IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

STRP NO.26 OF 2023

C/W

STRP NO.4 OF 2024

IN STRP NO.26/2023:

BETWEEN:

1 . THE STATE OF KARNATAKA,
REPRESENTED THROUGH THE STATE REPRESENTATIVE,
KARNATAKA APPELLATE TRIBUNAL,
M S BUILDING,BENGALURU 560 001.

2 . THE JOINT COMMISSIONER OF
COMMERCIAL TAXES(ADMN-1),
DGSTO-01, BENGALURU.
3RD FLOOR, BMTC BUS STAND COMPLEX,
YESHWANTHPURA, BENGALURU – 560 022.

3 . THE DEPUTY COMMISSIONER OF
COMMERCIAL TAXES (AUDIT) 1.1
D.V.O-1, BENGALURU, 2ND FLOOR,
TTMC BUILDING, YESHWANTHPUR,
BENGALURU 560 022.

...PETITIONERS

(BY SRI.ADITYA VIKRAM BHAT., AGA)

AND:

TRACTOR AND FARM EQUIPMENT LIMITED
RAHEJA CHAMBERS, 12, MUSEUM ROAD,
BENGALURU 560 001.

REPTD BY ITS DEPUTY GENERAL MANAGER- FINANCE,
MR. K P SIVARAMAKRISHNAN

…RESPONDENT

(BY SRI.T SURYA NARAYANA., SENIOR COUNSEL A/W
SMT.TANMAYEE RAJKUMAR., ADVOCATE)

THIS STRP IS FILED UNDER SECTION 65 (1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 AGAINST THE JUDGMENT DATED 03.03.2022 PASSED IN STA No. 42/2018 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BANGALORE, ALLOWING THE APPEAL AND SETTING ASIDE THE ORDER DATED 25.11.2017 PASSED IN SMR./CR.NO 13/16-17 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES(ADMIN) DGSTO-1, BENGALURU, REVISING THE RECTIFICATION ORDER DATED 19.12.2015 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT)-1.1, DVO-1, BENGALURU, FOR THE TAX PERIOD OF APRIL 2008 TO MARCH 2009.

IN STRP NO.4/2024:

BETWEEN:

1. THE STATE OF KARNATAKA,
   REPRESENTED HEREIN BY
   THE STATE REPRESENTATIVE,
   KARNATAKA APPELLATE TRIBUNAL
   MULTISTORIED BUILDING,
   VIDHANA VEEDHI, BENGALURU - 560001.

2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES
   (ADMIN)-1, DGSTO-01, BENGALURU,
   3RD FLOOR, B.M.T.C. BUS STAND COMPLEX,
   YESHWANTHPUR, BENGALURU – 560 022.

3. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES
   (AUDIT)-1.1, D.V.O.-1, BENGALURU
   2ND FLOOR, TTMC BUILDING,
   YESHWANTHPUR, BENGALURU – 560 022.

...PETITIONERS

(BY SRI.ADITYA VIKRAM BHAT.,AGA)

AND:

TRACTORS AND FARM EQUIPMENT LIMITED,
RAHEJA CHAMBERS, NO.12,
MUSEUM ROAD, BENGALURU - 560 001.
REPRESENTED HEREIN BY ITS
DEPUTY GENERAL MANAGER FINANCE,
MR. K.P. SIVARAMAKRISHNAN

…RESPONDENT

(BY SRI.T SURYA NARAYANA., SENIOR COUNSEL A/W
SMT.TANMAYEE RAJKUMAR., ADVOCATE)

THIS STRP IS FILED UNDER SEC.65(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 AGAINST THE JUDGMENT DATED 03.03.2022, PASSED IN STA.NO.41/2018 ON THE FILE OF KARNATAKA APPELLATE TRIBUNAL AT BANGALORE, ALLOWING THE APPEAL AND SETTING ASIDE THE ORDER DATED 25.11.2017 PASSED IN JCCT(ADMN) DGSTO-I/SMR/CR 14/16-17 ON THE FILE OF JOINT COMMISSIONER OF COMMERCIAL TAXES (ADMN),DGSTO-01, YESHWANTHPUR, BANGALORE, REASSESSMENT ORDER DATED 12.02.2016 ON THE FILE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT) 1.1, DVO-1, BENGALURU FOR THE TAX PERIOD FROM APRIL - 2009 TO MARCH -2010.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, **KRISHNA S. DIXIT.J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
AND
HON'BLE MR JUSTICE G BASAVARAJA

CAV ORDER

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

State has preferred these Revision Petitions for assailing the Appellate Tribunal's orders whereby, respondent-Assessee's appeals having been favoured, he has been granted deduction of Input Tax Credit at the rate admissible in law although what was claimed in the Returns filed by him, was less than that.

II. FOUNDATIONAL FACTS OF THE CASE:

(a) Assessee is a registered dealer under the Karnataka Value Added Tax Act, 2003 ("2003 Act"). For the tax periods April 2008 to March 2009 and April 2009 to March 2010, the Assessee had filed his Returns *inter alia* claiming Input Tax Credit on purchase of goods which were used in the manufacture and sale/stock-transfer. In terms of Sections 11(a)(5) and 14 of the Act read with Notification No. FD 507 CSL 2007 (IX) dated 01.04.2008 (KVAT Notification) issued under 2003 Act and other Notification No.1/2008-CST-F.No.28/11/2007-ST dated 30.05.2008 ('CST Notification') issued under the provisions

of the Central Goods and Services Tax Act, 2017, Assessee claimed to be eligible to deduct input tax paid on the purchase of subject goods used as inputs in the manufacture of taxable goods stock-transferred outside the State to the extent of input tax charged at a rate higher than 3% with effect from 01.04.2008 and at a rate higher than 2% with effect from 01.06.2008 while calculating his net tax liability under the Act.

(b) On his purchases of goods which were chargeable to VAT at 12.5% which were used in the manufacture of goods that were stock-transferred outside the State, the Assessee availed Input Tax Credit at the rate of 10.5% (12.5%-2%), under a wrong impression that the aforesaid benefit was available only in respect of goods liable to tax at the rate of 12.5% but was not available in respect of inputs purchased at the rate of 4%; he did not claim the benefit of Input Tax Credit of 1 % for the months of April 2008 and May 2008 (4%-3%) and from June 2008 onwards till March 2010- 2% (4% -2%) in his returns.

(c) During the course of re-assessment under Section 39(1) of the Act for the said tax periods, the Assessee made a claim for additional Input Tax Credit at the rate of 1%/2% (4%-3%/2%) in line with Section 14 of 2003 Act read with the aforesaid two Notifications. For the tax period April 2008 to March 2009, the Assessing Authority originally rejected the claim in the proceedings under section 39(1). Subsequently, pursuant to Assessee's rectification application filed under section 69 for the tax periods April 2008 to March 2009, the earlier order rejecting the additional claim of Input Tax Credit was set right and eventually, the claim came to be allowed. For the tax periods April 2009 to March 2010 however, the Assessing Authority allowed the claim in the assessment proceedings under section 39 itself, by noting that a dealer cannot be denied the benefit provided by the statute i.e., section 14 of the Act.

(d) The Joint Commissioner of Commercial Taxes initiated *suo moto* Revision Proceedings under section 63-A of the Act and passed an order setting aside those

passed by the Assessing Authority under sections 39(1) and 69 and thereby disallowed additional claim of ITC for the subject periods, on the ground that more than what was claimed as ITC in the Return is not admissible, in the absence of a Revised Return. Aggrieved by this, Assessee preferred appeals and the Tribunal allowed the same by setting aside the orders of JCCT principally following the Coordinate decision of this Court in the Assessee 's own case for the previous tax period 2007-08 in ***TRACTOR AND FARM EQUIPMENT LTD. vs. STATE OF KARNATAKA***[1]. That is how the Revision Petitions filed by the State u/s 65(1) of the Act are at our hands now.

III. The Revenue has framed the following questions of law for consideration:

In STRP No.4/2023:

> *"(1) Whether in light of the judgment in State of Karnataka vs. M/s Centum Industries (2015) 77 VST 117, 2014 SCC OnLine Kar 12109: (2014) 5 KCCR 1375: ILR 2015 Kar 57, the Hon'ble Karnataka Appellate Tribunal was right in upholding that the order passed by the Assessing Authority extending the special rebating scheme to the Respondent?*

[1] (2021) 93 GSTR 319

(2) Whether pursuant to Section 35 of the KVAT Act, the Respondent could have availed the benefit of special rebating scheme without filing revised Returns when the Respondent has not claimed for it in the Returns filed for the said assessment period?

IN STRP 26/2023:

(3) Whether on the facts and in the circumstances of the Petitioners' case, the Appellate Tribunal was right in law, in allowing the Respondent's Appeal by setting aside the order passed by the Revisional Authority and restoring the order of re-assessment/rectification ?

(4) Whether on the facts and in the circumstances of the Petitioners' case, the Appellate Tribunal was right in law, in allowing the Respondent's Appeal and holding that the Respondent was eligible for deduction of Input Tax Credit tax at 2% on the input purchased locally at 4% used in the manufacture of stock transferred out goods as envisaged as per the provisions of Section 14 of the Act ?

(5) Whether on the facts and in the circumstances of the Petitioners' case, the Appellate Tribunal was right in law, by holding that the Respondent for the periods from April 2008 to May 2008 and June 2008 to March 2009 is eligible for deduction of Input Tax Credit at rate 1% and 2% on the input purchased locally at 4% used in the manufacture of stock transferred out goods as envisaged as per the provisions of Section 14 of the Act ?

IV. SUBMISSIONS AT THE BAR:

(A) Learned AGA argued that filing of Returns is a mandate of law; there is a format prescribed for that and it has a column relating to Input Tax Credit; unless it is specifically claimed in the Return itself or at least in the revised Return, benefit of the kind cannot be granted; as a corollary, grant of benefit cannot exceed the claim specified in the Return; a default in this regard cannot be rewarded; compliance with the conditions is a must; there is a statutory limitation for making the claim for Input Tax Credit; after all, Input Tax Credit being a concession, cannot be claimed as a matter of right.

(B) Learned Sr. Advocate appearing for the Assessee *per contra* contended that: one of the avowed objects of 2003 Act is to grant benefit of Input Tax Credit; substantive provisions are enacted in that direction; delayed refund of Input Tax Credit attracts interest; in the scheme of Article 265 of the Constitution of India, State cannot retain money belonging to subjects; Input Tax Credit is not something like gratis, but partakes the character of State liability; therefore, Input Tax Credit is a concession, is misconceived; machinery provisions of a statute cannot override its substantive provisions; Act does not say that unless claim for Input Tax Credit is made in the Return, it cannot be allowed; after all, Assessee’s case is not the one of not making the claim in

the Return, but its one of rectification of what is claimed in the Return, that too relatable to the extant rates of tax; Act provides for self-assessment; virtually there is no limitation for claiming Input Tax Credit as long as assessment proceedings are not closed, as has happened in this case; it is the statutory duty of authorities to assess the correct tax payable and it is more so when re-assessment is undertaken; it is incongruous to say that Section 39(1) is exclusively for the benefit of the State; denying Input Tax Credit amounts to double taxation not authorized by law.

(C) Both the sides in support of their contentions, passionately pressed into service an avalanche of decisions and we have treated only those relevant of them.

V. In the light of pleadings of the parties coupled with the above submissions, the questions that arise for our consideration are as under:

(i) If Input Tax Credit is a concession as distinguished from a right under the scheme of 2003 Act, what really is meant by and follows from that…?

(ii) Whether the claim for Input Tax Credit cannot be entertained unless made in the Return or revised Return…?

(iii) Whether claim for Input Tax Credit can be rectified under section 39 of the Act even when it is disadvantageous to the State Exchequer…?

(iv) Whether there is any limitation period for claiming the Input Tax Credit…?

The above questions have been articulated after putting them to the counsel representing the parties who had advanced Marathon submissions.

VI. Our discussion follows as under:

(A) A THUMBNAIL DESCRIPTION OF TAXATION:

(a) Power to tax is one of the attributes of State sovereignty. Tax is a price a person pays for being a member of civilized society, to put it broadly. Tax is broadly defined as a pecuniary charge imposed by statute upon persons, property or transactions, for public purposes: it is a forced contribution of wealth to meet the public needs of a government[2]. Benjamin Franklin (1706-1790) said[3]:

---

[2] Roberts vs. McNary, 636 SW 2d 332
[3] Letter of 1789 written to Jean-Baptiste Le Roy-A French Scientist of the time

> *'Our new Constitution is now established, and has an appearance that promises permanency; but in this world, nothing can be said to be certain but death and taxes…'*

(b) Article 265 of our Constitution reads:

> *"Taxes not to be imposed save by authority of law: No tax shall be levied or collected except by authority of law."*

Apex Court in ***CIT vs. Mc.DOWELL***[4] said no tax can be levied without legislative authority. Though tax is an inevitable liability in any civilized society, such liability cannot be created except by a statute. When tax is due to the government, under a statute, subject has to remit it. A great Indian poet Kalidasa (500 CE) in his epic poem "Raghuvamsham" (1-18) states:

> *"King Dilip collects from his subjects only 1/6th of their income as tax for the welfare of State, indeed like the sun taking earthly water drops, only to indemnify her with multiples of rain-drops..."*

Chanakya in his acclaimed work "Arthashaastra" advises the Rulers:

> *"Collect taxes from the citizens as honeybees collect nectar from the flowers, gently and without inflicting pain...";*

---

[4] (2009) 8 S.C.R. 983

(B) A BRIEF DESCRIPTION OF RELEVANT PROVISIONS OF 2003 ACT:

(a) 2003 Act enacts Value Added Taxation replacing the conventional Sales Tax system. In its Statements of Objects and Reasons, it is *inter alia* stated:

> *"(v) Tax paid on inputs purchased within the State is provided to be rebated against goods sold within the State, in the course of inter-State trade;*
>
> *(vi) Provides limited rebating of tax paid in excess of 4% to input used in the goods sent out of the State on stock or consignment;"*

Section 2(15) of the Act defines 'goods' and section 2(19) defines 'input' to mean any goods in an inclusive way. Section 2(20) defines 'input tax' and section 2(22) defines 'output tax' both with reference to section 10. Sub-section (1) of section 10 defines output tax to mean the tax payable under the Act in respect of any taxable sale of goods; sub-section (2) defines input tax to mean the tax collected or payable under the Act on the sale to a registered dealer of any goods for use in the course of his business. Both these taxes are inclusively defined, is apparent from their text. Sub-section (3) mandates

payment of net tax which is arrived at by deducting input tax from output tax.

(b) Sub-section (3) of section 10 has certain special features and therefore, for ease of understanding, the same is reproduced below:

> *"[(3) Subject to input tax restriction specified in sections 11, 12, 14, 17, 18 and 19, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and shall be accounted for in accordance with the provisions of this Act.]*
>
> *[Provided that, a registered dealer while calculating the net tax payable on or after first day of April 2015 may claim input tax relatable to goods purchased during the period immediately preceding five tax periods of such tax period, if input tax of such goods is not claimed in any of such five preceding tax periods.]"*

Apparently, this provision begins with the expression "*Subject to input tax restriction specified in sections…"*

One of the sections specified in section 10 is section 11 which prescribes "Input tax restrictions" as indicated by its very heading. Clause (a) of section 11 provides that in respect of what items Input tax shall not be deducted in

calculating the net tax. However, Sections 12, 13, 15, 16, 17 & 18 are not much relevant to our discussion. Section 14 which is also enlisted in section 10, assumes importance and therefore, the same is reproduced:

> *"Special rebating scheme.- Deduction of input tax shall be allowed on purchase of goods, specified in clauses (5) and (6) of sub-section (a) of Section 11, to the extent of the input tax charged at a rate higher than four per cent or any lower rate as may be notified by the Government."*

Since this provision is as clear as gangetic waters, it admits no interpretation.

(c) We are at this point reverting to some provisions of section 10 again. Sub-section (4) contemplates evidentiary aspect of input tax for the purpose of working out net tax payable. What is very significant is sub-section (5) which has the following text:

> "*Subject to input tax restrictions specified in Sections 11, 12, 14, 17, 18 and 19, where under sub-section (3) the input tax deductible by a dealer exceeds the output tax payable by him, the excess amount shall be adjusted or refunded together with interest, as may be prescribed."*

In essence, it provides for the adjustment or refund of input tax when it exceeds the output tax payable by a dealer. Very significantly, it awards interest on such excess amount payable to dealer. The underlying principle of this provision is that when what is exacted is more than what was liable, the excess has to be refunded, that too with interest. This is consistent with the constitutional obligation of a Welfare State, whose taxing power is regulated under Article 265.

(C) AS TO THE NATURE OF CLAIM FOR INPUT TAX CREDIT:

(a) There was a heated debate at the Bar as to the nature of Input Tax Credit: learned AGA Mr.Aditya Vikram Bhat argued that Input Tax Credit is a concession as distinguished from a right whereas, learned Sr. Advocate Mr.Suryanarayana appearing for the Assessee contended to the contrary. The term 'concession' has been used with diverse and even contrasting shades of meaning, depending upon the scheme of the statute. Roughly concession is ordinarily something between right and

gratis and that beyond this, the term has no definite meaning in the law; concession is a legal creature given to various fact situations, particularly economic ones. Be it a right or a concession, they are not absolute. If a concession is enacted by the State, ordinarily it ceases to be a *gratis* or privilege. Merely because something is called as a 'concession' and the claim for that is conditioned, that *per se* may not rob elements that usually animate the right created by law. As already discussed above, sub-section (5) provides for adjustment or refund of amount when Input Tax exceeds Output Tax payable. Added, it is with interest that such adjustment/refund has to be made. If it was a mere concession, how is that the State is mandating to pay the interest, whatever be its rate as may be prescribed by Rules…? Thus, a right is created to the refund and to that is superadded the right to interest on the delay brooked in making refund/adjustment.

(b) Grant of concession arguably may involve discretion. However, it is not Moghul's discretion of granting or cancelling the *firman*. *The discretion allowed by the*

statute to the holder of a public office, as Lord Halsbury observed in Sharp v. Wakefield[5]*, is intended to be exercised according to the rules of reason & justice, not according to private opinion; according to law and not humour; it is to be, no arbitrary, vague and fanciful but legal and regular; it has to be exercised within the limits to which a reasonable person competent to the discharge of his office ought to confine himself. Every discretion ought to be exercised in furtherance of accomplishment of purpose for which the power is conferred.* In other words, if conditions prescribed by the statute are complied with, an authority cannot deny the concession with impunity. Concession in the text & context of the provisions of the statute, is not a *gratis* and it cannot be denied if conditions for availing it are fulfilled subject to all just exceptions. Such conditions may be as to the form, limitation period or the like, is beside the point.

(C) AS TO HOW THE COURTS VIEWED THE CONCEPT OF INPUT TAX CREDIT:

[5] *[1891] AC 173 at 179*

(a) Learned AGA in support of his submission that Input Tax Credit is only a concession, cited ***GODREJ & BOYCE MFG. CO. PVT LTD vs. COMMISSIONER OF SALES TAX***[6]*.* This case essentially related to Bombay Sales Tax Act, 1959. At paragraph 9, the following observations occur:

> *"In law (apart from Rules 41 and 41A) 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… 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."*

(b) The second decision cited by AGA is ***JAYARAM AND COMPANY vs. ASSISTANT COMMISSIONER***[7]*.* The Apex Court was examining certain provisions of Tamil Nadu Value Added Tax Act, 2006. Section 19 of the said Act in substance and to some extent, appears to be in *pari*

---

[6] (1992) 3 SCC 624
[7] (2016) 15 SCC 125

materia inter alia sections 10 & 14 of our 2003 Act, is true.

At paragraphs 11 & 12, it is observed as under:

> *" 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 its a concession granted by virtue of Section*
> *19. As a fortiorari, conditions specified in Section 10 must be fulfilled…"*

(c) The third decision cited by AGA is a Division Bench decision of Madras High Court in ***ASSISTANT COMMISSIONER OF GST & CENTRAL EXCISE vs. SUTHERLAND GLOBAL SERVICES PRIVATE LIMITED***[8]**.** The case essentially involved Central Goods and Services Tax Act, 2017, Finance Act, 1994, Finance Act, 2016

[8] (2020) 83 GSTR 259

Central Excise Act, 1944 and CGST Rules, 2017, etc. True it is that the court at paragraph 55 observed:

> *"…it is clear that Cenvat credit or input-tax credit under the GST regime is a concession and a facility and not a vested right. Even if one were to rank such a right of Cenvat credit on the pedestal of a statutory right, even that right can be curtailed and regulated by conditions for availing such right..."*

(d) The fourth one cited by the learned AGA is a Division Bench decision of Andhra Pradesh High Court in ***THIRUMALAKONDA PLYWOODS vs. ASSISTANT COMMISSIONER[9].*** This case essentially involved APGST Act, 2017. Court was examining the validity of section 16(4) of 'APGST/CGST Act, 2017' on the ground that prescribing conditions for Input Tax Credit such as limitation period, etc, was foul of Articles 14, 19(1)(g) & 300A of the Constitution. While repelling that contention, at para 21, it is observed:

> "*…the said argument has no validity for the reason, firstly the ITC is a mere concession/rebate/benefit but not a statutory or constitutional right… That, by nature ITC is a concession/rebate/benefit but not a statutory right has been reiterated in a thicket of decisions.*'

[9] 2023 SCC OnLine AP 1476

(e) Learned Sr. Advocate appearing for the Assessee pressed into service a decision of a learned Single Judge of this Court in ***KIRLOSKAR ELECTRIC COMPANY LIMITED vs. STATE OF KARNATAKA***[10]***.*** The court was construing *inter alia* the provisions of section 10(3) of 2003 Act while examining as to whether the department was justified in negativing the claim for Input Tax Credit on the ground that it did not pertain to the same tax period. While faltering the stand of department, the said Judge at paragraph 29 observed:

> *"Thus the claim of credit of input tax is indefeasible as was the case of CENVAT under Excise law and such credit of ITC under VAT law which is equivalent to tax paid in the chain of sales of the same goods, cannot be denied on the anvil of machinery provisions or even provisions relating to time frame which is law of limitation only bars the remedy rather than negativing the substantive claims under the taxing statutes."*

Learned AGA is right in contending that the above observation is too broad to be accepted in the light of decisions discussed above.

---

[10] 2018 SCC OnLine Kar 2301

(f) The above observations of the learned Single Judge in ***KIRLOSKAR*** *supra,* run counter to what is said by Apex Court in ***ALD AUTOMOTIVE PRIVATE LIMITED vs. COMMERCIAL TAX OFFICER***[11] paragraph 40:

> *"The alternative submission pressed by learned Counsel for the appellant was that Section 19(11) cannot be held to be mandatory and it is only a directory provision, noncompliance of which cannot be ground of denial of Input Tax Credit to the appellant. The conditions under which Input Tax Credit is to be given are all enumerated in Section 19 as noticed above. The condition under which the concession and benefit is given is always to be strictly construed. In event, it is accepted that there is no time period for claiming Input Tax Credit as contained in Section 19(11), the provision become too flexible and give rise to large number of difficulties including difficulty in verification of claim of Input Credit. Taxing Statutes contains selfcontained scheme of levy, computation and collection of tax. The time under which a return is to be filed for purpose of assessment of the tax cannot be dependent on the will of a dealer."*

(D) AS TO THE TRUE MEANING OF 'RIGHT' & 'CONCESSION':

[11] (2019) 13 SCC 225

(a) A brief discussion about what is a right and what is a concession assumes importance because of extreme views canvassed by the advocates appearing for the parties. Learned AGA said that Input Tax Credit is only a concession whereas, Assessee's counsel asserted that it is an indefeasible right. AGA, to drive home his point, drew our attention mainly to section 11 of the Act read with Rule 38 of Karnataka Value Added Tax Rules, 2005 which injuncts against grant of Input Tax Credit subject to exceptions, conditions, forms and limitations. Section 35(1) read with Rule 38 would be again adverted to *infra. Per contra,* Assessee's lawyer stressed Article 262 of the Constitution to the effect that what is paid in excess of tax cannot be retained by the State. He also re-read section 10(5) which according to him, is a legislative injunction to the government, to refund or adjust excess input tax with interest.

(b) There is a brief explanation in Salmond's Jurisprudence[12] as to what '*right'* means:

[12] Twelfth Edition Fitzgerald

> "*…that in the strict sense, a duty is something owed by one person to another. Correspondingly, the latter has a right against the former… To ascribe a right to one person is to imply that some other person is under a corresponding duty. But the term 'right' like 'duty' can be used in a wider sense. To say that a man has a right to something is roughly to say that it is right for him to obtain it. That may entail that others ought to provide him with it, or that they ought not to prevent him from getting it, or merely that it would not be wrong for him to get it. What exactly is being claimed by the assertion that he has a right is not always clear…*"

Hohfeld[13] points out that the genesis of 'right (*stricto sensu*)' lies in the 'corresponding duty'. R.W.M.Dias[14] asserts that every claim (his equivalent for 'right') implies the existence of a correlative duty since it has no content apart from the duty. Salmond[15] drives home the point with a touch of an artist when he says 'there can be no right without a corresponding duty any more than there can be a husband without a wife'.

(c) The meaning of 'concession' as occurring in the conventional English dictionary does not much come to our

[13] Fundamental legal conceptions, pg.510, 7th Edition,
[14] Jurisprudence, 5th Edition, Pg.24
[15] Supra, pg.232

aid. This apart, it is tritely said that laws are not the slaves of dictionaries. However, that does not dispense with the duty to derive meaning from the statutes and decisions interpreting the statutes, although principles applicable to them may be bit variable. Justice Oliver Wendell Holmes in ***TOWNE vs. EISNER***[16] observed:

> *"A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and time in which it is used…"*

(d) As to what Apex Court said about the meaning of concession and its invocation:

(i) In ***INDIAN ALUMINIUM COMPANY LIMITED vs. THANE MUNICIPAL CORPN***[17]***,*** it is observed as under:

> *"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 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:*

---

[16] 245 US 418
[17] 1992 Supp.(1) SCC 480, paras 5, 6

> *"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."*
>
> *The expressions "rebate" and "concession" in the commercial parlance have the same concept…"*

(ii) In ***COMMISSIONER OF CUSTOMS vs. DILIP KUMAR***[18]***,*** the following observations occur:

> *"The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, thought at times, some latitude can be shown, if there is failure to comply with some requirements which are directory in nature, the noncompliance of which would not affect the essence or substance of the notification granting exemption."*

From a holistic reading of all these cases, we gather an impression that meaning of the word 'concession' is not

[18] (2018) 9 SCC 1, para 50

static, and it oscillates between *gratis* on the one extreme and right in the other, leaning more towards the latter, depending upon the text, context, subject matter and intent of the statute, wherein it occurs. When the courts said that *Input Tax Credit is a concession*, certainly they did not mean that it is a *gratis,* in the sense that its denial is absolutely non-justiciable. True it is, there are some observations: "*Input Tax Credit is not a statutory right but only a concession*." To us, this appears to be on one side of the spectrum. A learned Single Judge in ***KIRLOSKAR*** *supra* observed '*…the claim of credit of input tax is indefeasible…*'. At its core, this is merely another instance of hyperbole, albeit one that manifests on the other side of the spectrum. Truth oscillates between these two and where the pendulum stop depends upon the text, context & policy content of the statute concerned.

(e) In our considered view, the inner voice of a slew of decisions cited at the Bar which mention that Input Tax Credit is only a concession is that: An Assessee cannot claim Input Tax Credit unless the conditions prescribed by

the statute are strictly complied with. To put it differently, Input Tax Credit is not unconditional or unqualified, since it is made available as an exception to the general rule that no input tax deduction would be granted, as said in section 11 of the Act read with Rule 38 of 2005 Rules. This accords with the constitutional mandate enacted in Article 265, as broadly construed by the Apex Court. If tax cannot be levied and collected except with the authority of law, then as a corollary of this, any excess exaction also cannot be retained by the State subject to exceptions such as unjust enrichment, delay & latches, non-compliance of mandatory form, etc. It is more so because section 10(5) mandates refund/adjustment of excess of Input Tax Credit that too with interest.

(f) Merit and legality of a proposition like the above can be better understood by contemplating the consequences of the contra. With all this in mind, we ask ourselves now: 'Despite strict compliance of all conditions, can the claim for Input Tax Credit be denied to the Assessee…?' Answer has to be a big 'NO'. Reasons for this are not far to seek:

firtly, what is payable is net tax; net tax is arrived at by deducting Input Tax by Output Tax. Secondly, Article 265 does not permit exaction of any money than what the statute authorizes. Thirdly, denial of Input Tax may eventually result into double taxation. Fourthly, section 10(5) provides for refund of Input Tax coupled with interest. Fifthly, ours is a constitutionally ordained Welfare State and therefore, its action should accord with fairness standards obtaining in the realm. Lastly, an argument to the contrary would *spurn at right, at law, at reason*. It was St. Augustine (354 AD – 430 AD) who said 'Without justice, what else is the State but a great band of robbers.'[19]

(E) AS TO SUBSTANTIVE PROVISIONS OVERRIDING THE MACHINERY PROVISIONS:

(a) Mr.Suryanarayana placing reliance on ***SONAL APPAREL PRIVATE LIMITED vs. STATE OF KARNATAKA***[20] and **KIRLOSKAR** *supra*, contended that section 10 broadly providing for adjustment/refund of

[19] City of God
[20] 2016 SCC OnLine Kar 9410

excess Input Tax Credit, is substantive in nature subject to exceptions/conditions enlisted *inter alia* in sections 11 to 18 of 2003 Act; therefore, section 35 read with Rule 38 of 2005 Rules being machinery provisions cannot override the substantive ones. As a broad proposition, this is attractive. Learned AGA in his inimitable style contended in variance. He tells that Input Tax Credit being only a concession, avails to a dealer as an exception and subject to compliance with conditions like format & limitation period. Let us examine these provisions.

(b) In the light of our above observation, Input Tax Credit is not a *gratis,* it is a kind of concession in a limited sense and that it would avail if all the conditions prescribed for that are strictly complied with. Section 35 of the Act was heavily banked upon by the learned AGA to resist the claim of Input Tax Credit. Sub-sections (1), (3) & (4) of this section being relevant are reproduced:

> *"(1) Subject to sub-sections (2) to (4), every registered dealer, and the Central Government, a State Government, a statutory body and a local authority liable to pay tax collected under sub-section (2) of Section 9, shall furnish a*

return in such form and manner, including electronic methods, and shall pay the tax due on such return within twenty days or fifteen days after the end of the preceding month or any other tax period as may be prescribed.

(3) Subject to such terms and conditions as may be specified, the prescribed authority may require any registered dealer.-

(a) to furnish a return for such periods, or

(b) to furnish separate branch returns where the registered dealer has more than one place of business.

(4) If any dealer having furnished a return under this Act, other than a return furnished under sub-section (3) of Section 38, discovers any omission or incorrect statement therein, other than as a result of an inspection or receipt of any other information or evidence by the prescribed authority, (a) he shall furnish a revised return within the time prescribed for filing the return for the succeeding tax period; and (b) he shall furnish a revised return any time thereafter but within six months from the end of the relevant tax period, if so permitted by the prescribed authority."

(c) Sub-section (1) of section 35 mandates filing of Return in prescribed form & manner and paying of tax due on such Return within a specified period. Sub-section (3) empowers the prescribed authority to call for a Return for specific periods or insist upon separate Returns *qua* the business branches of the dealer. Sub-section (4) enables

the dealer to file Revised Return within a prescribed period if he discovers any omission or incorrect statement in the Return already filed. Section 38 provides for self-assessment/deemed assessment based on the Return filed, subject to exceptions. Section 39 provides for re-assessment of tax when the Return filed by the dealer understates the correct tax liability.

(d) Sub-section (2)(e) of section 39 of the Act which is much pressed into service by both the sides reads:

> *"Where after making a re-assessment under this Section,*
>
> *(e) any deductions or exemptions have been wrongly allowed in respect thereof, the prescribed authority may, notwithstanding the fact that whole or part of such escaped turnover was already before the said authority at the time of re-assessment, proceed to make any further re-assessments in addition to such earlier re-assessment."*

Respondent's is a case of re-assessment, is not in dispute. Mr.Suryanarayana submitted that under the applicable provisions of the Act, it is the duty of the Assessing Authority to assess the correct tax liability and collect it. When there is a mistake, whether the dealer has furnished

Revised Return or not, the authority has to rectify the same, though it works detrimental to the State Exchequer. Learned AGA *per contra* stressed literal interpretation of sub-section (2)(e) of section 39 to contend that the duty to rectify mistake arises only when it proves advantageous to the State Exchequer. This literal interpretation of learned AGA is difficult to countenance. As already mentioned above, if the Assessing Authority while undertaking the re-assessment, discovers deductions or exemptions that are wrongly allowed, he has to rectify the same even if it enures to the benefit of the dealer. Such a duty becomes more onerous when a representation is given by the dealer. There is no escape from this duty when deductions & exemptions have to be worked out on the basis of statutory notifications that have the character of subordinate legislation. A sectarian interpretation cannot be placed on a provision like this on the ground that whatever amount otherwise due to a dealer, lying at the hands of the State would be used for the public at large. Object is laudable, but legally impermissible.

(F) AS TO ABSENCE OF CLAIM FOR INPUT TAX CREDIT IN RETURN/REVISED RETURN:

(a) As a matter of norm, Input Tax Credit cannot be availed unless the conditions are complied with. As already mentioned above, section 35 of 2003 Act read with Rule 38 of 2005 Rules gives full particulars to be furnished in the Return/Revised Return in Form VAT 100. Rule 38(1) which learned AGA relied upon strongly, has the following text:

> *"Every registered dealer shall submit a monthly return, containing particulars of net values of sales, purchases and other transactions, including input and output tax claimed or collected and net tax relating to all of his places of business, and accompanied by proof of full payment of any tax due, to the jurisdictional Local VAT officer or VAT sub-officer in Form VAT 100 within twenty days after the end of the relevant tax period."*

Relevant part of prescribed Form VAT 100 namely paragraphs 4.1, 4.2, 4.3 & 4.9 reads as under:

4.1	Output tax payable (Refer Box No. 8.3)
4.2	Brought forward credit of/excess payment made during previous month/quarter (Refer Box No.4.10)
4.3	Input Tax Credit (Refer Box No.11)
4.9	Refund

[Other columns not being much relevant, are not reproduced.]

(b) It is a specific case of the Revenue that unless claim is made for Input Tax Credit in the Return, a dealer cannot grieve against disallowance; learned AGA hastened to add that, if there was a mistake in the Return, nothing prevented the dealer from filing a Revised Return, of course within the prescribed period of limitation. In support of this, he relied upon the following decisions:

(i) In ***CENTUM*** *supra,* a Coordinate Bench at paragraph 11 observed as under:

> *"Sub-section (1) of Section 35 provides for furnishing a return in such form and manner and for payment of tax due on such return within 20 days or 15 days after the end of the preceding month or any other tax period as may be prescribed. Therefore, the statute provides the period within which a return is to be filed under Section 35(1), i.e., within 20 days or 15 days after the end of the preceding month. Sub-section (2) mandates that the tax on any sale or purchase of goods declared in a return furnished shall become payable within 20 days or 15 days as prescribed in sub-section (1) of Section 35 without the assessee waiting for a notice for payment of such tax. Sub-section (4) of Section 35 provides for filing of a revised return if the assessee discovers any omission or incorrect statement in the returns filed under Section 35(1) of the Act. At the*

relevant point of time such a revised return had to be filed within 6 months from the end of the relevant tax period. Therefore, the statute provides for filing of a return, claiming input tax rebate within the period prescribed in law. If in the return filed there is any omission or incorrect statement, a provision is made for filing of a revised return within the time prescribed. If the returns are not filed within the said period, then the assessee would not be entitled to the benefit of setting off output tax against the input tax."

(ii) In ***NANDI CONSTRUCTIONS vs. STATE OF KARNATAKA***[21], another Coordinate Bench has observed:

"The main issue to be decided by this Court is as to whether the petitioner can be granted benefit over and above that what has been claimed in the returns filed by the assessee for the relevant tax periods. Admittedly, the claim of the petitioner, in its returns filed for the relevant tax periods, was at 45% towards land cost. Though Assessing Officer allowed only 40%, the first appellate authority granted the benefit of 45% towards land cost. The question now to be decided is whether unless a claim is made by the assessee in its return (and without the same being revised or modified by filing a revised return), any benefit beyond the benefit claimed in the return can be considered and allowed by the authorities. In our view the answer would be a clear No.…"

[21] 2015 SCC OnLine Kar 9757, paras 6 & 7

This decision in turn referred to ***Centum Industries*** *supra,* and ***INFINITE BUILDERS & DEVELOPERS* vs. *ADDITIONAL CCT***[22]*.*

(c) In the above decisions, it is apparent that no claim for Input Tax Credit was made in the Return, nor any Revised Return was furnished. Limitation period as prescribed by law is also discussed for filing of Return or Revised Return. However, Mr.Suryanarayana is right in telling us that the case of his client is markedly different from the fact matrix of those decisions inasmuch as Input Tax Credit was specifically claimed in the Returns filed in time. Since the matter went for re-assessment, the Assessee before closure of the said process had sent the letters for rectifying the mistake by recomputing the tax rates as specified in the extant Notifications. Had the case of Assessee been one of deemed assessment, it would have been altogether a different scenario. We need not reiterate that a case is an authority for the proposition that it lays down in a given fact matrix and not for all that

[22] (2013) 76 Kar.L.J 390

which logically follows from what has been so laid down vide Lord Halsbury in ***QUINN vs. LEATHEM***[23]*.*

(d) The Tribunal although inarticulately has rightly granted relief to the Assessee, since it is not the case of Revenue that he has perpetrated any act of fraud, fabrication or the like. Mistake of the Assessee has been rightly termed as *bona fide.* That apart, mistake is not of fact but of law in the sense the rates of tax on the admitted fact position were required to be ascertained from the extant notifications, which can be treated as a piece of delegated legislation. Had the issue been of fact, arguably our view would have been different. After all, law is not pleaded, but facts are, unless law itself requires otherwise. The Tribunal appears to have operated with this approach and the same cannot be faltered.

(e) The vehement submission of learned AGA that Rule 38 read with Form VAT 100 requires that in order to claim Input Tax Credit, it should be stated in the Return or at least in Revised Return. We have already reproduced Rule

[23] (1901) UKHL 2

38 and relevant part of Form VAT 100. Now, let us see another important provision namely Rule 130A of 2005 Rules introduced w.e.f. 1.4.2007. It provides for certain benefits by way of refund or deduction of tax to dealers *inter alia* having units of business in Special Economic Zones. Sub-Rule (3) being relevant is reproduced:

> *"The registered dealer claiming refund or deduction under this rule shall, claim refund or seek adjustment of tax paid on the goods purchased by him towards any output tax payable by him, in the return made under Rule 38 along with a statement giving the details of each purchase made by him and the purpose for which it was purchased."*

The text of this Rule is markedly different from that of Rule 38 in providing that the claim for refund or adjustment of tax paid, has to be stated in the Return itself. If Rule 38 as sought to be interpreted by the learned AGA requires claim for Input Tax Credit to be made in the Return itself, then where was the need for introducing Rule 130A (3) by way of amendment ? It would be superfluous. This is where the maxim *expressio unius est exclusio alterius* becomes invocable: the expression of one thing is the exclusion of another.

(G) AS TO WHAT IS CONSPICUOUSLY LACKING IN THE RULINGS CITED ON BEHALF OF REVENUE:

(a) Learned AGA Mr.Aditya Vikram Bhat in support of his contention that no claim for Input Tax Credit can be entertained unless made in the Return or in the Revised Return, heavily banked upon four important decisions rendered by different Coordinate Benches of this Court. They are (i) M/s Centum Industries, (ii) Nandi Constructions, (iii) Infinite Builders & Developers & (iv) ***MANASA ELECTRICALS COMPANY vs. STATE OF KARNATAKA***[24].

(b) We very carefully perused these decisions which consistently suggest, if not hold that in the absence of claim being made in the Return, amended Return or Revised Return, Input Tax Credit can be denied. This broad proposition is structured keeping in view *inter alia* sections 10, 11, 14, 35, 38 & 39 of 2003 Act read with Rule 38 and Form VAT 100 of 2005 Rules. However, reference to Rule 130A which is on the Rule book since April 2007 is

[24] 2016 SCC OnLine Kar 9412

conspicuously absent. As already observed above, the text of this Rule is markedly different from that of Rule 38. Had this significant Rule been adverted to in the said decisions, it would have certainly had impact on the breadth of their ratio. How this particular Rule of significance remained unmindful, is beside the point. "Is" outweighs "ought".

(c) Salmond's Jurisprudence[25] observes:

> *"…a decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court…"*

VII. OUR ANSWERS TO THE QUESTIONS OF LAW FRAMED BY US:

[1] We answer the first question as to the nature of *Input Tax Credit* to the effect that although it is a concession, the claim for it cannot be denied when all conditions stipulated by law are complied with . In

[25] Fitzgerald, Tenth Edition, page 158

other words, wrongful denial of *Input Tax Credit* is justiciable.

[2] We answer the second question conditionally as under:

(i) Ordinarily, the claim for *Input Tax Credit* has to be made in the Return or Revised Return only. A claim otherwise is an exception and *bona fide* of the same has to be demonstrated.

(ii) However, when underclaim is made in the Return/Revised Return due to *bona fide* mistake of adopting inapplicable rates of tax only, it is permissible to seek rectification by making a representation provided that the foundational fact matrix is already available in the Return/Revised Return.

(iii) Further, no rectification whatsoever can be sought for, once the assessment/reassessment proceedings are concluded or that the limitation period otherwise has expired.

[3] We answer the third question as to the invocability of section 39 of 2003 Act as under:

(i) If the Assessee during the course of re-assessment proceedings makes a claim for Input Tax Credit, the same cannot be disallowed only on the ground that the claim of the Assessee is disadvantageous to the State Exchequer.

(ii) If the reassessed tax is more than what is payable, then the same has to be recovered from the Assessee along with admissible interest/penalty; as a corollary of this, what is paid is more than what is payable on reassessment, then the claim for *Input Tax Credit* has to be favoured if that is made before the conclusion of re-assessment proceedings.

In the above circumstances, these petitions being devoid of merits, are liable to be dismissed and accordingly, they are, costs having been made easy.

Before parting with the papers, we place on record our deep appreciation for the assistance rendered by Research Assistant Mr.Raghunandan K.S.

Sd/-
(KRISHNA S DIXIT)
JUDGE

Sd/-
(G BASAVARAJA)
JUDGE

Snb, cbc
List No.: 1 Sl No.: 1