now well settled that though taxing laws are not outside Article 14, however, having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal policy legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, events, etc. for taxation. The tests of the vice of discrimination in a taxing law are, accordingly, less rigorous. In examining the allegations of a hostile, discriminatory treatment what is looked into is not its phraseology, but the real effect of its provisions. A legislature does not, as an old saying goes, have to tax everything in order to be able to tax something. If there is equality and uniformity within each group, the law would not be discriminatory. Decisions of this Court on the matter have permitted the legislatures to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes.*

*47. But, with all this latitude certain irreducible desiderata of equality shall govern classifications for differential treatment in taxation laws as well. The classification must be rational and based on some qualities and characteristics which are to be found in all the persons grouped together and absent in the others left out of the class. But this alone is not sufficient. Differentia must have a rational nexus with the object sought to be achieved by the law. The State, in the exercise of its governmental power, has, of necessity, to make laws operating differently in relation to different groups or classes of persons to attain certain ends and must, therefore, possess the power to distinguish and classify persons or things. It is also recognised that no precise or*

*set formulae or doctrinaire tests or precise scientific principles of exclusion or inclusion are to be applied. The test could only be one of palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience.'*

*105.3. In matters of classification, involving fiscal legislation, the legislature is permitted a larger discretion so long as there is no transgression of the fundamental principle underlying the doctrine of classification. In Hiralal Rattanlal v. State of U.P., (1973) 1 SCC 216 : 1973 SCC (Tax) 307, K.S. Hegde, J., speaking for a four-Judge Bench observed : (SCC p. 223, para 20)*

*'20. It must be noticed that generally speaking the primary purpose of the levy of all taxes is to raise funds for public good. Which person should be taxed, what transaction should be taxed or what goods should be taxed, depends upon social, economic and administrative considerations. In a democratic set up it is for the legislature to decide what economic or social policy it should pursue or what administrative considerations it should bear in mind. The classification between the processed or split pulses and unprocessed or unsplit pulses is a reasonable classification. It is based on the use to which those goods can be put. Hence, in our opinion, the impugned classification is not violative of Article 14.'*

*105.4. More recently in Union of India Vrs. Nitdip Textile Processors (P) Ltd., (2012) 1 SCC 226, a two-Judge Bench observed : (SCC p. 255, para 67)*

*'67. It has been laid down in a large number of decisions of this Court that a taxation statute, for the reasons of functional expediency and even otherwise, can pick and choose to tax some. A power to classify being*

*extremely broad and based on diverse considerations of executive pragmatism, the judicature cannot rush in where even the legislature warily treads. All these operational restraints on judicial power must weigh more emphatically where the subject is taxation. Discrimination resulting from fortuitous circumstances arising out of particular situations, 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 accidental and inevitable and are inherent in every taxing statute as it has to draw a line somewhere and some cases necessarily fall on the other side of the line.'*

*106. The principles governing a benefit, by way of a refund of tax paid, may well be construed on an analogous frame with an exemption from the payment of tax or a reduction in liability CCT Vrs. Dharmendra Trading Co., (1988) 3 SCC 570 = 1988 SCC (Tax) 432.*

*107. In Elel Hotels & Investments Ltd. Vrs. Union of India, (1989) 3 SCC 698, M.N. Venkatachaliah, J. (as the learned Chief Justice then was) held that : (SCC p. 708, para 20)*

*'20. ... It is now well settled that a very wide latitude is available to the legislature in the matter of classification of objects, persons and things for purposes of taxation. It must need to be so, having regard to the complexities involved in the formulation of a taxation policy. Taxation is not now a mere source of raising money to defray expenses of Government. It is a recognised fiscal tool to achieve fiscal and social objectives. The differentia of classification*

*presupposes and proceeds on the premise that it distinguishes and keeps apart as a distinct class hotels with higher economic status reflected in one of the indicia of such economic superiority. The presumption of constitutionality has not been dislodged by the petitioners by demonstrating how even hotels, not brought into the class, have also equal or higher chargeable receipts and how the assumption of economic superiority of hotels to which the Act is applied is erroneous or irrelevant.'*

*108. In Spences Hotel (P) Ltd. Vrs. State of W.B., (1991) 2 SCC 154, a two-Judge Bench, speaking through K.N. Saikia, J. revisited the precedents of this Court governing the principles of classification in tax legislation and held : (SCC pp. 168-69, para 24)*

*'24. ... The history of taxation is one of evolution as is the case in all human affairs. Its progress is one of constant growth and development in keeping with the advancing economic and social conditions; and the fiscal intelligence of the State has been advancing concomitantly, subjecting by new means and methods hitherto untaxed property, income, service and provisions to taxation. With the change of scientific, commercial and economic conditions and ways of life new species of property, both tangible and intangible gaining enormous values have come into existence and new means of reaching and subjecting the same to contribute towards public finance are being developed, perfected and put into practical operation by the legislatures and courts of this country, of course within constitutional limitations.'*

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*117. The rule-making power under Section 164(1) of the CGST Act may be exercised in numerous situations. As we have already noticed earlier in this judgment accumulation of credit may occur due to a variety of reasons including the absence of outwards supplies in a tax period, making supplies at a loss including by discount or predatory pricing, bulk purchase of inputs, large opening balance of credit or change in the rate of tax during the tax period. A rule providing for identifying unutilised ITC which is attributable to supplies having an inverted duty structure and bifurcating it from credit which has accumulated due to other causes would be a rule required for carrying out the provisions of the Act. A second instance to illustrate the same point is that a rule may provide a proportionate formula for determining the pro rata amount of ITC relatable to the inverted duty structure vis-à-vis the total turnover. Such a formula is necessary where the assessee is engaged in outward supplies involving an inverted duty structure as well as those not involving an inverted duty structure. In fact, Mr. Sridharan in his submissions also accepts that such a formula would be a rule made for carrying out provisions of the Act. The third illustration in the link is with reference to exports. Under the CGST Act, ITC relatable to exports (which are zero-rated supplies) has to be refunded. The assessee may have both domestic sales as well as exports in which event there is a need for a proportionate formula. Rule 89(4) provides a formula for refund of ITC to cover a situation in which zero-rated supplies of goods or services or both has been done without payment of tax under bond or letter of undertaking in accordance with Section 16(3) of the IGST Act.*

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*132. **In our view, the justification of the formula under Rule 89(5) given by the ASG to create a legal bifurcation is valid.** In this context, it would be material to advert to the provisions of Rule 42. Rule 42(1) provides that the ITC in respect of input goods or input services which attract the provisions of sub-section (1) or sub-section (2)*

*of Section 17 being partly used for the purpose of business and partly for other purposes or partly used for effecting taxable supplies including zero-rated supplies and partly for effecting exempts supplies shall be attributed to the purposes of business or for effecting taxable supplies in the manner which is indicated in the Rule. Sub-section (1) of Section 17 provides that where the goods and services or both are used by a registered person partly for the purposes of any business and partly for any other purpose, the amount of credit shall be restricted to so much of the input tax as is attributable to the purpose of its business. Sub-section (2) of Section 17 provides that where the goods or services or both are used by a registered person partly for effecting taxable supplies including zero-rated supplies under the CGST Act or under the IGST Act and partly for effecting exempt supplies the amount of credit shall be restricted to so much of the input tax as is attributable to the taxable supplies including zero-rated supplies. Rule 42, in other words, provides for the manner in which the attributions of ITC in respect of the input or input services under sub-sections (1) or (2) of Section 17 shall be carried out. Rule 43 similarly provides the manner in which ITC in respect of capital goods attracting the provisions of sub-section (1) of Section 17, used partly for business and partly for other purposes or partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies would be attracted to the purpose of business or for effecting taxable supplies. Both Rules 42 and 43 provide for a formula for attribution. Rule 86 provides for the maintenance of an electronic credit ledger. Rule 89(5) provides for a refund.* ***In both sets of rule clusters, Rules 42 and 43 on the one hand and Rule 89(5) on the other hand, a formula is used for the purpose of attribution in a post assimilated scenario. The use of such formulae is a familiar terrain in fiscal legislation including delegated legislation under parent norms and is neither untoward nor ultra vires.***

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> *142. The above judicial precedents indicate that in the field of taxation, this Court has only intervened to read down or interpret a formula if the formula leads to absurd results or is unworkable. In the present case however, the formula is not ambiguous in nature or unworkable, nor is it opposed to the intent of the Legislature in granting limited refund on accumulation of unutilised ITC. It is merely the case that the practical effect of the formula might result in certain inequities. The reading down of the formula as proposed by Mr. Natarjan and Mr. Sridharan by prescribing an order of utilisation would take this Court down the path of recrafting the formula and walk into the shoes of the executive or the Legislature, which is impermissible.* ***Accordingly, we shall refrain from replacing the wisdom of the Legislature or its delegate with our own in such a case.*** *However, given the anomalies pointed out by the assessees, we strongly urge the GST Council to reconsider the formula and take a policy decision regarding the same."(emphasis supplied)*

*8.12.* In view of authoritative pronouncement of the Hon'ble Supreme Court declining to substitute its wisdom for that of the subordinate legislation prescribed under Rule 89(5) in the context of refund on account of inverted duty structure, this Court does not consider it expedient to go beyond what is stated in ***Union of India Vrs. VKC Footsteps India Pvt. Ltd., (2022) 2 SCC 603*** for the purpose of ascertaining quantum of refund in case of zero-rated supplies as prescribed under Rule 89(4) of the GST Rules.

***9.*** Sri Puneet Agrawal, learned counsel for the petitioner submitted that without affording opportunity of hearing the Assistant Commissioner-opposite party No.6 ought not to have held that supplementary application(s) is hit by limitation and he should not have returned such application(s). It was further

contended by Sri Agrawal that the authority having not afforded opportunity of hearing prior to returning the supplementary application(s) for refund, the entire proceeding is liable to be set aside.

*9.1.* Sri Radheyshyam Chimanka, learned Senior Standing Counsel opposing such a contention brought to the notice of this Court the provisions contained in Section 107 of the GST Act. Had the petitioner being sanguine about its claims, there was no restriction for it to avail recourse of alternative remedy. The Appellate Authority is vested with ample power to extend the benefit of hearing as well as consider the supplementary refund application on proper perspective with particular reference to limitation. He further referred to notice dated 10.09.2021 *vide* Annexure-8 and intimation dated 16.09.2021 *vide* Annexure-9 of the writ petition bearing W.P.(C) No.32166 of 2021 to urge that having not availed the opportunity of personal hearing as instructed in said notice and intimation, the petitioner need not be shown benevolence.

*9.2.* The petitioner did not choose to avail the opportunity of personal hearing as instructed in the aforesaid notice/intimation, but challenged the same before this Court by way of writ petition. This Court is, therefore, of the opinion that the petitioner is not deprived of availing alternative remedy to question the legality of decision taken by the Assistant Commissioner-opposite party No.6 who returned the supplementary application(s) for refund. In the present case, it is not the sole reason to discard manual filing of

supplementary refund application based on Circular No. 125/44/2019-GST dated 18.11.2019, but the authority concerned had returned such application assigning different reasons also. Such a decision of Assistant Commissioner, GST & Central Excise, Jharsuguda Division could be challenged in appeal under Section 107 of the GST Act. On this score also the writ petition fails.

***Conclusion and decision:***

***10.*** For the discussions made in the foregoing paragraphs and the reasons enumerated *supra*, it is held that:

*(i)* Rule 89(4) of the Central Goods and Services Tax Rules, 2017/the Odisha Goods and Services Tax Rules, 2017 is *intra vires* and said rule being framed in conformity with the powers conferred on the Government under Section 164 of the Central Goods and Services Tax Act, 2017/the Odisha Goods and Services Tax Act, 2017, there is no necessity to read down Rule 89(4) as suggested by the petitioner-company;

*(ii)* Having claimed refund of unutilized input tax credit on account of zero-rated supplies by clubbing up all the transactions relating to three units, namely, 2 MTPA Aluminium Refinery and Captive Power Plant at Lanjigarh; Jharsuguda 1215 MW Captive Power Plant; and Jharsuguda 2400 MW Thermal Power Plant, situated in Domestic Tariff Area bearing single/common GSTIN: 21AACCS7101B1Z8

granted in terms of Section 25, there is no scope for the petitioner-company to insist on consideration of supplementary refund application based on fresh calculation made by taking into account transactions of individual unit-wise;

*(iii)* The various reasons ascribed by the Assistant Commissioner, GST & Central Excise, Jharsuguda Division for returning the manually submitted supplementary refund application(s) appears to be plausible and, therefore, this Court desists from exercising extraordinary jurisdiction under Article 226 of the Constitution of India and, since alternative remedy is available to the petitioner to challenge the decision of the Assistant Commissioner-opposite party No.6, this Court does not warrant it necessary to show indulgence;

*(iv)* The prayer (alternative) to issue writ of *mandamus* to the opposite parties to allow the petitioner to file refund application does not arise on the facts and in the circumstances of the case inasmuch as the petitioner had claimed refund by way of filing application(s) which was duly examined by the opposite party No.6-Assistant Commissioner and allowed already and, therefore, there was no occasion for the said authority to revisit claim for refund in consideration of the supplementary application(s) by computing figures of individual unit-wise.

*10.1.* In the result, this Court does not find any merit in the nature of challenge made in the writ petitions and declines to read down Rule 89(4) of the Central Goods and Services Tax Rules, 2017/the Odisha Goods and Services Tax Rules, 2017. The writ petitions, therefore, stand dismissed, but, in the circumstances, with no order as to costs.

**(Murahari Sri Raman)**
**Judge**

**(Dr. S. Muralidhar)**
**Chief Justice**


MRS/AKS