**HIGH COURT OF TRIPURA**
**AGARTALA**

**WP(C)No.114 of 2020**

**M/s Kiran Enterprise,**
Having its registered office at
Village-Dharmanagar, Nayapara Road,
P.O. & P.S. Dharmanagar, District : North Tripura

----Petitioner(s)

Versus

**1. The State of Tripura,**
represented by the Commissioner & Secretary,
Commissioner of Taxes & Excise, Government of Tripura,
having his office at Secretariat Building, P.O. Kunjaban,
P.S. New Capital Complex,
District : West Tripura,
PIN : 799006

**2. The Commissioner & Secretary,**
Commissioner of Taxes & Excise, Government of Tripura,
having his office at Secretariat Building, P.O. Kunjaban,
P.S. New Capital Complex,
District : West Tripura,
PIN : 799006

**3. The Superintendent of Taxes,**
Government of Tripura, Dharmanagar,
P.O. & P.S. Dharmanagar,
District : North Tripura

**4. The Superintendent of State Tax,**
Government of Tripura, Dharmanagar,
P.O. & P.S. Dharmanagar,
District : North Tripura

---- Respondent(s)

---

For Petitioner(s) : Mr. Somik Deb, Adv.

For Respondent(s): Mr. A.K. Bhowmik, Advocate General
Mr. K. De, Addl. G.A.

Date of hearing : 14.10.2020

Date of delivery of Judgment & Order : 17.12.2020

Whether fit for reporting : YES.

---

**HON'BLE MR. JUSTICE S. TALAPATRA**
**HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

**Judgment & Order**

*[S. Talapatra. J]*

By means of this petition filed under Article 226 of the Constitution of India, the petitioner, which is a sole proprietorship firm, has challenged fundamentally two orders being the order dated 15.11.2018 [Annnexure-4 to the writ petition] and the decision contained in the communication dated 17.12.2019 [Annexure-6 to the writ petition]. In addition, it has been urged by the petitioner that the defects/errors manifest in the showcause notice dated 10.10.2018 [Annexure-2 to the writ petition] render the same unsustainable. The petitioner is the distributer of Airtel as engaged by Bharati Hexacom Limited for Dharmanagar jurisdiction. This fact, however, is not under dispute. It is also not in dispute that in terms of Clause-5.7 of the agreement dated 30.10.2010 by which the petitioner has been engaged as the distributor, the petitioner is under obligation for making payment of all taxes, duties, levies, cess, search charge or any other charges that may be applicable on the distributor or for prepaid/service offerings/ products etc. According to the petitioner,

the tax invoices used to be prepared by Bharati Hexacom Limited in the name of M/s New Kiran Enterprise, another proprietorship firm owned by the petitioner. On 04.09.2012, when a search was carried out under Section 67(2) of Tripura State Goods and Services Act, 2017 [TSGST Act, 2017 in short] it revealed from GSTTR-3B for the period from July, 2017 to 31st March, 2018 that the taxpayer namely M/s Kiran Enterprise GSTTIN 16ACIPD2157R2Z9 Nayapara Road Dharmanagar has utilized or availed IGST at Rs.3,690.00, CGST at Rs.12,67,409.84 and SGST at Rs.12,67,409.84 but as per Form GSTR-2A (inward supply), the taxpayer is entitled for utilization Input Tax Credit (ITC) against its liabilities at Rs.2,67,307.94 as CGST and Rs. 2,67,307.94 as SGST only, but the tax payer had been found to have wrongly utilized excess ITC at Rs.3,690.00 as IGST, Rs.10,00,101.90 (Rs.12,67,409.84-Rs.2,67,307.94) as CGST and Rs.10,00,101.90 (Rs.12,67,409.84-Rs.2,67,307.94) as SGST.

2. By the order of seizure dated 04.09.2018 tax invoices were seized in presence of witnesses by the Superintendent of State Tax, Dharmanagar charge. For purpose of seizure, due authorization was issued by the competent authority under Section 67(1) of TSGST Act. At the time of seizure, one Ajit Kumar Deb, son of the proprietor was present. As it appeared that the petitioner has committed offence under Clauses-(c) and (d) of Section 12 (2) of TSGST Act, a notice under Section 74(1) of the TSGST Act was issued to the petitioner to

showcause as to why the amount of Rs.20,03,893.80 along with interest payable thereon and penalty equivalent to the tax as computed under Section 74(1) of the TSGST Act and why further penal action should not be taken under Clause (e) of Section 122(3) of TSGST Act for availing or utilizing wrongful Input Tax Credit (ITC) to the extent of Rs.20,03,893.80 (Rs.3690.00 +10,101.90 + Rs.10,101.90) by way of suppression of facts for evading tax and for having supplied taxable goods without issuance of tax invoices as required under Section 31(1) of the TSGST Act. The detailed break-up of such evasion has been shown in a table.

3. The sole proprietor by filing a reply has stated that she has two sole proprietorship firms namely M/s Kiran Enterprise and M/s New Kiran Enterprise which deal in the same products and their PAN number is also same. Only the GST number is separate. She has categorically made the following statement :

> **"As per your notice excess ITC claimed will be adjusted by our Auditor and it is under process. I also submit the annual return also. "**

4. On such premises, it was urged that no penal action be taken under Clause (c) of Section 122(3) of TGST Act. The said reply dated 15.10.2018 [Annexure-3 to the writ petition] was considered by the Superintendent of the State Tax, Dharmanagar Charge the respondent No.4 herein and he passed the order dated 15.11.2018 [Annexure-4 to the writ petition] and that order has been challenged

in this writ petition. By the order dated 15.11.2014 the respondent No.4 has observed as follows :

> **"The taxpayer submitted with her application dated 15.10.2018 M/S Kiran Enterprise & New Kiran Enterprise deals in same products and PAN number is also same. Only GST number is separate. M/S Kiran Enterprise, GSTIN: 16ACIPD2157R2Z9, Nayapara Road, Dharmanagar and M/S New Kiran Enterprise, GSTIN: 16ACIPD2157R1ZA, Nayapara Road, Dharmanagar are separate entity and it should be treated as distinct persons though the proprietor and PAN is same as per provisions of sub-section (4) of Section 25 of the TSGST Act, 2017 as reproduced by the provisions of Section 25(4) of the Act;**
> **"A person who has obtained or is required to obtain more than one registration, whether in one State or Union Territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purpose of this Act."**
> **Therefore, the taxpayer cannot utilize or avail of Input Tax Credit (ITC) of M/S New Kiran Enterprise, GSTIN: 16ACIPD2157R1ZA against M/S Kiran Enterprise, GSTIN : 16ACIPD2157R2Z9 though both the distinct persons PAN is same.**
> **In respect of excess ITC claimed, the taxpayer is also submitted an application dated 15/10/2018, it will be adjusted by their Auditor and it is under process but it appears from the GST Portal that the taxpayer namely M/S Kiran Enterprise, GSTIN: 16ACIPD2157R2Z9 did not reverse the ITC.**
> **Therefore, it is evidently proved that the taxpayer M/S Kiran Enterprise, Nayapara Road, Dharmanagar wrongly availed or utilized input tax credit an amount of Rs. 3,690.00 as IGST, Rs.10,00,101.90 (Rs.12,67,409.84 – Rs.2,67,307.94) as CGST and Rs.10,00,101.90 (Rs.12,67,409.84 –Rs.2,67,307.94) as SGST. Totally wrongly availed or utilized input tax credit an amount of Rs.20,03,893.80 (Rs.3690.00 + Rs.10,00,101.90 + Rs.10,00,101.90)."**

In view of what has been observed in the order dated 15.11.2018 [Annexure-4 to the writ petition], the respondent No.4 has imposed penalty in the manner as under :

> **"It is crystal clear that the tax payer willingly and knowingly committed offences under clauses (c) & (d) of sub-section (2) of Section 16 of the TSGST Act, 2017 to evade tax and hence liable to penalty an amount**

**equivalent to tax, in addition to tax payable along with interest thereon under Section 74(1) of the TSGST Act, 2017.**
**In view of the above fact and circumstances, in addition to tax payable, I impose penalty equivalent to the amount of tax along with interest payable thereon under Section 74(1) of the TSGST Act, 2017.**
**And thus the case is completed as under :**

**Computation**

| Act | IGST | CGST | TSGST |
|---|---|---|---|
| Tax payable | 3,690.00 | Rs.10,00,101.90 | Rs.10,00,101.90 |
| Add penalty under Section 74(1) of the TSGST Act, 2017 | 3,690.00 | Rs.10,00,101.90 | Rs.10,00,101.90 |
| Interest U/S 50 | 885.60 | 244493.93 | 244493.93 |
| Total Sum payable | 8264.60 | 2244697.73 | 2244697.73 |
| Round off | 8265.00 | 2244698.00 | 2244698.00 |

**Asked the taxpayer to deposit the above tax, penalty and interest by 15th December, 2018 positively. Issue DRC in Form VII of the TSGST Act, 2017."**

5. In terms of the said order dated 15.11.2018, the respondent No.4 raised the claim in the form No. GST DRC-07 asking to deposit the above tax, penalty and interest. The petitioner has asserted that owing to inadvertence name of M/s Kiran Enterprise was recorded in the tax invoice instead of the distributor namely M/s New Kiran Enterprise. But M/s New Kiran Enterprise is nowhere in the proceeding. M/s New Kiran Enterprise has not even been aggaigned in the proceeding as separate entity. The impugned order has been passed against M/s Kiran Enterprise following the showcause notice dated 10.10.2018 [Annexure-2 to the writ petition]. The petitioner filed a petition on 08.11.2019 [Annexure-5 to the writ petition] under Section 161 of the TSGST Act for rectification of the error in the tax invoice. As consequence thereof, the showcause notice dated

10.10.2018 and the order dated 15.11.2018 [Annexure-2 and 3 respectively] be recalled. The delay that occurred in filing such petition was required to be condoned. Accordingly, prayer for condoning the delay was advanced on the ground that the sole proprietor of the petitioner is about ninety six years of age and is suffering from various old age diseases. In the said petition filed under section 161 of the TSGST Act, the petitioner has asserted inter alia that Bharati Hexacom Limited prepared the tax invoices erroneously in the name of M/s Kiran Enterprise (instead of M/s New Kiran Enterprise). It has been stated further that Bharati Hexacom Limited owes payment of SGST as well as CGST and the petitioner does not have any liability to pay the tax, interest etc. It is Bharati Hexacom Limited which raised the tax invoices erroneously in the name of M/s Kiran Enterprise, the petitioner herein. The petitioner before the respondent No.4 had further urged as follows :

> **"13.2 It is stated that admittedly, in the instant case, for the periods, stretching from July, 2017 to August, 2017, the tax due and payable, for the transaction in question, amounting to Rs.24,05,159.44/- has been deposited, by Bharati Hexacom Ltd., against the correct GSTIN No.16ACIPD2157R2Z9, and therefore, by no stretch of imagination, it can be urged that the present case involves any evasion of tax. In such view of the matter, it is submitted that invocation of Section 74 of the SGST Act is wholly misplaced. As a consequenti, the impugned Show Cause Notice dated 10.10.2018 & the impugned Order dated 15.11.2018 (Annexure-2 & 3 respectively supra) are liable to be quashed/ set aside.**
>
> **13.3. It is stated that the errors committed, while passing the impugned Show Cause Notice dated 10.10.2018 & the impugned Order dated 15.11.2018 (Annexures-2 & 3 respectively supra) are error apparent on the face of the**

**record, and therefore, the said errors are liable to be rectified, in exercise of the jurisdiction, conferred under Section 161 of the SGST Act, 2017. ”**

**[Emphasis added]**

6. Having considered the plea as raised in the said petition dated 08.11.2019 filed under Section 161 of the TSGST Act, the respondent No.4 by his communication dated 17.12.2019 [Annexure-6 to the writ petition] had conveyed the decision that the adjudicating authority has no right to rectify an error after expiry of a period of more than six months. It may be noted that this limitation does not apply to such cases where the rectification involves only a clerical or arithmetical error. It has been further observed that as per record, the order against the tax payer was passed by the Superintendent of State Tax, Dharmanagar Charge under Section 74 of the TSGST Act, 2017 on 15.11.2018. The petitioner [the tax payer] filed the petition under Section 161 of the TSGST Act after expiry of approximately twelve months, for rectification of defects/errors before the Superintendent of State Tax.] The said petition under Section 161 of the TSGST Act was filed by the taxpayer [the petitioner] on 08.11.2019. The first proviso to Section 161 of TSGST Act stipulates that no rectification should be done after expiry of six months from the date of issue of such decision, order or notice. It has been also observed that no rectification can be done by the adjudicating authority after the period prescribed under Section 161 of the TSGST

Act if the rectification as contemplated does not involve a clerical or arithmetical error. Accordingly, the said petition was rejected.

The revenue has filed their reply on 17.03.2020 by admitting the fact relating to issuance of the showcause notice and imposition of tax, interest and penalty. They have asserted that the petitioner utilized more amount of ITC for which the petitioner was not entitled. The petitioner had submitted the said prayer before the order dated 15.11.2018 was passed, to the respondent No.4 but no document was submitted in support of her said claim. The respondents have restated that the rectification as sought did not involve a clerical or arithmetical error arising from any accidental slip or omission to apply. Proviso to Section 161 of the TSGST Act clearly provides that no rectification can be done after expiry of six months from the date of passing of the order. The petitioner did not file the petition under Section 161 of the TSGST Act within the period of six months. The petition for rectification was filed to the Superintendent of Taxes after the notice was issued by the respondent No.4 in pursuance to the order dated 15.11.2014. Hence, the said petition under Section 161 of the TSGST Act was barred by limitation. No rectification can be done after expiry of six months from the date of passing of the order and as such, the said petition was rejected being barred by limitation.

7. Mr. Somik Deb, learned counsel appearing for the petitioner, despite laying the reason for delay the adjudicating

authority, the respondent No.4 did not condone the delay. Even there was no consideration for the said cause. According to Mr. Deb, learned counsel for the petitioner, the adjudicating authority had jurisdiction to consider the cause assigned for condoning the delay. Non-consideration has caused miscarriage of justice. It has been contended that in the tax invoice, the name of the firm had been erroneously written as M/s Kiran Enterprise, the petitioner herein, instead of M/s New Kiran Enterprise. But the GST number of M/s New Kiran Enterprise was correctly written in the said invoice being 16ACIPD2157R2Z9.

8. Mr. A.K. Bhowmik, learned Advocate General appearing for the revenue has quite categorically stated that since the application for rectification was filed after six months, the Superintendent of State Tax, the respondent No.4, did not have any authority to rectify the mistake. Even the said error cannot be attributed to the Superintendent of State Tax or to any other authority under CGST Act or TSGST Act. Hence, the said error cannot be brought within contour of the 'error apparent' as referred under Section 161 of the TSGST Act. Mr. Bhowmik, learned Advocate General has submitted further that even the error as committed by any authority, such error being apparent on the face on record can only be corrected by the said authority on its own motion or on reference by the affected person within a period of three months from

the date of such reference or order or notice or certificate or any other document as the case may be. An absolute bar has been created by the first proviso to Section 161 of the TSGST Act that no such rectification can be carried out after a period of six months from the date of issue of such decision or order or notice or certificate or any other document. However, an exception has been curved out by the second proviso to Section 161 of the TSGST Act that such restriction shall not be applied in the cases where the rectification purely involves a correction of arithmetical error arising from accidental slip or omission.

9. Mr. Bhowmik, learned Advocate General has emphatically stated that no authority has competence to condone the delay as prescribed by Section 161 of the TSGST Act. For purpose of reference, Section 161 of the TSGST Act is reproduced hereunder :

> **"161. Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the Central Goods and Services Tax Act or by the affected person within a period within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:**
> **Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:**
> **Provided further that the said period of six months shall not apply in such cases where the rectification is purely in**

> **the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission :**
>
> **"Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification."**

10. Section 160 of the TSGST Act is as well reproduced as reference has been made in Section 161 of TSGST Act to that Section:

> **"160.(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, reassessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.**
>
> **(2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalized pursuant to such notice, order or communication."**

11. It is apparent from the record that the petitioner did not question the service of the notice, order or communication. On the contrary, the petitioner has acted upon on such service. Thus the assessment as made by the order dated 15.11.2018 [Annexure-4 to the writ petition] neither can be questioned nor the assessment can be invalidated on that ground.

12. The core question that arises in this petition is whether the Superintendent of State Tax being the authority which passed the order dated 15.11.2018 had the authority to condone the delay on the

face of the petition filed under Section 161 of the TSGST Act for rectifying the defects or errors in the impugned notice dated 10.10.2018 and the order dated 15.11.2018. Such error is sourced in the tax invoice which has mentioned the name of the petitioner.

13. There is no dispute that the Superintendent of State Tax by the communication dated 17.12.2018 [Annexure-6 to the writ petition] apprised the petitioner that the tax payer's petition under Section 161 of the TSGST Act dated 18.11.2018 cannot be entertained for the reasons as recorded in the said communication dated 17.12.2019 which reads as under :

> **"As per record, the order against the taxpayer was passed by the Superintendent of State Tax of Dharmanagar Charge under section 74 of the TSGST Act, 2017 on 15.11.2018. The taxpayer after expiry of approximately twelve months furnished a petition under section 161 of the TSGST Act, 2017 for rectification of defects/errors before the Superintendent of State Tax. The petition under Section 161 of the TSGST Act, 2017 was submitted by the taxpayer on 08.11.2019 but the proviso to the section 161 mandated that no such rectification should be done after expiry of six months from the date of issue of such decision, order or notice.**
>
> **Here, the adjudicating authority has no right to rectify any error after expiry of a period of more than six months. But this limitation is not applicable to such cases where the rectification involves only a clerical or arithmetical error.**
> **So, after perusing the taxpayer's petition under Section 161 of the TSGST Act, 2017 it is observed that no rectification can be done by the adjudicating authority after the period prescribed under section 161 of the TSGST Act as the rectification does not involve a clerical or arithmetical error and hence the petition submitted by the taxpayer is here by quashed."**

14. Mr. Somik Deb, learned counsel appearing for the petitioner has submitted that when there is no provision for condoning

the delay, Section 29(2) of the Limitation Act would apply. Mr. Deb, learned counsel has drawn an illustration from **Mukri Gopalan versus Cheppilat Puthanpurayil Aboobacker** reported in **(1995) 5 SCC 5** where the apex court has held that in absence of any provision, Section 5 of the Limitation Act would automatically be attracted. It has been observed that the appellate authority constituted under Section 18 of the Kerala Rent Act, 1965 functions as a court and the period of limitation as prescribed under Section 18 governs the appeal by the aggrieved party. For purpose of limitation, the provisions of Sections 4 to 24 of the Limitation Act, 1963 are considered. Such proceedings attract Section 29(2) of the Limitation Act and consequently, Section 5 of the Limitation Act will be applicable to such proceedings. The appellate authority will have ample jurisdictions to consider the question whether the delay in filing such appeals could be condoned on sufficient cause being made out by the applicant concerned. It cannot be disputed that Kerala Rent Act is a special Act or a local law. It also cannot be disputed that it prescribes for appeals under Section 18 a period of limitation which is different from the period prescribed by the schedule inasmuch as the schedule to the Limitation Act does not contemplate any period of limitation for filing appeal before the appellate authority under Section 18 of the said Rent Act or in other words it prescribes nil period of limitation for such an appeal. It is now well settled that where a period of limitation

is prescribed by a special or local law for an appeal or application and for which there is no provision made in the schedule to the Act, the second condition for attracting Section 29(2) would get satisfied. Thus, Section 29(2) would apply even to a case where a difference between the special law and the Limitation Act arises. For applying Section 29(2) of the Limitation Act, 1963, the apex Court has observed as follows :

> **"8. Once it is held that the appellate authority functioning under Section 18 of the Rent Act is not a persona designata, it becomes obvious that it functions as a court. In the present case all the District Judges having jurisdiction over the areas within which the provisions of the Rent Act have been extended are constituted as appellate authorities under Section 18 by the Govt. notification noted earlier. These District Judges have been conferred the powers of the appellate authorities. It becomes therefore, obvious that while adjudicating upon the dispute between the landlord and tenant and while deciding the question whether the Rent Control Court's order is justified or not such appellate authorities would be functioning as courts. The test for determining whether the authority is functioning as a court or not has been laid down by a series of decisions of this court. We may refer to one of them, in the case of *Thakur Jugal Kishore Sinha v. Sitamarhi Central Coop. Bank Ltd.*: AIR 1967 SC 1494 . In that case this court was concerned with the question whether the Assistant Registrar of Cooperative Societies functioning under Section 48 of the Bihar and Orissa Cooperative Societies Act, 1935 was a court subordinate to the High Court for the purpose of Contempt of Courts Act, 1952. While answering the question in the affirmative, a division bench of this court speaking through Mitter, J placed reliance amongst other on the observations found in the case of *Brajnandan Sinha v. Jyoti Narain*: AIR 1956 SC 66 wherein it was observed as under:-**
>
> > **"It is clear, therefore, that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement."**

**Reliance was also placed on another decision of this court in the case of *Virindar Kumar Satyawadi v. The State of Punjab*: AIR 1956 SC 153. Following observations found at page 1018 therein were pressed in service:**

**"It may be stated broadly that what distinguishes a court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declares the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a court."**

**When the aforesaid well settled tests for deciding whether an authority is a court or not are applied to the powers and functions of the appellate authority constituted under Section 18 of the Rent Act, it becomes obvious that all the aforesaid essential trappings to constitute such an authority as a court are found to be present. In fact, Mr. Nariman learned Counsel for respondent also fairly stated that these appellate authorities would be courts and would not be persona designata. But in his submission as they are not civil courts constituted and functioning under the Civil Procedure Code as such, they are outside the sweep of Section 29(2) of the Limitation Act. It is therefore, necessary for us to turn to the aforesaid provision of the Limitation Act. It reads as under :**

**"29(2). Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."**

**A mere look at the aforesaid provision shows for its applicability to the facts of a given case and for importing the machinery of the provisions containing Sections 4 to 24 of the Limitation Act the following two requirements have to be satisfied by the authority invoking the said provision.**

> **(i) There must be provision for period of limitation under any special or local law in connection with any suit, appeal or application.**
>
> **(ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the schedule to the Limitation Act.***
>
> **9. If the aforesaid two requirements are satisfied the consequences contemplated by Section 29(2) would automatically follow. These consequences are as under :**
>
> ***(i)* In such a case Section 3 of the Limitation Act would apply as if the period prescribed by the special or local law was the period prescribed by the schedule.**
>
> ***(ii)* For determining any period of limitation prescribed by such special or local law for a suit, appeal or application all the provisions containing Sections 4 to 24 (in[1]clusive) would apply insofar as and to the extent to which they are not expressly excluded by such special or local law."**
>
> **[Emphasis added]**

15. If two requirements are satisfied, Section 29(2) would automatically follow. In such cases, Section 3 of the Limitation Act would apply as if it is prescribed by the special or local law. When such incidence occurs, provisions contained in Sections 4 to 24 [inclusive] would apply unless they are expressly excluded by the special or local law.

16. Mr. Deb, learned counsel appearing for the petitioner has in order to nourish his submission in respect of applicability of Section 29 of the Limitation Act, 1963 drawn a parallel with the provision of Section 18(2) of Securitization and Reconstruction of Financial Assets

*The second condition

and Enforcement of Security Interest Act, 2002 [SARFAESI, Act] where the limitation provided for filing an appeal is 30 days. In **Baleshwar Dayal Jaiswal versus Bank of India and Others** reported in **(2016) 1 SCC 444** it has been held by the apex court that a bare perusal of Section 18(2) of the SARFAESI Act makes it abundantly clear that the appellate tribunal under the SARFAESI Act has to dispose an appeal in accordance with the provisions of Recovery of Debts Due to Banks and Financial Institution Act, 1993 (RDDB Act). In this respect, the provisions of RDDB Act stands incorporated in the SARFAESI Act for disposal of an appeal. In view of that in corporation, it is held by the apex court that there is no reason as to why the SARFAESI appellate tribunal cannot maintain an appeal beyond the prescribed period. Even on being satisfied that there is sufficient cause for not filing such appeal within that period, power of condonation by means of Section 29(2) of the Limitation Act was held not to be available. Proviso of Section 20(2) of the RDDB Act would apply in view of the provisions made in Section 18(2) of SARFAESI Act. This interpretation is clearly borne in two statutes, as stated. But that advances the cause of justice. It has been emphatically observed that unless the scheme of the statute expressly excludes the power of condonation, there is no reason to deny such power to an appellate tribunal when the statutory scheme so warrants. It has been observed in **Baleshwar Dayal Jaiswal** (supra) as follows :

> **"11. We approve the view taken by the Madras [(2009) 2 CTC 302], Andhra Pradesh [AIR 2013 AP 24] and Bombay High Courts [(2008) 4 Mah LJ 424], but for different reasons. The view taken by Andhra Pradesh High Court in Sajida Begum v. State Bank of India: AIR 2013 AP 24 is based on applicability of Section 29(2) of the Limitation Act. In our view, Section 29(2) of the Limitation Act has no absolute application, as the statute in question impliedly excludes applicability of provisions of Limitation Act to the extent a different scheme is adopted. If no provision of Limitation Act was expressly adopted, it may have been possible to hold that by virtue of Section 29(2) power of condonation of delay was available. It is well settled that exclusion of power of condonation of delay can be implied as laid down in Union of India v. Popular Construction Co.: (1995) 5 SCC 5, Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission: (2010) 5 SCC 23, Commissioner of Customs and Central Excise v. Hongo India Private Limited: (2009) 5 SCC 791 and Gopal Sardar v. Karuna Sardar: (2004) 4 SCC 252 relied upon on behalf of the Banks."**
>
> **[Emphasis added]**

17. In **Baleshwar Dayal Jaiswal** (supra) the apex Court had considered another question as to whether the appellate tribunal under SARFAESI Act is a court or not. It has been held that Section 29(2) of the Limitation Act was not attracted for the reasons as discussed :

> **"13. The Andhra Pradesh High Court in Sajida Begum case in holding the Tribunal to be Court, has relied on Sections 22 and 24 of the RDB Act. Section 22 vests powers of Civil Court on the Tribunal only for purposes mentioned therein, such as summoning witnesses, discovery and production of documents, receiving evidence, issuing commission for examining witnesses etc. and deems Tribunals to be courts for specified purposes, such as for Sections 193, 196 and 228 of the Indian Penal Code and Section 195 of the Code of Criminal Procedure. These provisions may not be conclusive of the question of the Tribunal being Court for Section 29(2) of the Limitation Act without further examining the scheme of the statutes in question. In Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corporation: (2009) 8 SCC 646, this Court examined the scheme of the two Acts in question and held that the Tribunal was a court but not a civil court for purposes of Section 24 of the Code of Civil Procedure. We are of the view that for purposes of**

> **decision of these appeals, it is not necessary to decide the question whether the Tribunal under the Banking statutes in question was court for purposes of Section 29(2) of the Limitation Act.**
>
> **14. We have already held that the power of condonation of delay was expressly applicable by virtue of Section 18(2) of the SARFAESI Act read with proviso to Section 20(3) of the RDB Act and to that extent, the provisions of Limitation Act having been expressly incorporated under the special statutes in question, Section 29(2) stands impliedly excluded. To this extent, we differ with the view taken by the Andhra Pradesh High Court as well as Madras and Bombay High Courts. We are also in agreement with the principle that even though Section 5 of the Limitation Act may be impliedly inapplicable, principle of Section 14 of the Limitation Act can be held to be applicable even if Section 29(2) of the Limitation Act does not apply, as laid down by this Court in Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department : (2008) 7 SCC 169 and M.P. Steel Corporation v. Commissioner of Central Excise: (2015) 7 SCC 58.**
>
> **15. As a result of the above discussion, the question is answered in the affirmative by holding that delay in filing an appeal Under Section 18(1) of the SARFAESI Act can be condoned by the Appellate Tribunal under proviso to Section 20(3) of the RDB Act read with Section 18(2) of the SARFAESI Act. The contrary view taken by the Madhya Pradesh High Court in Seth Banshidhar Media Rice Mills Pvt. Ltd. case : AIR 2011 MP 205 is overruled."**

18. Mr. Deb, learned counsel has on the question of applicability of Section 29(2) of the Limitation Act, 1963 for invoking the provisions of Section 5 for purpose of condoning the delay referred a decision of the apex Court in **State of Madhya Pradesh and Another versus Anshuman Shukla** reported in **(2014) 10 SCC 814** where the apex court has considered the power of the High Court to entertain an application for revision after expiry of prescribed period of limitation. The brief fact of that case [**State of Madhya Pradesh and Another versus Anshuman Shukla**] the state being

aggrieved by the award passed by the arbitral tribunal filed a revision petition before the High Court under Section 19 of the 1983 Act. The said revision petition was filed beyond the period of limitation of three months as prescribed under Section 19 of the 1983 Act. In terms of the decision of the full bench of the said High Court, the said revision petition was dismissed being barred by the limitation. The full bench of the High Court in **Pandey Construction Company** [2005 SCC online MP 223] referred a decision of the apex court in **Nagar Palika Parishad Mourena** [the order dated 27.08.2004 delivered in SLP No.2049 of 2003]. The revision petition was dismissed being barred by limitation. The said order of dismissal was challenged in the apex court. The apex court had dwelled upon the question whether Section 5 of the Limitation Act, 1963 can be applicable to a proceeding under Section 19 of the 1983 Act. According to the apex court, Section 19 does not contain any express bar that the High Court cannot entertain an application for revision after the expiry of the period of three months [the limitation clause]. On the contrary, the High Court is conferred with suo moto power to call for the record of an award at any time. On the basis of the said provision it has been held by the apex Court that it cannot therefore be said that the legislative intent was to exclude the applicability of Section 5 of the Limitation Act to the proceeding under Section 19 of the 1983 Act. In

**Anshuman Shukla** (supra) it has been observed by the apex court as follows :

> **"21. The Limitation Act, 1963 is the general legislation on the law of limitation. Section 5 of the Limitation Act provides that an appeal may be admitted after the limitation period has expired, if the Appellant satisfies the court that there was sufficient cause for delay.**
>
> **22. Section 29 of the Limitation Act is the saving section. Sub-section (2) reads as follows:**
>
> > **"29.(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."**
>
> **Sub-section (2) thus, provides that Sections 4 to 24 of the Limitation Act shall be applicable to any Act which prescribes a special period of limitation, unless they are expressly excluded by that special law.**
>
> **27. This Court in the case of Mukri Gopalan v. Cheppilat Puthanpuravil Aboobacker:(1995) 5 SCC 5 examined the question of whether the Limitation Act will apply to the Kerala Buildings (Lease and Rent) Control Act, 1965. While holding that the appellate authority under the Kerala Act acts as a Court, it was held that since the Act prescribes a period of limitation, which is different from the period of limitation prescribed under the Limitation Act, and there is no express exclusion of Sections 4 to 24 of the Limitation Act, in the above (Lease & Rent) Control Act, thus, those Sections shall be applicable to the Kerala Act.**
>
> **24. While examining the provisions of Section 29(2) of the Limitation Act, it was observed:**
>
> > **"8. <u>A mere look at the aforesaid provision shows for its applicability to the facts of a given case and for importing the machinery of the provisions containing Sections 4 to 24 of the Limitation Act the following two requirements</u>**

**have to be satisfied by the authority invoking the said provision:**

**(i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application.**

**(ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the schedule to the Limitation Act."**

**It was further held that if the two above conditions are satisfied, then the following implications would follow:**

**"9. If the aforesaid two requirements are satisfied the consequences contemplated by Section 29(2) would automatically follow. These consequences are as under:**

**(i) In such a case Section 3 of the Limitation Act would apply as if the period prescribed by the special or local law was the period prescribed by the schedule.**

**(ii) For determining any period of limitation prescribed by such special or local law for a suit, appeal or application *all the provisions containing Sections 4 to 24 (inclusive) would apply insofar as and to the extent to which they are not expressly excluded by such special or local law*."**

**[Emphasis supplied]**

**25. Further, in the case of Hukumdev Narain Yadav v. Lalit Narain Mishra: (1974) 2 SCC 133, a three judge Bench of this Court, while examining whether the Limitation Act would be applicable to the provisions of Representation of People Act, observed as under:**

**"17..... but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act.**

> **In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation."**
>
> **26. According to Hukumdev Narain Yadav (supra), even if there exists no express exclusion in the special law, the court reserves the right to examine the provisions of the special law, and arrived at a conclusion as to whether the legislative intent was to exclude the operation of the Limitation Act."**

19. In **Anshuman Shukla** (supra), the apex court has considered **Nasiruddin versus Sita Ram Agarwal** reported in **(2003) 2 SCC 577** where it was explained why Section 5 of the limitation act is not applicable in the matter of the deposit by the tenant as the provision of Section 5 cannot be extended when the default takes place in complying an order under sub-Section 4 of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. It has been further observed in **Nasiruddin** (supra) as follows :

> **"47. The provisions of Section 5 of the Limitation Act must be construed having regard to Section 3 thereof. *For filing an application after the expiry of the period prescribed under the Limitation Act or any special statute a cause of action must arise. Compliance of an order passed by a Court of Law in terms of a statutory provision does not give rise to a cause of action.* On failure to comply with an order passed by a Court of Law instant consequences are provided for under the statute. The Court can condone the default only when the statute confers such a power on the Court and not otherwise. In that view of the matter we have no other option but to hold that Section 5 of the Limitation Act, 1963 has no application in the instant case."**

20. In **Union of India versus Popular Construction Company** reported in **(2001) 8 SCC 470** the apex court had considered another incidence where Section 5 of the Limitation Act will not be applicable. It has been held that since in Section 34(3) of the Arbitration and Conciliation Act, 1996, the words employed are "but not thereafter," those will operate as an express exclusion of Section 5 of the Limitation Act. It has been observed in **Popular Construction Company** (supra) as follows :

> **"12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are *'but not thereafter'* used in the proviso to Sub-section (3). *In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act*. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result."**

21. On the aspect of application of Section 29(2) of the Limitation Act vis a vis Section 161 of the Tripura State Goods and Services Act, 2017 Mr. Deb, learned counsel has further relied on another decision of the apex court in **Mohinder Singh versus Paramjit Singh and Others** reported in **(2018) 5 SCC 698** where it has been held that the Limitation Act deprives or restricts the right of an aggrieved person to have recourse to legal remedy, and where its language is ambiguous, that construction should be preferred which preserves such remedy to the one which bars or defeats it. A court

ought to avoid an interpretation upon a statute of limitation by implication or inference as it may have a penalizing effect unless it is driven to do so by the irresistible force of the language employed by the legislature.

22. In **Mahinder Singh** (supra), the Civil Judge by a judgment discarded the objection raised against the suit being barred by limitation inasmuch as Article 2(b) of the Punjab Limitation (Custom) Act, 1920 provides the period of limitation of three years for a suit for possession of an ancestral immovable property which has been alienated but that alienation was not bound on the plaintiff. The Civil Judge had observed that dismissal of the execution proceeding cannot be said that the decree sheet was not prepared during the proceedings of the said execution case. But in fact, the decree sheet was prepared much earlier than what had been claimed by the defendant. Thus, it was held that the suit was within the period of limitation as prescribed. Even the appeal filed from the said order stood dismissed by an Additional District Judge, Gurdaspur. The said appellate court affirmed the observation of the Civil Judge. The said order of the first appellate court was challenged and in the second appeal, Punjab and Harayana High Court while disposing the appeal had observed that the suit was filed after expiry of the limitation and hence the suit was barred by limitation. The finding of the courts below were patently perverse and illegal and therefore unsustainable.

On such observation, the second appeal was allowed. The said decision was challenged in the appeal before the apex Court. The apex court in the background of the case had observed as follows :

> **"20. It may be useful to advert to the elucidation in W.B. Essential Commodities Supply Corpn. v. Swadesh Agro Farming & Storage Pvt. Ltd. and Anr.: (1999) 8 SCC 315. Indeed, in that case the factual narrative on which the question was examined was somewhat different, namely, whether the period of limitation Under Article 136 of the 1963 Act will start from the date of the decree or from the date when the decree is actually drawn up and signed by the Judge, as articulated in paragraph 2 of the judgment. In paragraph 12 of the judgment this Court observed thus:**
>
> > ***"12. There may, however, be situations in which a decree may not be enforceable on the date it is passed. First, a case where a decree is not executable until the happening of a given contingency, for example, when a decree for recovery of possession of immovable property directs that it shall not be executed till the standing crop is harvested, in such a case time will not begin to run until harvesting of the crop and the decree becomes enforceable from that date and not from the date of the judgment/decree. But where no extraneous event is to happen on the fulfillment of which alone the decree can be executed it is not a conditional decree and is capable of execution from the very date it is passed (Yeshwant Deorao v. Walchand Ramchand*: AIR 1951 SC 16). Secondly, when there is a legislative bar for the execution of a decree then enforceability will commence when the bar ceases. *Thirdly, in a suit for partition of immovable properties after passing of preliminary decree when, in final decree proceedings, an order is passed by the court declaring the rights of the parties in the suit properties, it is not executable till final decree is engrossed on non-judicial stamp paper supplied by the parties within the time specified by the Court and the same is signed by the Judge and sealed. It is in this context that the observations of this Court in Shankar Balwant Lokhande v. Chandrakant Shankar Lokhande: (1995) 3 SCC 413 have to be understood*. These observations do not apply to a money decree and, therefore, Appellant can derive no benefit from them."**

**21. As in the present case, even though the declaratory judgment was pronounced by the Court in the previous suit on 20th August, 1963, on the basis of compromise entered into by Mohinder Singh (original Plaintiff) and Rura Singh (original Defendant), that declaration could be given effect to only after the death of Ujjagar Singh. The decree as passed was enforceable only thereafter. Suffice it to observe that the decree sheet having been made ready on 19th August, 1972 and the suit for possession filed three years thereafter on 11th June, 1974, was thus within the prescribed period of limitation in terms of Article 2(b) of the Schedule to the 1920 Act.**

**22. Assuming for the sake of argument that the three years' period provided in Article 2(b) ought to be reckoned from the date of death of Ujjagar Singh i.e. 14th January, 1971, the question would be whether the provisions of Section 14 of the 1963 Act would come to the aid of the Plaintiff (Appellants). The purport of Section 14 of the 1963 Act has been delineated in the case of Union of India and Ors. v. West Coast Paper Mills Ltd. (supra). The Court while considering the question as to whether the suit was barred by limitation examined the question whether Section 14 of the 1963 Act was applicable to that case. In paragraph 14 of the judgment, after referring to the decision in CST v. Parson Tools and Plants: (1975) 4 SCC 22, this Court observed thus:**

**"14. In the submission of Mr. Malhotra, placing reliance on CST v. Parson Tools and Plants: (1975) 4 SCC 22: 1975 SCC (Tax) 185, to attract the applicability of Section 14 of the Limitation Act, the following requirements must be specified: (SCC p. 25, para 6)**

> **6. (1) both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;**
>
> **(2) the prior proceedings had been prosecuted with due diligence and in good faith;**
>
> **(3) the failure of the prior proceedings was due to a defect of jurisdiction or other case of a like nature;**
>
> **(4) both the proceedings are proceedings in a Court."**

**In the submission of the learned Senior Counsel, filing of civil writ petition claiming money relief cannot be said to be a proceeding instituted in good faith and secondly, dismissal of writ petition on the ground that it was not an appropriate remedy for seeking money relief cannot be**

> **said to be 'defect of jurisdiction or other cause of a like nature' within the meaning of Section 14 of the Limitation Act. It is true that the writ petition was not dismissed by the High Court on the ground of defect of jurisdiction. *However, Section 14 of the Limitation Act is wide in its application, inasmuch as it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression 'other cause of like nature' came up for the consideration of this Court in Roshanlal Kuthalia v. R.B. Mohan Singh Oberai : (1975) 4 SCC 628 and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstances, legal or factual, which inhibits entertainment or consideration by the Court of the dispute on the merits comes within the scope of the Section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right*.**

23. Thereafter, the apex Court having noticed the facts of that case had observed as under :

> **26. It may be apposite to also advert to Section 29(2) of the 1963 Act, the same reads thus:**
>
> **"29. Savings.- (1)**
>
> **(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.**
>
> **(3)-(4) * * *"**
>
> **27. We find force in the submission of the Appellants that Section 14 of the 1963 Act would be attracted in the fact situation of the present case, in light of Section 5 of the 1920 Act and also Section 29(2) of the 1963 Act coupled with the fact that there is no express provision in the 1920 Act, to exclude the application of Section 14 of the 1963 Act.**

> **28. Both sides have relied on the exposition in the case of Consolidated Engineering Enterprises: (2008) 7 SCC 169. In that case, the Court noted that Section 14 of the 1963 Act envisages that it is a provision to afford protection to a litigant against bar of limitation when he institutes a proceeding which by reason of some technical defects cannot be decided on merits and is dismissed. While considering the provisions of Section 16 and its application, this Court observed that a proper approach will have to be adopted and the provisions will have to be interpreted so as to advance cause of action rather than abort the proceedings, inasmuch as the Section is intended to provide relief against bar of limitation in cases of mistaken remedy or selection of a wrong forum."**

24. Mr. Deb, learned counsel, has, having referred the core of the dispute as raised before the Superintendent of Sale Taxes submitted that while filling up the tax invoices, inadvertently Bharati Hexacom Limited had put the name of M/s Kiran Enterprise but the GSTTIN No. that they filled up in the tax invoice was of M/s New Kiran Enterprise. That mistake in writing the name of the distributor was unintentional but that led to the penalty as imposed on the petitioner. The tax and penalty as imposed on the ground of availing wrongful input tax credit has created a huge liability for the petitioner. This mistake has been clarified in the reply to the showcause as well as in the petition that has been filed under Section 161 of the TSGST Act. But the respondent No.3 did not appreciate that explanation as according to him, the said petition under Section 161 of the TSGST Act was time-barred. In this regard, Mr. Deb, learned counsel has relied on decision of the apex court in **M/s Hindustan Steel Ltd. versus State of Orissa** reported in **1970 (25) STC 211:1969(2) SCC 627** to contend that the liability as to pay the penalty does not arise

merely upon proof of fault in the order imposing penalty for failure to carry out a statutory obligation. Penalty will not ordinarily be imposed unless the party so penalised either acted deliberately in defiance of law or acted in conscious disregard of its obligation. Penalty will not be imposed merely it is lawful to do so. Where the penalty should be imposed for failure to perform the statutory obligation is a matter of discretion of the authority. Discretion is to be exercised judicially and on consideration of all relevant circumstances. The relevant passage from **Hindustan Steel Ltd.**(supra) is reproduced hereunder :

> **"7. Under the Act penalty may be imposed for failure to register as a dealer : Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."**
>
> **[Emphasis added]**

25. Mr. A.K. Bhowmik, learned Advocate General appearing for the revenue respondents has emphatically submitted that the

contention of the petitioner is misplaced on both counts. The first question that has arisen has to be decided first that whether the petition filed under Section 161 of the TSGST Act was time-barred and if so, whether the Superintendent of the State Tax or the Superintendent of Taxes, Charge Dharmanagar had authority to condone the delay in filing the 'petition' by invoking provisions of Section 5 of the Limitation Act. While considering this question, this court has to take the question whether within the scheme of TSGST Act, Section 29(2) of the Limitation Act can be applied for invoking provisions of Section 5 of the Limitation Act. Mr. Bhowmik, learned Advocate General has contended that if the petition is time-barred there is no reason to consider the core of the controversy as projected in the petition, inasmuch as being barred by limitation forecloses the jurisdiction of the authority to decide the controversy on merit. Even if, Mr. Bhowmik, learned Advocate General has submitted, it is assumed that the Superintendent of State Tax or the Superintendent of State Tax could have condoned the delay, then decision on merit could have been taken by the said authority which has the jurisdiction for determining whether rectification of errors can be permitted to be corrected or not.

26. Mr. Bhowmik, learned Advocate General has categorically submitted that the second proviso to Section 161 of the TSGST Act has no relevance in the present controversy inasmuch as it provides

for rectification or correction of a clerical or arithmetical error arising from any accidental slip or omission. The provision of Section 161 provides rectification only of the decision or order or notice or certificate or any other document as issued by any authority under the TSGST Act. Thus, the clerical or arithmetical error from any accidental slip or omission would mean rectification in the decision or order or notice or certificate or any other document as issued by any authority under the TSGST Act. Mr. Bhowmik, learned Advocate General has emphasized that Section 161 is without any prejudice to the provisions of Section 160 of the TSGST Act. Section 161 of TSGST Act provides only rectification of the decision or the order or the notice or the certificate or any other document issued by any authority. Either of the parties of the proceeding meaning any officer appointed either under TSGST Act or CGST Act or the affected party may apply for rectification within a period of three months from the date of issue of such order, decision, notice or certificate or any other document as the case may be. He has referred the first proviso to Section 161 of the TSGST Act to advance his plea of express exclusion of the Limitation Act.

27. Mr. Bhowmik, learned Advocate General has further submitted that submission of Mr. Deb, learned counsel is completely unacceptable for the reason that rectification as sought is of the tax invoice and which was never issued by any authority under TSGST Act

or CGST Act. It has been done by the Principal namely Bharati Hexacom Ltd. Mr. Bhowmik, learned Advocate General has also contended that the proposition of law as placed by the counsel for the petitioner cannot be accepted inasmuch as Section 29(2) of the Limitation Act is applied where suit, appeal or application is filed in a court, not before statutory authority, quasi judicial authority or tribunal. In this regard Mr. Bhowmik, learned Advocate General has placed his reliance on a decision of the apex court in **Ganesan versus Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board and Others** reported in **(2019) 7 SCC 108**. In **Ganesan**(supra) the apex court has dwelled upon the issue of applicability of Section 29(2) of the Limitation Act in detail. Even a work-able definition of the 'court' has been provided :

> **13. The definition of the Court refers to the Civil Court constituted by Legislature in the State for administration of justice. The conventional definition of the Court as mentioned in Advanced Law Lexicon by P. Ramanatha Aiyer, 3rd Edn. is:**
>
> **"A Court is defined in Coke on Littleton as a place wherein justice is judicially administered. "In every Court, there must be at least three constituent parts-the actor, reus and judex: the actor, or Plaintiff, who complains or an injury done; the reus, or Defendant, who is called upon to make satisfaction for it; and the judex, or judicial power, which is to examine the truth of the fact, and to determine the law arising upon that fact, and if any injury appears to have been done, to ascertain, and b its officers to apply, the remedy," (3 Steph. Comm. 6th Ed., pp. 383, 385). See also Manavals Goundan v. Kumarappa Reddy:ILR(1907)30 Mad 326, Court is a body in the government to which the public administration of justice is delegated; an organised body, with defined powers, meeting at certain times, and places, for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, viz., attorneys and**

**counsels, to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands and secure order in its proceedings."**

**14. The constitution of Court in this country has been by legislative enactments. For constituting Civil Courts, the Bengal, Agra and Assam Civil Courts Act, 1887 was enacted which provided classes of civil courts and provided for constitution of courts of District Judges, Sub-ordinate Judges and Munsifs. Similarly for civil courts in the town of Bombay, Calcutta and Madras, the Presidency Small Causes Act, 1882 was enacted.**

**15. The definition of Court as contained in Section 6(7) as noted above, thus, clearly indicates that what Act, 1959 refers to a Court is a civil court created in the State. The scheme of the Act clearly indicates that Commissioner is an authority under the Act who is to be appointed by the Government. The Commissioner is entrusted with various functions under the Act and one of the functions entrusted to the Commissioner is hearing of the appeal Under Section 69 of the Act, 1959. In the present case we are concerned with Section 69 which is to the following effect:**

**"69. *Appeal to the Commissioner*.-(1) Any person aggrieved by any order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be], under any of the foregoing Sections of this chapter, may within sixty days from the date of the publication of the order or of the receipt thereof by him as the case may be, appeal to the Commissioner and the Commissioner may pass such order thereon as he thinks fit.**

**(2) Any order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be], in respect of which no appeal has been preferred within the period specified in Sub-section (1) may be revised by the Commissioner suo motu and the Commissioner may call for and examine the records of the proceedings as to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be]. Any such order passed by the Commissioner in respect of an order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be], shall be deemed to have been passed by the Commissioner on an appeal preferred to him Under Sub-section (1).**

**(3) Any order passed by the Commissioner on such appeal against which no suit lies to the Court under the next succeeding Section or in which no suit has been instituted**

> **in the Court within the time specified in Sub-section (1) of Section 70 may be modified or cancelled by the Commissioner if the order has settled or modified a scheme for the administration of a religious institution or relates to any of the matters specified in Section 66."**

28. While considering the applicability of Section 29(2) of the Limitation Act vis a vis Section 69 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (the Act of 1959, in short) the apex court has observed inter alia :

> **23. The Limitation Act, 1963 is an Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith. The law of Limitation before enactment of Act, 1963 was governing by the law of limitation under Indian Limitation Act, 1908. The different provisions of Limitation Act, 1963 refers to 'Court'. Section 4 provides where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens. Similarly, Section 5 provides that any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period, if the Appellant or the applicant satisfies the court that he has sufficient cause for not preferring the appeal or making the application within such period. Section 6 refers to institution of a suit or making of application for the execution of a decree by a minor or insane, or an idiot who may institute the suit or make the application within the same period after the disability has ceased.**
>
> *** *** *** *** ***
>
> **26. The Schedule of the Act provides for "Periods of Limitation". First Division deals with different kinds of suits. Second Division deals with appeals and Third Division deals with applications. The suits, appeals and applications which have been referred to in the Schedule obviously mean suits, appeals and applications to be filed in Court as per the provisions referred to in the Act noted above.**
>
> **27. Section 29(2) provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation and**

**the provisions contained in Sections 4 to 21 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. Whether prescription of appeal of limitation of any suit or application in any special or local law relates to suit, application or appeal to be filed in Court or it may refer to statutory authorities and tribunals also, is the question to be answered. Different special or local laws have been enacted by Legislature covering different subjects, different rights and liabilities, methodology of establishing, determining rights and liabilities and remedies provided therein. Special or local law may also provide remedy by institution of suits, appeals and applications in the Courts, i.e., civil court and to its normal hierarchy and also create special forum for determining rights and liabilities and provide remedies. Most common example of creating statutory authorities for determining rights, liabilities and remedies are taxing statutes where assessing authorities have been provided for with hierarchy of authorities. The remedy of appeal and revision is also provided in the taxing statutes which authorities are different from normal civil courts. Section 29(2) in reference to different special or local laws came for consideration before this Court in large number of cases. This Court had occasion to consider the provisions of the Limitation Act, 1963, in reference to different statutes which contain provisions of suits, appeals or applications to the courts/authorities/tribunals. There are series of judgments of this Court holding that provisions of the Limitation Act are directed only when suit, appeal or application are to be filed in a Court unless there are express provisions in a special or local law.**

**28. Section 29(2) also came for consideration before this Court in several cases. There is another set of cases where it was held that the provisions of the Limitation Act, 1963 is to be applied even for suit, appeal or application under special/local law is to be filed before statutory authorities and the tribunal. We shall notice both sets of cases to find out the ratio which need to be applied in the present case.**

**29. The first case to be noticed is Town Municipal Council, Athani v. The Presiding Officer, Labour Courts, Hubli,: (1969) 1 SCC 873. In the above case applications Under Section 33(c)(2) of the Industrial Disputes Act, 1947 were filed by various workmen of the Appellant. The question which was considered by this Court in the above was as to whether Article 137 of the Schedule of the Limitation Act, 1963 governs applications Under Section 33(c)(2) of the Industrial Disputes Act, 1947. Referring to various articles of Limitation Act, 1963, this Court laid down following:**

> **"12. ...The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than courts, such as a quasi judicial tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not courts and they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this Article will apply even to applications made to an Industrial Tribunal or a Labour Court."**
>
> **[Emphasis added]**

29. It has been also observed in **Ganesan**(supra) even though that part has not been referred as such by any counsel appearing for the parties that the relevant special statute [as the case is with us] may contain an express provision conferring on the authority within the said special statute, such as the Collector in the case of **Sakuru versus Tanaji** reported in **(1985) 3 SCC 590** from which case the apex Court has illustrated this aspect of the special statute by which the said authority is given power to extend the prescribed period of limitation, but the apex Court sounds caution that such provisions need to be examined looking into the scheme of special statute. The relevant passage from **Sakuru**(supra) is extracted hereunder for illustration:

> **"36. This Court in Sakuru (supra) however, further held that relevant special statute may contain an express provision conferring on the appellate authority, such as the Collector, to extend the prescribed period of limitation which needs to be examined looking to the scheme of the special statute. Section 93 of the Act was a provision pertaining to the applicability of the Limitation Act. Referring to the said provision this Court held that 1958**

**Act does not indicate that Section 5 of the Limitation Act is applicable. Following was further laid down in paragraph 3:**

> **"3. ...But even in such a situation the relevant special statute may contain an express provision conferring on the Appellate Authority, such as the Collector, the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of Section 5 of the Limitation Act shall be applicable to such proceedings. Hence it becomes necessary to examine whether the Act contains any such provision entitling the Collector to invoke the provisions of Section 5 of the Limitation Act for condonation of the delay in the filing of the appeal. The only provision relied on by the Appellant in this connection is Section 93 of the Act which, as it stood at the relevant time, was in the following terms:**
>
> **"93. Limitations.--Every appeal and every application for revision under this Act shall be filed within sixty days from the date of the order against which the appeal or application is filed and the provisions of the Indian Limitation Act, 1908 shall apply for the purpose of the computation of the said period.'**

**On a plain reading of the Section it is absolutely clear that its effect is only to render applicable to the proceedings before the Collector, the provisions of the Limitation Act relating to "computation of the period of limitation". The provisions relating to computation of the period of limitation are contained in Sections 12 to 24 included in Part III of the Limitation Act, 1963. Section 5 is not a provision dealing with "computation of the period of limitation". It is only after the process of computation is completed and it is found that an appeal or application has been filed after the expiry of the prescribed period that the question of extension of the period Under Section 5 can arise. We are, therefore, in complete agreement with the view expressed by the Division Bench of the High Court in Venkaiah case that Section 93 of the Act did not have the effect of rendering the provisions of Section 5 of the Limitation Act, 1963 applicable to the proceedings before the Collector."**

It has been observed in **Sakuru**(supra) as follows:

**37. In LAO v. Shah Manilal Chandulal: (1996) 9 SCC 414 the Land Acquisition Officer has rejected the application for reference Under Section 18 on the ground that it was barred by limitation. A writ petition was filed contending**

> **that provision of Section 5 of the Limitation Act applies to the proceedings before the Collector. The High Court accepted the argument and condoned the delay against which judgment appeal was filed before this Court. This Court held that Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to Sub-section (2) of Section 18. Following was held in paragraph 18:**
>
> > **"18. Though hard it may be, in view of the specific limitation provided under proviso to Section 18(2) of the Act, we are of the considered view that Sub-section (2) of Section 29 cannot be applied to the proviso to Sub-section (2) of Section 18. The Collector/LAO, therefore, is not a court when he acts as a statutory authority Under Section 18(1). Therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to Sub-section (2) of Section 18. The High Court, therefore, was not right in its finding that the Collector is a court Under Section 5 of the Limitation Act."**

30. Mr. Bhowmik, learned Advocate General has referred to **Patel Brothers versus State of Assam and Others** reported in **(2017) 2 SCC 350** where the apex court has examined the similar issues and observed inter alia that "expressly excluded" would mean that there must be an express reference in the special or local law to the specific provisions of Limitation Act of which the operation has to be excluded. It has been stated that the approach that has to be adopted by the court in such a case is to examine the provisions of the special statute to arrive at a conclusion as to whether there is legislative content to exclude the operation of the Limitation Act. It can be gathered from the legislation the provision is to exclude the other provisions relating to condonation including Section 5 of the

Limitation Act. Section 29(2) stipulates that in absence of any express provisions, provisions of Sections 4-24 inclusive of the Limitation Act would apply but that will not be the same, when the special statute excludes the applicability of Section 29(2) even by implication. In this context it has been observed in **Patel Brothers**(supra) as follows :

> **21. The judgment in Mangu Ram(supra) would not come to the aid of the Appellant as the Court found that there was no provision under the Code of Criminal Procedure. from which legislative intent to exclude Section 5 of the Limitation Act could be discerned and, therefore, Section 29(2) of the Limitation Act was taken aid of. Similar situation prevailed in Anshuman Shukla's case. On the contrary, in the instant case, a scrutiny of the scheme of VAT Act goes to show that it is a complete code not only laying down the forum but also prescribing the time limit within which each forum would be competent to entertain the appeal or revision. The underlying object of the Act appears to be not only to shorten the length of the proceedings initiated under the different provisions contained therein, but also to ensure finality of the decision made there under. The fact that the period of limitation described therein has been equally made applicable to the Assessee as well as the revenue lends ample credence to such a conclusion. We, therefore, unhesitantly hold that the application of Section 5 of the Limitation Act, 1963 to a proceeding Under Section 81(1) of the VAT Act stands excluded by necessary implication, by virtue of the language employed in Section 84.**
>
> **22. The High Court has rightly pointed out the well settled principle of law that :**
>
> **"19.....'the court cannot interpret the statute the way they have developed the common law 'which in a constitutional sense means judicially developed equity'. In abrogating or modifying a Rule of the common law the court exercises the same power of creation that built up the common law through its existence by the judges of the past. The court can exercise no such power in respect of statue, therefore, in the task of interpreting and applying a statue, Judges have to be conscious that in the end the statue is the master not the servant of the judgment and no judge has a choice between implementing it and disobeying it."**
>
> **<u>What, therefore, follows is that the court cannot interpret the law in such a manner so as to read into the Act an</u>**

> **inherent power of condoning the delay by invoking Section 5 of the Limitation Act, 1963 so as to supplement the provisions of the VAT Act which excludes the operation of Section 5 by necessary implications."**
>
> **[Emphasis added]**

31. In **Patel Brothers**(supra) extensive reference has been made in **The Commissioner of Customs and Central Excise versus Hongo India (P) Ltd.** reported in **(2009) 5 SCC 791** where it has been observed by the apex court as follows :

> **"34. Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29(2) would be attracted, what we have to determine is whether the provisions of this Section are expressly excluded in the case of reference to the High Court.**
>
> **35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.**
>
> **[Emphasis added]**

32. In a different context, having reference to the scheme of Representation of the People Act in **Hukumdev Narain Yadav**

**versus Lalit Narain Mishra** reported in **(1974) 2 SCC 133** the apex Court has unambiguously laid down the principle of law as follows :

> **"17. ... but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation."**

33. Mr. Bhowmik, learned Advocate General referred to **M.P. Steel Corporation versus Commissioner of Central Excise** reported in **(2015) 7 SCC 58** where the similar interpretation has been laid down by the apex Court, having reference to Section 14 of the Limitation Act. It has been observed approvingly in **Madanlal Das & Sons** reported in **(1976) 4 SCC 464** that the Limitation Act applies only to courts and does not apply to quasi judicial bodies. But the said decision has been later on held not to be the correct proposition of law in **M.P. Steel Corporation**(supra) as it stood contrary to the decision of the three-judge-bench in **Mukri Gopalan**(supra). In **CST versus Parson Tools and Plants** reported in **(1975) 4 SCC 22,** the apex court held that the Limitation Act will not apply to quasi judicial bodies or tribunals. This proposition of law is somewhat deviated from what has been observed in **Mukri Gopalan**(supra). Section 29(2) of the

Limitation Act which provides that the special or local law described therein should prescribe for any suit, appeal or application a period of limitation, different from the period prescribed by the schedule to the Limitation Act. This would necessarily mean or imply that such special or local law would have to lay down that the suit, appeal or application to be instituted under it, should be a suit, appeal or application of the nature described in the schedule to the Limitation Act.

34. In **M.P. Steel Corporation**(supra) the edges have been sought to be ironed out holding that **Parson Tools**(supra) is the authority for the proposition that the Limitation Act will not apply for the quasi judicial bodies or the tribunal :

> **29. Quite apart from Mukri Gopalan's case being out of step with at least five earlier binding judgments of this Court, it does not square also with the subsequent judgment in Consolidated Engg. Enterprises v. Principal secy., Irrigation Deptt.: (2008) 7 SCC 169. A 3-Judge Bench of this Court was asked to decide whether Section 14 of the Limitation Act would apply to Section 34(3) of the Arbitration and Conciliation Act, 1996. After discussing the various provisions of the Arbitration Act and the Limitation Act, this Court held:**
>
> > **"23. At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the Act of 1996 this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted Under Section 34 of the said Act. On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings Under Section 34 are for the purpose of challenging the award whereas the proceeding referred to Under Section 43 are the original proceedings which can be equated with a suit in a court. Hence,**

**Section 43 incorporating the Limitation Act will apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the court. Sub-section (4) of Section 43, inter alia, provides that where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute so submitted. If the period between the commencement of the arbitration proceedings till the award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to an application submitted Under Section 34 of the Act of 1996, more particularly where no provision is to be found in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act, to an application made Under Section 34 of the Act. It is to be noticed that the powers Under Section 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction Under Section 34 of the Act, cannot be exercised suo motu. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long. Section 34 of the Act of 1996 would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. From the scheme and language of Section 34 of the Act of 1996, the intention of the legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted Under Section 34 of the Act of 1996 for setting aside an arbitral award."**

**30. While discussing Parson Tools, this Court held:**

**25...In appeal, this Court held that (1) if the legislature in a special statute prescribes a certain period of limitation, then the Tribunal concerned has no jurisdiction to treat within limitation, an application, by excluding the time spent in prosecuting in good faith, on the analogy of Section 14(2) of the Limitation Act, and (2) the appellate authority and the revisional authority were not "courts" but were merely administrative tribunals and, therefore, Section 14 of the Limitation Act did not, in terms, apply to the proceedings before such tribunals.**

**26. *From the judgment of the Supreme Court in CST: (1975) 4 SCC 22 : 1975 SCC (Tax) 185 : (1975) 3 SCR 743] it is evident that essentially what weighed with the Court in holding that Section 14 of the Limitation Act was not applicable, was that the appellate authority and the revisional authority were not "courts".* The stark features of the revisional powers pointed out by the Court, showed that the legislature had deliberately excluded the application of the principles underlying Sections 5 and 14 of the Limitation Act. Here in this case, the Court is not called upon to examine scope of revisional powers. The Court in this case is dealing with Section 34 of the Act which confers powers on the court of the first instance to set aside an award rendered by an arbitrator on specified grounds. It is not the case of the contractor that the forums before which the Government of India undertaking had initiated proceedings for setting aside the arbitral award are not "courts". In view of these glaring distinguishing features, this Court is of the opinion that the decision rendered in CST: (1975) 4 SCC 22: 1975 SCC (Tax) 185: (1975) 3 SCR 743] did not decide the issue which falls for consideration of this Court and, therefore, the said decision cannot be construed to mean that the provisions of Section 14 of the Limitation Act are not applicable to an application submitted Under Section 34 of the Act of 1996.**

**31. In a separate concurring judgment Justice Raveendran specifically held:**

**"44. <u>It may be noticed at this juncture that the Schedule to the Limitation Act prescribes the</u>**

**period of limitation only to proceedings in courts and not to any proceeding before a tribunal or quasi-judicial authority. Consequently Sections 3 and 29(2) of the Limitation Act will not apply to proceedings before the tribunal. This means that the Limitation Act will not apply to appeals or applications before the tribunals, unless expressly provided.”**

**While dealing with Parson Tools, the learned Judge held:**

**“56. In Parson Tools: (1975) 4 SCC 22] this Court did not hold that Section 14(2) was excluded by reason of the wording of Section 10(3-B) of the Sales Tax Act. This Court was considering an appeal against the Full Bench decision of the Allahabad High Court. Two Judges of the High Court had held that the time spent in prosecuting the application for setting aside the order of dismissal of appeals in default, could be excluded when computing the period of limitation for filing a revision Under Section 10 of the said Act, by application of the principle underlying Section 14(2) of the Limitation Act. The minority view of the third Judge was that the revisional authority Under Section 10 of the U.P. Sales Tax Act did not act as a court but only as a Revenue Tribunal and therefore the Limitation Act did not apply to the proceedings before such Tribunal, and consequently, neither Section 29(2) nor Section 14(2) of the Limitation Act applied. The decision of the Full Bench was challenged by the Commissioner of Sales Tax before this Court, contending that the Limitation Act did not apply to tribunals, and Section 14(2) of the Limitation Act was excluded in principle or by analogy. This Court upheld the view that the Limitation Act did not apply to tribunals, and that as the revisional authority Under Section 10 of the U.P. Sales Tax Act was a tribunal and not a court, the Limitation Act was inapplicable. This Court further held that the period of pendency of proceedings before the wrong forum could not be excluded while computing the period of limitation by applying Section 14(2) of the Limitation Act. This Court, however, held that by applying the principle underlying Section 14(2), the period of pendency before the wrong forum may be considered as a "sufficient cause" for condoning the delay, but then having regard to Section 10(3-B), the**

> **extension on that ground could not extend beyond six months. The observation that pendency of proceedings of the nature contemplated by Section 14(2) of the Limitation Act, may amount to a sufficient cause for condoning the delay and extending the limitation and such extension cannot be for a period in excess of the ceiling period prescribed, is in the light of its finding that Section 14(2) of the Limitation Act was inapplicable to revisions Under Section 10(3-B) of the U.P. Sales Tax Act. These observations cannot be interpreted as laying down a proposition that even where Section 14(2) of the Limitation Act in terms applied and the period spent before wrong forum could therefore be excluded while computing the period of limitation, the pendency before the wrong forum should be considered only as a sufficient cause for extension of period of limitation and therefore, subjected to the ceiling relating to the extension of the period of limitation. As we are concerned with a proceeding before a court to which Section 14(2) of the Limitation Act applies, the decision in Parson Tools: (1975) 4 SCC 22: 1975 SCC (Tax) 185: (1975) 3 SCR 743] which related to a proceeding before a Tribunal to which Section 14(2) of the Limitation Act did not apply, has no application.**
>
> **32. Obviously, the ratio of Mukri Gopalan does not square with the observations of the 3-Judge Bench in Consolidated Engineering Enterprises. In the latter case, this Court has unequivocally held that Parson Tools is an authority for the proposition that the Limitation Act will not apply to quasi-judicial bodies or Tribunals. To the extent that Mukri Gopalan is in conflict with the judgment in the Consolidated Engineering Enterprises case, it is no longer good law."**

35. Finally, Mr. Bhowmik, learned Advocate General has referred to a decision of the apex court in **International Asset Reconstruction Company of India Limited versus Official Liquidator of Aldrich Pharmaceuticals Limited and Others** reported in **(2017) 16 SCC 137** where the applicability of Section 5 of the Limitation Act qua Section 29(2) of the Limitation Act, 1963 was

considered in the context of condoning the delay by the Debt Recovery Tribunal for an appeal under Section 30 of the Recovery Debts and Bankruptcy Act, 1993. It has been observed, having referred to **Sakuru**(supra) that the proceeding under the said Act before the statutory tribunal cannot be place at par with proceedings before a court. The tribunal has therefore had no power to condone the delay. It has been observed by the apex Court in the **International Asset Reconstruction Company of India Limited** (supra) as follows :

> **"13. The RDB Act is a special law. The proceedings are before a statutory Tribunal. The scheme of the Act manifestly provides that the Legislature has provided for application of the Limitation Act to original proceedings before the Tribunal under Section 19 only. The appellate tribunal has been conferred the power to condone delay beyond 45 days Under Section 20(3) of the Act. The proceedings before the Recovery officer are not before a Tribunal. Section 24 is limited in its application to proceedings before the Tribunal originating Under Section 19 only. The exclusion of any provision for extension of time by the Tribunal in preferring an appeal Under Section 30 of the Act makes it manifest that the legislative intent for exclusion was express. The application of Section 5 of the Limitation Act by resort to Section 29(2) of the Limitation Act, 1963 therefore does not arise. The prescribed period of 30 days Under Section 30(1) of the RDB Act for preferring an appeal against the order of the Recovery officer therefore cannot be condoned by application of Section 5 of the Limitation Act."**

This decision is restatement of the law as referred.

36. Before we formulate our decision in respect of the question whether Section 5 qua Section 29(2) of the Limitation Act would apply for purpose of condoning the delay in filing the petitioner's petition under Section 161 of the TSGST Act, let us revisit the provisions of Section 161 of the TSGST Act as reproduced in para-

9 of this judgment. Let us highlight the provisions relating to the limitation. It provides that for purpose of any error which is apparent on the face of the record in the decision or the order or the notice or the certificate or any other documents issued by any authority, the said authority can exercise the said power to rectify either on own motion of the said authority or by the officers appointed under TSGST Act or CGST Act or by the affected person, if such action is taken within a period of three months from the date of such decision, or order or notice or certificate or any other documents as the case may be. The first proviso stipulates that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other documents. The second proviso provides that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of clerical or arithmetical error, arising from any accidental slip or omission. It is apparent on the face of the said provision [Section 161 of the TSGST Act] that this is a complete code within itself and it has impliedly excluded the Limitation Act. Thus, what has been observed by the Superintendent of Taxes in the decision communicated by the reply dated 17.12.2019 does not suffer from any infirmity. Moreover, the Limitation Act will not apply automatically unless it is extended to the special statute such as TSGST Act inasmuch as law in this regard is absolutely unambiguous that except in the case of the suit, appeal

or application in the court, the limitation of Act will not apply/extend for the local or special statute. Thus, the petitioner's contention in respect of the extension of the Limitation Act stands dismissed. That apart, in the considered view of this court, the rectification as sought is not covered by Section 161 of the TSGST Act.

37. It is needless to say that when a legal action is barred by limitation unless that bar is overcome, no decision can be rendered on merit. Mr. Bhowmik, learned Advocate General was absolutely correct when he has stated that even if the Limitation Act would have applied, this court might not have extended its jurisdiction of judicial review.

Having observed thus, this writ petition is dismissed. However, there shall be no order as to costs.

**JUDGE** **JUDGE**




*Sabyasachi B*