**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA**

**CIVIL APPELLATE JURISDICTION**

**APPELLATE SIDE**

RESERVED ON: 21.09.2022
DELIVERED ON:23.11.2022

**CORAM:**

**THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM**

**AND**

**THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA**

**F.M.A. 857 OF 2022**

**WITH**

**I.A. NO. CAN 01 OF 2022**

**WITH**

**I.A. NO. CAN 02 OF 2022**

**WITH**

**I.A. NO. CAN 03 OF 2022**

**COMMISSIONER OF COMMERCIAL TAXES & ANOTHER**

**VERSUS**

**M/S. TATA STEEL LIMITED & OTHERS**

**Appearance:-**
**Mr. S.N. Mookherjee, Ld. Advocate General**
**Mr. Anirban Ray, Ld. Government Pleader**
**Mr. T.M. Siddique, Adv.**
**Mr. Debasish Ghosh, Adv.**
**Mr. Varun Kothari, Adv.**

**.....For the Appellants**

**Mr. Kavin Gulati, Sr. Adv.**
**Mr. Sumeet Gadodia, Adv.**
**Mr. Avi Tandon, Adv.**
**Mr. Avra Mazumder, Adv.**
**Ms. Shilpi Sandil Gadodia, Adv.**
**Mr. Binayak Gupta, Adv.**
**Mr. Sk. Md. Bilwal Hossain, Adv.**

**.....For the Tata Steel Limited**

**Mr. Jaweid Ahmed Khan, Adv.**
**Mr. Bhaskar Sengupta, Adv.**
**Mr. Talha Ahmed Khan, Adv.**

**.....For the Indian Oil Corporation Limited**

***JUDGMENT***

***(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)***

1. This intra court appeal is directed against the order dated December 6, 2021 in WPA No. 5306 of 2021 filed by the first respondent herein, *M/s. Tata Steel Limited* (hereinafter referred to as the writ petitioner). The appellants are the Commissioner of Commercial Taxes West Bengal and the Joint Commissioner, Commercial Taxes Large tax payers Unit, Government of West Bengal, who were impleaded as the Respondents No. 2 and 3 in the writ petition. The fourth respondent in this appeal and the first respondent in the writ petition is the State of West Bengal represented by the Secretary, Department of Finance, Government of West Bengal who has been shown as the proforma respondent in this appeal.

2. The writ petition was filed for issuance of writ of certiorari to quash the assessment order dated June 30, 2020 passed by the second appellant in the case of the Indian Oil Corporation Limited (IOCL), the fourth

respondent in the writ petition and the third respondent herein. By the impugned order, a bunch of writ petitions were allowed, pertaining to the assessment year 2017-2018 to the extent of submissions of Form "C" declaration by IOCL pertaining to the writ petitioner which was denied with consequential directions to the appellants as well as the State of West Bengal to refund the amount of Rs. 24,61,31,232/- being the amount of excess differential tax realized from the writ petitioner by IOCL and deposited with the State of West Bengal in respect of purchase of High Speed Diesel (HSD) oil. The learned Single Bench allowed the writ petition by issuing the following direction:-

> *(i) Impugned order of assessment passed by the Assessing Officer is set aside to the extent of refusal of acceptance of relevant "C" Forms submitted before him impugned assessment proceedings by the HSD oil purchasing dealers/petitioners through the oil selling dealers/HSD relating to the relevant disputed period which were issued by the purchasing respective State Government, in favour of the petitioners on inter-State sales in question and it shall accept the aforesaid relevant "C" Forms and allow concessional rate of tax to the petitioners on the basis of the said relevant "C" Forms subject to formal verification of the same.*
>
> *(ii) The respondent State Government of West Bengal shall within three months from date process and refund the excess amount of tax collected by it from the petitioners oil purchasing dealers in excess of concessional rate of tax through selling dealers/HSD in West Bengal in course of Inter-State sales in question during the relevant period with interest at the rate of 10% per annum on the basis of relevant "C" Forms submitted by the seller/HSD during the impugned assessment proceedings, directly to the petitioners instead of*

> *refunding the same to the Respondent HSD after formal verification of the same along with the relevant documents and by affording opportunities of hearing to the petitioners and HSD in course of the said verification and in the alternate it shall refund the said amount to the HSD after such verification and in that event HSD shall refund to the petitioners the amounts so refunded within 15 days from the date of receipt of such amount by the Respondent State Government of West Bengal subject to proper indemnification by the petitioners and the Respondents State Government of West Bengal.*

The following facts to suffice to decide this appeal.

3. The writ petitioner is a registered dealer under Section 7 of the Central Sales Tax Act, 1956 (The CST Act), in the State of Jharkhand and are engaged in the business of manufacturing and mining. The writ petitioner purchased HSD from IOCL by way of interstate sales from the State of West Bengal to the State of Jharkhand. Prior to 01.07.2017, the writ petitioner was issued Form "C" declaration by the State of Jharkhand which was submitted to IOCL, who in turn submitted the same to the prescribed authority in the State of West Bengal to claim concessional rate of tax in terms of Section 8 of the CST Act. With effect from July 1, 2017 the definition of "goods" as defined under Section 2(d) was amended by Taxation Law (Amendment) Act, 2017. On October 11, 2017, the State of Jharkhand issued a circular stating that Form "C" declaration will no longer be issued to dealers if the final products manufactured by them do not fall within the amended definition of "goods" in Section 2(d) of the CST Act. By office memorandum dated November 7, 2017,the Ministry of Finance, Department of Revenue, Government of India, issued a clarification with regard to the

definition of "goods" in Subsection (3) (b) of Section 8 of the CST Act, clarifying that the term "goods" referred to in Section 8 (3) (b) of the CST Act will have the same meaning as defined and amended under Section 2(d) of the CST Act, however it will not affect the provisions of the Section 8(3) (b) of the CST Act relating to tele-communication network or mining or generation or distribution of electricity, or any other form of power.

4. The writ petitioner challenged the circular by filing the writ petition before the High Court of Jharkhand. On May 17, 2018, an interim order was granted directing the State of Jharkhand to issue Form "C" declarations to the writ petitioner pending disposal of the writ petition. Similar challenge was made by other interstate purchasers before the High Court of Punjab & Haryana and one such case being ***Capro Power Limited Versus State of Haryana and Others***[1]. By the said decision, the circular similar to the circular dated October 11, 2017 issued by the State of Jharkhand was struck down and consequential direction was issued to the State of Haryana to issue Form "C" declaration to the buyers and they would be entitled to claim refund of the excess tax from the concerned authorities through the oil companies or by themselves. The said order was put to challenge by the State of Haryana before the Hon'ble Supreme Court in Special Leave to Appeal C No. 20572 of 2018 which was dismissed by order dated August 13, 2018.

[1](2018) VIL 154 (P & H); (2018) SCC Online P & H 6938

5. The Ministry of Finance, Department of Revenue, Government of India, issued a circular dated November 1, 2018 to all the Commissioners of Commercial Taxes of all the States and Union Territories directing that the decision in the case of ***Capro Powers Limited*** to be complied with in the respective states. The writ petitioner would state that in spite of the decision in the case of ***Capro Powers Limited*** having been directed to be followed by all the States and Union Territories full tax was collected and the writ petitioner was compelled to pay the same in spite of having obtained Form "C" declaration for the purchases effected during the relevant period. The writ petitioner was also issued provisional credit notes/credit notes by the IOCL. The writ petition which was filed by the writ petitioner herein before the High Court of Jharkhand, challenging the circular dated October 11, 2017 was allowed and the circular was quashed by judgment dated August 28, 2019. In the said judgment, the Court observed that pursuant to the interim order passed in the writ application Form "C" declaration having been issued to the writ petitioner and provisional credit notes have also been given by the IOCL, to the writ petitioner and that being an admitted case, it was held that the provisional credit notes given to the writ petitioner shall be given effect to, or in any case in which the provisional credit notes have not been given, the required refund shall always be given to the writ petitioner. Further it was observed that if the respective oil companies have made deposit to the state exchequer, they shall also be entitled to claim the refund thereof.

6. The assessment in the case of IOCL was completed by order dated June 30, 2020 disallowing the claim for concessional rate of tax for the financial year 2017-2018 on the ground that tax was charged, collected and deposited at full rate by IOCL and that IOCL had not filed revised return for claiming concessional rate of tax, they have not submitted amended invoices for claiming concession and credit notes have not been issued by the IOCL. Aggrieved by such order of assessment, IOCL had preferred appeal before the First Appellate Authority which is still pending. On account of the above development, IOCL by their letter dated August 31, 2020 informed the writ petitioner that their assessment for the financial year 2017-2018 has been completed by the authority on June 30, 2020 and the Commercial Tax department have not accepted the Form "C" declarations submitted subsequently and since such forms were not accepted, no refund of the differential tax has been allowed by the West Bengal Commercial Taxes Authorities. It was further informed since IOCL has not received the refund from the West Bengal Commercial Taxes Authorities they are unable to pass it on to their customers (writ petitioner) however, the writ petitioner could proceed directly with the appropriate authorities of the West Bengal Government for the refund. IOCL had filed a review petition before the High Court of Jharkhand, by placing reliance on the decision of the High Court of Gujarat in Civil Applications No. 15333 of 2019 etc. dated December 18, 2019 wherein the Court held that it was for the purchases of HSD to claim the refund from the concerned authorities and any claim of refund by selling dealer would not be appropriate as the question of unjust enrichment would arise. On the strength of the said decision, IOCL contended that they cannot

claim any refund of the excess amount of CST already deposited by them to the State Exchequer in the State of West Bengal and they cannot be made liable to refund the amount to the writ petitioners. The review applications were dismissed by order dated October 17, 2020 making it clear that there is no occasion for review of the order passed in the writ petition and if the refund of the CST deposited with the State of West Bengal is refused by authorities of West Bengal, it is open to the writ petitioners or even to the review petitioners (IOCL) to approach the appropriate forum for required relief. It was further held that the writ petitioners therein cannot be governed by the judgment of the High Court of Gujarat in the aforementioned matter.

7. The writ petitioner filed representation dated December 29, 2020 to the appropriate authority to refund excess amount of CST collected by the State of West Bengal for the period from 01.04.2017 to 31.03.2018 through IOCL who had sold the goods against Form "C" declaration to the writ petitioner which can only be at the concessional rate of tax as against the full rate of tax wrongly collected. It appears that the representation was not considered and the writ petition was filed before this Court by *M/s. Tata Steel Limited* for the aforementioned relief. The said writ petition along with the other connected matters was allowed by common order dated December 6, 2021 which is impugned in this appeal. The learned Single Bench framed nine issues which in the opinion of the Court was both factual and legal. The issues were elaborately framed which have been concisely reframed by the learned Advocate General in the following terms:-

Issues:-

(i) Locus Standi of the writ petitioner/purchasing dealer to maintain the writ petition for refund of excess CST collected by IOCL and remitted to the Government of West Bengal.

(ii) Whether filing of Form "C" declaration by the selling dealers is mandatory? Can Form "C" declaration be filed belatedly?

(iii) Whether the assessment order dated June 30, 2020 is liable to be set aside due to the rejection of the Form "C" declaration by the assessing authority?

(iv) Whether the writ petitioner is entitled to concessional rate of tax, who have admittedly fulfilled the conditions under Section 8 of the CST Act?

(v) Whether the writ petitioner is entitled to claim refund of tax directly from the state or should they claim the refund from the selling dealers (IOCL)?

(vi) Whether the refund can be denied to the writ petitioners by the State of West Bengal disregarding the fact that excess tax was paid under compelling extraordinary circumstances and non-issuances of Form C declaration?

(vii) Whether the writ petitioner can claim refund directly from the state in view of the fact that excess tax has been deposited by IOCL with the State of West Bengal?

(viii) Whether the State Government is legally justified in refusing refund of excess tax when it is admittedly being allowing the

concessional rate to the writ petitioner before and after the disputed period (01.04.2017 to 31.03.2018)?

(ix) Whether the non-refund of excess tax is contrary to the instruction of the Government of India dated November 01, 2018?

8. Though nine issues had been framed for consideration, the issues are overlapping and the core issue involved in the matter could be precisely stated in the following terms:-

Whether the writ petitioner is entitled to refund of the excess Central Sales Tax collected by IOCL and remitted to the State of West Bengal on account of production of Form "C" declarations which have not been disputed by the assessing authority of IOCL and if the answer to this question is in the affirmative, whether a claim for refund at the instance of the writ petitioner, the purchasing dealer would be maintainable?

If the above core issue is addressed and in the process of answering the core issue, the subsidiary issues which are rolled into the nine issues framed by the learned Single Bench could also be dealt with.

9. On the issues 1,5 and 7 (supra), the learned Advocate General would contend that the writ petitioner being a purchasing dealer has no locus to maintain the petition, is not entitled to claim refund from the authority in the State of West Bengal as the purchasing dealer has no liability to pay tax under the CST Act as it is the only liability of the seller, IOCL; liability of the purchasing dealer arises out of the contract with the selling dealer and there

is no statutory liability on the purchasing dealer as the selling dealer may or may not chose to recover the taxes paid by him from the purchasing dealer; it is only a selling dealer who is given the privilege of concessional rate of tax by virtue of Section 8(1), 8(3) and 8(4) of the CST Act; the selling dealer does not act as agent of the State of West Bengal for collection of tax. Referring to Section 6,7,8 and 9 of the CST Act, it is submitted that there is no liability imposed on the purchasing dealer under the CST Act and the concessional rate of tax in terms of Section 8 is given only to the selling dealer and there is no right recognized in favour of the purchasing dealer. Similarly, Section 9 of the Act provides for levy and collection of tax only from the selling dealer.

10. Referring to Section 60 of the West Bengal Sales Tax Act (WBST) and Section 62 of the West Bengal Value Added Tax Act (WBVAT), it is submitted that those provisions provided for refund of excess tax only to be paid to the selling dealer and there is no right conferred on the purchasing dealer under the statute to claim refund. In support of such contention, reliance was placed on the decision in ***Tata Iron and Steel Company Limited Versus State of Bihar*** [2]***, M/s. George Oakes Private Limited Versus State of Madras*** [3]***, Central Wines, Hyderabad Etc. Versus Special Commissioner Tax Officer Etc.*** [4] and ***Mahalaxmi Cotton Ginning Pressing and Oil Industries Versus State of Maharashtra*** [5] and the order passed by the Hon'ble Supreme Court in Special Leave to appeal CC No. 3823 of 2013

[2]AIR 1958 SC 452
[3]AIR 1962 SC 1037
[4](1987) 2 SCC 371
[5](2012) SCC Online Bom 733

dated 25.02.2013 by which the special leave petition against the said judgment was dismissed.

11. It is further submitted that the writ petitioner had placed reliance on the decision of the Hon'ble Supreme Court in ***Anand Swarup Mahesh Kumar Versus Commissioner of Sales Tax*** [6] to support their contention that by virtue of Section 37 of the WBST Act, IOCL is permitted to pass on the burden of tax to the writ petitioner and, therefore IOCL would be acting as an agent of the State of West Bengal in collecting the tax from the writ petitioner.

12. It is submitted that this contention is without any basis as under the relevant enactment considered in the said case, there was a specific provision placing a statutory obligation to pay the market fee on the purchasing dealer and there is no *para materia* provision under the CST Act. Further under the relevant Act in the said case the commission agent may realize the market fee from the purchaser and this expression "may" was construed as "shall" and the court placed a statutory obligation also on the seller to collect the market fee from the purchaser and on account of such interpretation there became a statutory obligation on the part of the purchaser to pay the market fee. It is submitted that this decision in ***Anand Swarup Mahesh Kumar*** was interpreted in ***Central Wines.*** Thus, it is contended that in the case on hand, there is no statutory liability or obligation on the writ petitioner/purchasing dealer to pay the tax, nor there

[6](1980) 4 SCC 451

is any obligation on the selling dealer/IOCL to collect tax from the purchaser/writ petitioner.

13. Section 9A of the CST Act was also referred to state that the said provision does not impose any liability on the purchaser to pay sales tax, nor does it require the seller to pass on sales tax liability to the purchaser. Further, it was submitted that in ***M/s. George Oakes Private Limited,*** it has been held that merely because a dealer is unable to pass on the tax does not mean that the tax is imposed by the Government on the purchaser or that the seller is a mere collecting agency for the Government.

14. It is further submitted that the learned Single Bench had also referred to Section 37 of the WBST Act and held that the purchasing dealer is entitled to maintain a claim for refund before the Commissioner. It is submitted that Section 37 is not applicable to the facts of the case as the case on hand does not relate to excess tax paid to the authority. The said provision relates to excess amounts collected by the selling dealer from the purchaser in contravention of the provisions of the act and not deposited to the authority as tax and only in those situations the selling dealer is obligated to deposit the excess amount collected to the RBI or the Government Treasury and only after such deposit the purchasing dealer can apply for refund of this excess amount. Therefore, it is contended that Section 37 does not relate to tax paid to the authorities by the selling dealer for which only the selling dealer is entitled to claim refund. Therefore, it is contended that the order of the learned Single Bench recognizing an

independent right on the purchasing dealer in terms of Section 37(3) of the WBST Act is not sustainable. Hence the reliance placed by the writ petitioner on the decision in ***R.S. Joshi, S.T.O. Gujarat Etc. Versus Ajit Mills Limited, Ahmedabad & Another***[7] as also the reliance placed on the decision in ***Kasturi Lal Harlal Versus State of U.P. & Others*** [8] are not applicable to the facts of the case of hand.

15. It is submitted that the writ petitioner had placed reliance on the decision in ***M/s. I.D.L. Chemicals Limited Versus Union of India & Others***[9] to support their contention that the purchasing dealer would have locus to maintain a claim for a refund. The said decision is clearly distinguishable on facts as the Court in the said case was dealing with provisions under Chapter 10 of the Central Excise Rules, 1944 and noted that the Rules placed an obligation on the purchaser to pay tax where as under the CST Act there was no such statutory obligation on the purchasing dealer to pay tax.

16. It is further submitted that the learned Single Bench had placed reliance on the decision of the Hon'ble Supreme Court in ***Corporation Bank Versus Saraswati Abharansala & Another*** [10] and ***State of Punjab and Others Versus Atul Fasteners Limited***[11] to hold that IOCL was acting as an agent of the State of West Bengal in collecting sales tax from writ

[7](1977) 4 SCC 98
[8](1986) 4 SCC 704
[9](1996) 5 SCC 373
[10](2009) 1 SCC 540
[11](2007) 4 SCC 471

petitioner. It is submitted that the said finding is not sustainable as in those decisions, the Hon'ble Supreme Court was not considering the question as to the position of the selling dealer or whether it acted as agent of the State; the said decisions have not taken note of the Constitution Bench decisions of the Hon'ble Supreme Court in ***Tata Iron and Steel Company Limited, George Oakes Private Limited*** and ***Central Wines.*** The decision in ***Corporation Bank*** and ***R.S. Joshi*** were considered and distinguished in the ***Mahalaxmi Cotton Ginning Pressing & Oil Industries*** wherein it was held that the selling dealer does not act as the agent of the State. Therefore, the finding to the contrary rendered by the learned Writ Court is required to be set aside.

17. Reliance was placed on the decision in ***Saraf Trading Corporation and Others Versus State of Kerala*** [12]wherein it was held that only a person entitled under the law to claim a refund can do so. In the said decision, the Hon'ble Supreme Court was considering Section 44 of the Kerala General Sales Tax Act, 1963 which is similar to Section 60 of WBST Act. The Hon'ble Supreme Court held that a purchasing dealer would not have right to claim a refund when the statute allows the refund to be made only to the selling dealer and the Court will not take a pro-active stance and grant refund to a purchasing dealer *de hors* the provisions of the statute, even though the burden of tax may have been passed on by the selling dealer to the purchasing dealer. Therefore, it is submitted that in terms of Section 60 of the WBST Act only the selling dealer is entitled to claim

[12](2011) 2 SCC 344

refund. Therefore, it is submitted that the decision in ***Saraf Trading Corporation*** is clearly applicable to the case on hand.

18. The learned Advocate General to support the argument that taxing authority is only concerned with the assessee and not any other third party with whom the assessee may have contractual relationship, placed reliance on the decision of the Hon'ble Supreme Court in ***Rashtriya Ispat Nigam Limited Versus M/s. Dewan Chand Ram Saran*** [13]and the decision of the High Court of Delhi in ***Delhi Transport Corporation Versus Commissioner of Service Tax*** [14].

19. For the proposition that there is no equity about tax, reliance was placed on the decisions of the Hon'ble Supreme Court in ***Commissioner of Income Tax, Madras Versus Ajax Products Limited*** [15] and ***Commissioner of Income Tax Versus Sh. Madho Pd. Jatia*** [16]**.**

20. It is further submitted that the learned Single Bench has placed reliance on the decision of the High Court of Allahabad in ***Indian Explosives Limited Versus Commissioner, Sales Tax, U.P. & Others***[17]**,** for holding that the writ petitioner has locus standi to maintain the claim for refund. It is submitted that the said decision is not applicable to the case on

[13](2012) 5 SCC 306
[14](2015) SCC Online Del 8786
[15]AIR 1965 SC 1358
[16](1976) 4 SCC 92
[17](1975) SCC Online All 503

hand as the Court did not consider the effect of any statutory provision similar to Section 60 of the WBST Act.

21. On the issue relating to the locus of the writ petitioner reliance was placed on the decision in ***N. Bala Baskar Versus Union of India & Others*** [18]and ***Uttar Pradesh State Road Transport Corporation Versus Commissioner of Central Excise & Service Tax & Another*** [19]**.**

22. It is submitted that the learned Single Bench has recorded a concession made by the learned Government Pleader as regards the locus of the writ petitioner, such concession is not binding on the State or on this Court as the same is a concession in law and in any event a concession made by the Government Pleader is not binding on the State. For such proposition, reliance was placed on the decision in ***Employees' State Insurance Corporation Versus Union of India & Others*** [20] and ***Periyar and Pareekanni Rubbers Limited Versus State of Kerala*** [21]**.**

23. Further it is submitted that the writ petitioner had placed reliance on the orders passed by the High Court of Jharkhand, Punjab and Haryana, Gujarat and Rajasthan. These decisions are clearly not applicable as the Court was not deciding any question of tax liability or any entitlement of the writ petitioner or IOCL to get refund. Further, there was no positive direction

[18]MANU/TN/1096/2016
[19](2011) 15 SCC 451
[20](2022) SCC Online SC 70
[21](1991) 4 SCC 195

or finding by the Jharkhand High Court to the effect that the writ petitioner was entitled to recover tax from the sales tax authorities in West Bengal or that the State authority is under an obligation to refund the tax collected from the writ petitioner. This aspect was clarified in the order passed by the Court in the review application stating that it is only the oil companies that are entitled to claim refund. In any event, the decision of the High Court of Jharkhand is not binding on the State of West Bengal as it was not a party to the said proceedings. To support the contention that the decision will not bind a non-party to the litigation, reliance was placed on the decision in ***Census Commissioner Versus R. Krishnamurthy***[22] and ***Kulwant Singh & Others Versus Daya Ram & Others***[23]**.**

24. Further it is submitted that the decisions of the other High Courts are not applicable in the case on hand for several reasons and more particularly, have not taken into consideration the decisions of the Constitution Bench of the Hon'ble Supreme Court in ***Tata Iron and Steel Company Limited*** and ***George Oakes Private Limited.*** It is further contended that the decision of the Hon'ble Supreme Court in ***Commissioner of Commercial Taxes Versus Ramco Cements Limited***[24]by which the appeal filed before the Hon'ble Supreme Court was dismissed by agreeing with the view taken in ***Capro Powers Limited*** and ***Tata Iron and Steel Company Limited*** but the said order is a simple dismissal of the special leave petition from an order passed by the High Court of Madras.

[22](2015) 2 SCC 796
[23](2015) 3 SCC 177
[24](2021) SCC Online SC 3209

25. Alternatively, it is submitted that even if the decision of the High Court of Jharkhand is accepted and the writ petitioner applies for refund, such refund could only be claimed from IOCL and not from the State of West Bengal.

26. Further, it is submitted that the circular dated November 1, 2018 only related to issue of Form "C" declaration and there is no direction to refund tax to the purchasers. In any event, it is submitted that if such direction is issued, it would be contrary to Section 60 of the WBST Act, therefore, not binding on the West Bengal Sales Tax Authorities.

27. With regard to issues 2, 3, & 4, it is submitted by the learned Advocate General that in terms of Section 8 of the CST Act, it is only the seller who is entitled to claim concessional rate of tax. In terms of Section 8(4), the buyer merely hands over the filled up Form "C" declaration to the seller which would enable the seller to claim the concession, therefore, the buyer has no right against the taxing authorities to claim any concessional rate of tax. Further it is submitted that it is only IOCL who can challenge the assessment order, and the buyer/writ petitioner being a stranger to the legislation cannot be allowed to bypass the frame work of rights, liabilities and adjudication mechanism laid down in the Act. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in ***Titaghur Paper Mills Company Limited And Another Versus***

***State of Orissa*** [25] **and** ***Thansingh Natwal and Others Versus Superintendent of Taxes, Dhrubi and Others*** [26]**.**

28. It is further submitted that the CST Act is a complete code and what is not expressly provided in the Act is excluded. To support such argument, reliance was placed on the decisions of Hon'ble Supreme Court in ***State of Kerala Versus Ramaswami Iyer and Sons***[27]**,** ***Kandla Export Corporation and Another Versus OCI Corporation and Another*** [28] and ***Fuerst Day Lawson Limited Versus Jindal Exports Limited*** [29]**.**

29. Further, for the proposition that a concession can be claimed strictly in the manner provided for in the statute, reliance was placed on the decisions of the Hon'ble Supreme Court in ***India Agencies (Regd.) Bangalore Versus Additional Commissioner of Commercial Taxes, Bangalore*** [30] and ***Ald Automative Private Limited Versus Commercial Tax Officer now upgraded as Assistant Commissioner (CT) and Others*** [31]**.** It is further submitted that the learned Writ Court has not held that IOCL has not claimed the concessional rate of tax in terms of the provisions of the statute.

[25] (1983) 2 SCC 493
[26] AIR 1964 SC 1419
[27] AIR 1966 SC 1738
[28] (2018) 14 SCC 715
[29] (2011) 8 SCC 333
[30] (2005) 2 SCC 129
[31] (2019) 13 SCC 225

30. For the proposition that assessment order can be set aside only by following the provisions of the statute, reliance was placed on the decisions of Hon'ble Supreme Court in ***State of Madhya Pradesh Versus Haji Hasan Dada*** [32] and ***Sales Tax Officer, New Delhi Versus East India Hotels Ltd. And Anr.***[33]

31. It is submitted that Act nowhere provides that the purchasing dealer would be entitled to the concessional rate automatically by submission of Form "C". The decision in the ***State of Tamil Nadu Versus Arulmurugan and Company*** is also to the said effect. Such an argument proceeds on the assumption that it is the buyer being taxed under the Act, which is incorrect. Further this argument if accepted would also amount to doing away with the provisions for furnishing returns, scrutiny thereof, assessment, levy refund of tax, all of which relate to the seller. After referring to Sections 2(h) (j), 8, 8A, 9(2) of the CST Act, Section 30 and 45 of WBST Act, and Rule 8 of the WBCST Rules, reliance was placed on the decisions of the Hon'ble Supreme Court in ***Kamala Mills Ltd. Versus State of Bombay*** [34] and ***Kamal Brothers and Others Versus The State of Uttar Pradesh and Anr.***[35]

32. With regard to issues 6,8 and 9, it is submitted that there is no violation of the Circular dated 01.11.2018, as the Circular only pertained to

[32] AIR 1966 SC 905
[33] (1988) 9 SCC 662
[34] AIR 1965 SC 1942
[35] (1983) 54 STC 31

the issuance of Form "C" and not the issue of who would be entitled to a refund under CST Act. Further the direction issued in ***Ramco Cements*** for compliance of the circular can relate only to the issuance of Form "C" and not the locus of the purchasing dealer to apply for a refund. In any event, the circular dated 01.11.2018 cannot give a right to the purchasing dealer to obtain a refund *de hors* the provisions contained in Section 60 of WBST Act. Further there can be no estoppel against law and the circular is only the understanding of the law by the relevant authority and is not binding on the Court. Further the circular is only a direction to the State where the purchasing dealer is situated and cannot be construed as a direction to the State where the selling dealers are situated.

33. On the issue relating to the credit notes, it is submitted that if refund to IOCL is allowed before IOCL gives effect to the provisional credit notes, the same would unjustly enrich IOCL, not only that it would be contrary to the decision in ***Mafatlal***, in this regard paragraph 86, 97 and 108 (iii-v) of the judgment were referred to.

34. Further it is submitted that there is no admission by the State of West Bengal that any refund has to be provided to IOCL. In fact, the authorities by email dated 18.06.2020 addressed IOCL asking whether they have issued credit notes to the purchasers or not, for which there was no reply given by IOCL. Therefore, merely because IOCL had stated that it would give effect to

the provisional credit note after receiving refund from the State of West Bengal, it does not create any obligation on the State.

35. With regard to the finding of learned Writ Court that Article 265 of the Constitution was violated, that withholding the excess tax would amount to unjust enrichment for the State of West Bengal and therefore would justify granting relief under Article 226 of the Constitution, it is argued by the learned Advocate General that Article 265 would not stand in the way if refund of tax would unjustly benefit the assessee (IOCL) who has already passed on the burden of such tax. It is on the person claiming refund to establish that he has not passed on such burden of tax. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in ***Mafatlal Industries and Others Versus Union of India*** [36]**.**

36. Further it is submitted that there is no question of unjust enrichment of the State. The benefit being a concession could be claimed upon strict compliance of the conditions. That apart, it is only IOCL who can claim such concession and not the writ petitioner.

37. With regard to the order directing payment of interest, it is submitted that interest on refund should strictly confirm to Section 34, and modification of the period of charging interest in contravention of the provisions of the statute is not called for. The decision relied on by the writ

[36] (1997) 5 SCC 536

petition in ***Union of India (UOI) Through Director of Income Tax Versus Tata Chemicals Limited*** [37] was sought to be distinguished by submitting that in the said decision, the Hon'ble Supreme Court was dealing with the specific language of Section 244A of the Income Tax Act, 1961 which provides for calculation of interest from date of payment of tax, which provision is different from Section 34 of WBST Act.

38. It is further submitted that in case this Court decides against the appellant, the State of West Bengal shall be entitled to adjust the refund amount from the amount due from IOCL in respect of other periods in terms of Section 60 of WBST Act. It is submitted that the High Court of Rajasthan had allowed the State to adjust the amount of refund from the amount due in respect of any other period and such benefit of adjustment provided by the statute cannot be denied to the State of West Bengal in its entirety. With the above submissions the learned Advocate General concluded.

39. Mr. Kavin Gulati, learned Senior Advocate appearing for the writ petitioner submitted that Form "C" can be produced at any stage in view of proviso to Section 8(4) of the CST Act read with the proviso to Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957. Admittedly the writ petitioner fulfilled all the three conditions to be entitled to the benefit of a concessional rate of tax as could be seen from the assessment order and noted by the learned Writ Court. Therefore, the stand of the State

[37] (2014) 6 SCC 335

of West Bengal and the Assessing Officer that Form "C" cannot be accepted without IOCL revising its returns cannot be accepted. In support of the above contention, reliance was placed on the decisions in ***State of Tamil Nadu Versus Arulmurugan and Company*** [38]***, M/s. Arvind Remedies Limited Versus The Assistant Commissioner (CT), Vepery Assessment Circle, Chennai*** [39]***, State of H.P. & Others Versus Gujarat Ambuja Cement Limited & Another*** [40]***, State of Madras Versus Radio and Electricals Limited & Another*** [41]***, State of A.P. & Others Versus M/s. Hyderabad Asbestos Cement Production Limited & Others*** [42]and ***Corporation Bank Versus Saraswati Abharansala & Another*** [43]***.***

40. It is submitted that Section 30(2) of WBST Act stipulates the period for filing a return and Section 30(6) for filing revised return, and by the time Form "C" declaration became available to the writ petition the time stipulated to file revised return had long expired. The law does not compel an impossibility (***Cochin State Power and Light Corporation Limited Versus State of Kerala*** [44]). Further by placing reliance on the decisions of the Hon'ble Supreme Court in ***Deputy Commercial Tax Officer, Park Town Division, Madras & Another Versus Sha Sukraj Peerajee*** [45] and ***Commercial of Wealth Tax, Meerut Versus Shravan Kumar Swarup &***

[38](1982) SCC Online Mad 367
[39](2016) SCC Online Mad 2744
[40](2005) 6 SCC 499
[41] AIR (1967) SC 234
[42](1994) 5 SCC 100
[43](2009) 1 SCC 540
[44]AIR 1965 SC 1688
[45]AIR 1968 SC 67

***Sons*** [46]**,** it is submitted that filing of returns is only a part of machinery provision and cannot override the substantive claim of concessional rate of tax.

41. For the proposition that the purpose of assessment proceedings before the assessing authority is to correctly assess the tax liability, reliance was placed on the decision in ***National Thermal Power Company Limited Versus Commissioner of Income Tax*** [47]***, Jupiter International Limited Versus The Senior Joint Commissioner Sales Tax*** [48]***, Commissioner of Income Tax Versus Bharat General Reinsurance Company Limited*** [49]***, The Commissioner of Income Tax, Chennai Versus M/s. Abhinitha Foundation Private Limited*** [50]***, and Principal Commissioner of Income Tax-I Versus Anugraha Valve Castings Limited*** [51]**.**

42. With regard to the effect of the decision of the High Court of Jharkhand, it is submitted that the writ petitioner is entitled to Form "C" and consequently concessional rate of tax. Such claim cannot be denied on technicalities, especially when the decision has become final as approved in ***Ramco Cements***. The State of West Bengal having not pointed out any defect in the Form "C"s, they are bound to give effect to the decision in its letter and spirit. Further the circular having been quashed by the Court and

[46](1994) 6 SCC 623
[47](1997) 7 SCC 489
[48](2014) SCC Online Cal 4122
[49](1970) SCC Online Del 301
[50](2017) SCC Online Mad 1978
[51]MANU/TN/7483/2019

direction issued to issue Form "C", the consequences would be to grant concessional rate of tax to the purchaser/buyer. Cobwebs of procedures and legal technicalities cannot deter the legal rights of the writ petitioners to get a refund of excess tax collected by the State of West Bengal. To support such argument, reliance was placed on the decision of the Hon'ble Supreme Court in ***Commissioner of Sales Tax, U.P. Versus M/s. Auriaya Chamber of Commerce, Allahabad [52], and Hindustan Sugar Mills Versus State of Rajasthan & Others [53].***

43. It is further submitted there is a right with the writ petitioners/purchaser to receive the goods at a concessional rate of tax. Equally there is a corresponding obligation on IOCL/seller to sell at concessional rate of tax on receipt of Form "C" and there is also a corresponding right on IOCL to be assessed at a concessional rate of tax. To buttress this submission, reliance was placed on the decisions in ***State of Madras Versus Radio and Electricals Limited & Another [54], Assessing Authority-Cum Excise and Taxation Officer, Gurgaon & Another Versus East India Cotton Mfg. Company Limited [55].***

44. It is submitted that the benefit of concessional rate of tax is to enure in favour of the writ petitioner and therefore being "person aggrieved" have locus to maintain the writ petition; this aspect was conceded by the State of

[52](1986) 3 SCC 50
[53](1978) 4 SCC 271
[54]AIR 1967 SC 234
[55](1981) 3 SCC 531

West Bengal before the learned Writ Court. Further the plea of alternative remedy was only raised against IOCL and not the writ petitioner. The State has stated that the writ petitioner is not a dealer, it cannot file a statutory appeal against the assessment order of IOCL. IOCL has taken a stand that the writ petitioner can pursue its claims against the State of West Bengal. Thus, the writ petitioner cannot be left without a legal remedy and cannot be driven from one forum to another. To support such argument, reliance was placed on the decisions of the Hon'ble Supreme Court in ***Union of India Versus Hindalco Industries [56], and Ghanshyam Mishra and Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited & Others [57].***

45. The following decisions were relied on for the proposition that payer of tax is entitled to challenge the excess levy/collection of tax.

- ***I.D.L Chemicals Limited Versus Union of India & Others [58]***
- ***Jharkhand State Mineral Development Corporation Limited Versus Central Coalfields Limited & Others in WP (C) No. 3318/2018.***
- ***Indian Explosives Limited Versus Commissioner, Sales Tax, U.P. & Others [59]***

[56](2003) 5 SCC 194
[57](2021) 9 SCC 657
[58](1996) 5 SCC 373
[59](1975) SCC Online All 503

46. To support the argument that the appeal remedy availed by IOCL is illusory as already the first appellant, the highest administrative authority has already taken a stand in the writ petition by filling an affidavit-in-opposition, reliance was placed on the decision of the Hon'ble Supreme Court in ***M/s. Filterco & Another Versus Commissioner of Sales Tax, Madhya Pradesh & Another*** [60]**.**

47. With regard to the decisions in ***George Oakes*** and ***Central Wines***, relied on by the learned Advocate General, it is submitted that in those cases the definition of the term "turnover" which included taxes collected from buyers was under challenge. The Hon'ble Supreme Court held that the principal liability to tax was on the seller, collection of tax by the seller, therefore, was not as an agent of the State Government. Thus, whatever was received by the seller from the buyers, could legitimately be taken to be the price of goods and was therefore, intra vires Entry 54 of List II of 7th Schedule of the Constitution. It is submitted that two extremely important distinctions were pointed out in the aforesaid two judgments, firstly in ***George Oakes,*** it was noticed there was no definition of "sale price" and therefore, it could include any sum received by the seller from the buyers. Further it was noticed that there is a distinction between tax and price, however, it loses its significance from the point of view of legislative competence. Secondly, in ***Central Wines,*** it was pointed out that there is a statutory provision allowing the seller to recover or pass on the burden of tax to the buyers, then the recovery by the seller is as an agent of the State

[60](1986) 2 SCC 103

Government and then such a tax is not to be treated as a part of the sale price. It is submitted that the decisions have no application to the present case as in none of the judgments the scheme of CST Act was interpreted. Further perusal of Section 9(1) of the CST Act would indicate the State Government collects tax as an agent of the Central Government.

48. It is further submitted that as per Section 8(1) of the CST Act, tax is payable by the seller on his "turnover", which is defined in Section 2(f). The determination of turnover is provided in Section 8A of the CST Act. This provision provides for the tax received by the seller to be deducted from the turnover. The proviso to Section 8A clarifies that if the amount of tax received by the seller has already been deducted from the aggregate sale price, then a second deduction would not be permissible. Thus, this Section clearly points out that tax received by seller is not part of turnover unlike the cases in ***George Oakes*** and ***Central Wines.***

49. It is further submitted that Section 9A of the CST Act mandates that the seller will not make any collection of tax except in accordance with the Act and the Rules made thereunder. This collection of tax by the seller from the buyer is clearly contemplated. If the purchasing dealer produces Form "C", the selling dealer is obligated to collect only a concessional rate of tax. If the seller contravenes Section 9A, he would be visited with penalty under Section 10(f) of the CST Act, similarly if the buyer contravenes any of the provisions relating to the goods purchased at a concessional rate penalty is

attracted under Section 10(a) to 10(e) of the CST Act. A combined reading of the aforesaid provisions clearly shows the CST Act contemplates the passing of the burden of tax to the writ petitioner by IOCL. In such an eventuality, the recovery of tax by IOCL is only as an agent of the State of West Bengal. In this regard, reference was made to paragraph 12 of ***Central Wines***. Reliance was also placed on the decision of Hon'ble Supreme Court in ***Anand Swarup Mahesh Kumar Versus Commissioner of Sales Tax*** [61].

50. It is submitted that the decision of the High Court of Bombay in ***Mahalaxmi Cotton*** has no bearing to the present dispute.

51. Thus, in none of the four judgments referred by the learned Advocate General the issue was refund of taxes and the controversy was regarding the legislative competence of the State Government to include taxes received from the buyer as part of the turnover of the seller.

52. It if further submitted that a plain reading of Section 37(3) of the WBST Act shows that anything collected as tax is refundable to the buyer directly. Thus a combined reading of Section 37(1), (2) and (3) of the WBST Act makes it clear that if any collection made by IOCL in excess of the amount of tax permitted under the Act, it has to be deposited by IOCL with the State of West Bengal, which will vest with the State of West Bengal subject to the right of the writ petitioner to make an application for refund of

[61](1980) 4 SCC 451

the excess amount collected from IOCL. More importantly, Section 37(3) of WBST Act has been introduced to save Section 37(1) and Section 37(2) from being declared as unconstitutional. It is submitted that similar provisions came up for examination before the Hon'ble Supreme Court in ***R.S. Joshi, Sales Tax Officer, Gujarat & Others Versus Ajit Mills Limited & Another*** [62] and ***M/s. Kasturi Lal Harlal Versus State of U.P. & Others*** [63].

53. It is submitted in ***R.S. Joshi*** the contention as canvassed by the learned Advocate General that seller was not the agent of the state was repelled and the judgment in ***George Oakes*** was held to be of no relevance while deciding the question of refund to the buyer. It is further submitted that Section 37(3) of the WBST Act is in *pari materia* with Sections 46(1) and 46(2) of the Bombay Sales Tax Act 1962, which was considered in ***R.S. Joshi***. Therefore, it is submitted that the judgment in ***R.S. Joshi*** will apply with full force to the case of the writ petitioner which decision was affirmed in ***Mafatlal***.

54. Reference was made to the decision of the Hon'ble Supreme Court in ***State of Maharashtra & Others Versus Swanstone Multiplex Cinema Private Limited*** [64], wherein the Hon'ble Supreme Court directed that the excess duty collected by the State Government would go back to the buyers

[62](1977) 4 SCC 98
[63](1986) 4 SCC 704
[64](2009) 8 SCC 235

from whom it was collected. Reliance was also placed on the decision of the West Bengal Taxation Tribunal in ***Steel Authority of India Versus ACCT, Durgapur*** [65]**,** wherein among other things it was held that buyer can certainly move an application to the Commissioner for refund of the excess tax deposited and the State of West Bengal would be obliged to refund the excess tax collected by the buyer.

55. Distinguishing the decision in ***Saraf Trading Corporation***, it is submitted that in the said decision Section 44 of the Kerala General Sales Tax Act, 1963 was considered which is materially/significantly different from Section 37(3) of WBST Act. It is submitted that learned Advocate General referred to Section 46A(2) of the Kerala General Sales Tax Act which provision was not considered in ***Saraf Trading Corporation***. In ***Corporation Bank***, it was held that the buyer was entitled to refund however, this decision was not noticed in ***Saraf Trading Corporation***. On the similar issue as to the entitlement of buyer maintain a claim for refund the decision of the High Court of Gujarat in ***J.K. Cements Limited Versus State of Gujarat in Special Civil Appeal No. 15333 of 2019*** dated 18.12.2019 was referred. The Special Leave petition filed by the State of Gujarat before the Hon'ble Supreme Court in Special Leave Petition (C) No. 2279-2280 of 2021 was dismissed by order dated 10.02.2021. For the same proposition, reliance was placed on the decision of the High Court of Punjab

[65]MANU/ST/0016/2007

and Haryana in ***ASI Industries Limited Versus State of Haryana & Others*** [66].

56. With regard to the contention that there can be no question of unjust enrichment in the case of the writ petitioner, reliance was placed on the decision of the Hon'ble Supreme Court in ***Indian Council for Enviro-legal Action Versus Union of India & Others***[67]. On facts, it is submitted that the writ petitioner has not passed on the tax burden to its customers, and a specific averment was made in the writ petition, for which there is no specific denial by the State of West Bengal in their affidavit-in-opposition. Further the aspect of unjust enrichment by the writ petitioner was never argued before the learned Writ Court and such plea was raised only against IOCL. In ***Mafatlal Industries***, the constitution Bench of the Hon'ble Supreme Court has held that refund can be claimed by the buyer/purchaser. It is submitted by way of abundant caution an affidavit on behalf of the writ petitioner dated 29.08.2022 is being filled enclosing certificate of its Chartered Accountant dated 20.07.2022 that the burden of the tax refundable has not been passed on by the writ petitioner to its customers.

57. It is submitted that the learned Advocate General placed reliance on the decision in ***State of Madhya Pradesh Versus Haji Hasan Dada***[68] , wherein it was held that unless and until an assessment order is challenged

[66]MANU/PH/0085/2021
[67](2011) 8 SCC 161
[68]AIR 1966 SC 905

no relief for refund can be granted. Therefore, the writ petitioner has challenged that part of the assessment order of IOCL as was done in the case of ***Indian Explosives***. It is further submitted that in the ***Associated Cement Companies Limited Versus The State of Tamil Nadu and Another*** [69] , it was held that the judgment in ***Haji Hasan Dada*** would be inapplicable where the assessment order was under challenge.

58. It is further submitted that the circular dated 01.11.2018 issued by the Government of India directing all State Governments/Commissioners of Commercial Taxes to follow the decision in ***Capro Power Limited*** is not contrary to any judgment of any court nor does it interprets the scope of any statutory provision. The State of Jharkhand did not accept the Circular as is evident from the judgment in ***Tata Steel Limited, Jamshedpur***, the Hon'ble Court therefore, interpreted Section 2(d) and 8(3) of the CST Act to hold that the writ petitioner was entitled to Form "C". Furthermore, the State of West Bengal by Circular dated 07.08.2018 directed the continuance of issue of Form "C" as was done prior to 01.07.2017, though other state governments declined to issue Form "C" after 01.07.2017, therefore the present stand taken by the state of West Bengal in these proceedings is diametrically opposite to what was taken earlier. With the above submissions Mr. Gulati concluded.

[69](1984) SCC Online Mad 374

59. Mr. Khan, learned Counsel for IOCL, while adopting the submissions of Mr. Gulati, submitted that before 01.07.2017 there was no dispute about the entitlement of the writ petitioners, it is only after the amendment to the definition of "goods" in Section 2(d) of the CST Act, dispute arose. The Circular issued by the State of Jharkhand was challenged by the writ petitioner was quashed by the High Court of Jharkhand by order dated 28.08.2019 and directions were issued. The review petition filed by IOCL was dismissed with the observation that if State of West Bengal refused refund it is open to the writ petitioner or IOCL to approach the appropriate forum for relief. It is submitted that the Form "C" declarations furnished by the writ petitioner was furnished to the assessing officer by IOCL. By order dated 12.08.2020, for the assessment year 2017-2018 the assessing officer rejected the Form "C" declarations on a hyper technical ground that IOCL has not filed revised returns, the invoices were not revised and credit notes were not issued by IOCL. The assessing officer failed to appreciate that by the time Form "C" was received by IOCL the time limit for filing revised returns had expired, the invoices cannot be revised, but credit notes/provisional credit notes were issued. Being aggrieved by the assessment order dated 12.08.2020 and conscious of the legal disputes, IOCL filed appeal before the appellate authority which is still pending.

60. It is further submitted that the assessment for the period 2018-2019 was completed by order dated 29.06.2021, the Form "C" declarations submitted by the writ petitioner were rejected on the ground that revised return was not filed and the invoices have not been amended. As against the

said order IOCL preferred appeal which was rejected by order dated 24.03.2022 on the ground that this appeal is pending before this Court. IOCL has preferred Revision petition against the said order before the West Bengal Taxes Appellate and Revisional Board on 17.05.2022 which is still pending.

61. It is submitted that the appellants/state are not disputing their obligation to refund the excess amount deposited with them as such, however are adopting an unfair, unjust and vexatious stand that refund would not be made directly to the writ petitioner and that refund would not be made to IOCL on the alleged ground that it would result in unjust enrichment. The plea of unjust enrichment raised by the appellant is grossly misplaced. The doctrine does not forbid the refund of excess collection to the person who bears the actual burden. The learned Counsel adopts the arguments of Mr. Gulati on this aspect.

62. It is submitted that the statutory scheme as contained in Section 37 of WBST Act, envisages the excess amount deposited into the state exchequer would be refunded to the buyer who has borne the burden. The appropriation of the money by the state of West Bengal would be hit by Article 265 of the Constitution. It is submitted that the argument as advanced by the state of West Bengal before this Court is similar to the argument made by state of Gujarat in the case of ***J.K. Cements*** which was rejected by the High Court of Gujarat and refund was allowed to the buyer.

63. Mr. Khan, placed reliance on the judgment of the Hon'ble Division Bench of the High Court of Mysore at Bangalore in ***Giridharlal Parasmal Versus the State of Mysore***[70] and referred to paragraph 6 wherein it was pointed out that the duty of the assessing officer is not merely to impose tax that is lawfully excisable but also to give the assessee the benefit of any reduction or exemption that may become due to them upon facts actually found to be true by the assessing authorities, whether or not the assessee out of ignorance or by mistake, make a claim thereto, when the mistake is so obvious and the matter is taken up on appeal, it is the duty of the appellate authorities to correct the mistake.

64. It is submitted that several purchasers like the writ petitioners have paid excess tax, which stands deposited with the State of West Bengal, had filed similar writ petitions which were allowed, but only one appeal has been preferred and those writ petitioners seek to join in this appal for which applications have been filed.

65. It is submitted that after the writ petitioners were allowed the assessing authority has verified all transactions of IOCL with purchasers including the writ petitioner where excess tax was collected and deposited with the State Exchequer, and who have already furnished Form "C" declarations. The details of the transactions and the amount of refund claimed have been furnished in a tabulated format, checked and found to be

[70](1967) 20 STC 64

in order by the State Tax Officer, Large Taxpayer Unit, Directorate of Commercial Taxes, Government of West Bengal.

66. Finally, it is submitted that IOCL has no objection if the refund is made directly to the writ petitioner and other purchasing dealers, however if for any reason refund is made to IOCL, they would expeditiously make it over to the purchasing dealers who have actually borne the burden of tax. The learned counsel also prayed that the order directing payment of interest on the refund as ordered by the Hon'ble Single Judge may be confirmed.

67. The learned Advocate General by way of reply reiterated that in the decision in ***Anand Swarup Mahesh Kumar***, the court was considering Section 17(iii) (b) of the UP Act which provision placed a statutory obligation on the purchaser to pay the market fee, and there is no such provision in the CST Act. This decision was interpreted in ***Central Wines.*** Further in ***George Oakes,*** it has been held that merely because a dealer is entitled to pass on the tax does not mean that the tax is imposed by the government on the buyer or that the seller is a mere collecting agent for the government. The decision in ***Anand Swarup Mahesh Kumar*** was considered in ***State of Punjab Versus Chhabra Rice Mills and Others***[71] and it was held that there was a statutory obligation on the purchaser to pay market fee. Further it is reiterated that in ***R.S. Joshi*** the Hon'ble Supreme Court notes a provision like Section 37 of WBST Act and holds that it would apply to a

[71] (2005) 13 SCC 221

case where the tax is "collected and kept as his" by the selling dealer and not where the tax has been deposited with the state.

68. With regard to the decision in ***I.D.L Chemicals, Jharkhand State Mineral Development Corporation Limited Versus Central Coalfield Limited and Others*** in ***WP(C) No. 3318 of 2018***, High Court of Jharkhand and ***Indian Explosives Limited***, it is submitted that the obligation to pay tax was on the buyer.

69. It is reiterated that the circular dated 01.11.2018 is only a direction to the states where the purchasing dealers are situated and cannot be construed as a direction where the purchasing dealer is situated, hence cannot be construed as a direction to the State where the selling dealer is situated and in no way relates to the locus of the purchasing dealer to maintain an action for refund against the seller's state. The decision in ***Tata Chemicals*** relied on by the writ petitioner for grant of interest on the refund, is sought to be distinguished by contending that in the said case the Hon'ble Supreme Court was dealing with the specific language of Section 244A of Income Tax Act, 1961, which is different from Section 34 of the WBST Act. Section 244A of the Income Tax Act, 1961provides for interest calculation from the date of payment of tax, whereas there is no such provision in Section 34 of WBST Act, therefore no interest is payable. It is further submitted that the High Court of Rajasthan in ***Hindustan Zinc***

***Limited Versus The State of Rajasthan and Others*** [72]**,** the court held that the petitioners therein shall be entitled to refund and/or adjustment of the same from the concerned authorities who collected the excess tax.

70. We have heard the learned Counsels for the parties and carefully noted their submissions.

71. The core issue involved in this appeal is whether the writ petitioner has locus standi to claim refund of the excess tax collected directly from the state of West Bengal and whether can be stated to be a person aggrieved over that portion of the assessment order of IOCL (2017-18), rejecting the Form "C" declarations filed by the writ petitioner on the grounds that IOCL have not filed revised return, not amended the invoices and not issued credit notes? If the above core issue is answered, the secondary issues as to applicability of doctrine of unjust enrichment, if refund is ordered should it carry interest and whether the State of West Bengal can claim for adjustment of the excess tax collected are to be dealt with.

72. The undisputed facts are, IOCL is a registered dealer in the State of West Bengal, it is the selling dealer. The purchasing dealer, the writ petitioner is a registered dealer in the State of Jharkhand. The writ petitioner purchased HSD during the disputed period, 01.07.2017 to October 2018 from IOCL and used and claimed concessional rate of tax under Section 8 of the CST Act. The benefit was denied as IOCL informed

[72] 2018-VIL-233 Raj

the writ petitioner by letter dated August 31, 2020 that the assessment for the relevant year has been completed by order dated June 30, 2020 and the Commercial Tax department have not accepted the Form "C" declarations on the ground that they have not filed revised return, they have not amended the invoices and not issued credit notes to the writ petitioner. Though such was the reason assigned in the assessment order for rejecting the Form "C" declarations.

73. Section 8 of the CST Act deals with the rate of tax on sales in the course of inter-state trade or commerce. Sub-Section (1) of Section 8 states that every dealer, who in the course of interstate trade or commerce, sells to a registered dealer goods of the description referred to in Sub Section 3 of Section 8 shall be liable to pay tax under the Act which shall be 2% of his turn over or at the rate applicable to the sale or purchase of such goods inside the appropriate state under the Sales Tax Law of that state, whichever is lower. In terms of the proviso, the Central Government may by notification in the official gazette reduce the rate of tax under Sub-Section (1). Sub-Section (2) of Section 8 states that the tax payable by any dealer on his turn over in so far as the turn over or any part thereof relates to the sale of goods in the course of interstate trade or commerce not falling within Sub-Section (1) of Section 8, shall be at the rate applicable to the sale or purchase of such goods inside the appropriate state under the Sales Tax Law of that state. The goods referred to in Sub Section 1 of Section 8 of the Act on which the liability to pay tax arises have been enumerated under Sub

Section 3 of Section 8. Sub-Section (4) of Section 8 states that the provisions of Sub Section (1) shall not apply to any sale in the course of interstate trade or commerce unless the dealers selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority. The proviso states that the declarations should be furnished within the prescribed time or within such time as that the authority may for "sufficient cause", permit. Sub-Section (5) empowers the State Government to exempt dealers from payment of tax or lower rate of tax as spelt out under Clauses (a) and (b) of Sub-Section (5). In exercise of the powers conferred under Section 13 of the CST Act, the Central Government notified the Central Sales Tax (Registration and Turnover) Rules, 1957. In terms of Rule 12(1), the declaration and the certificate referred to in Sub Section (4) of Section 8 shall be in Forms "C" and "D" respectively. Sub Rule (2) and Sub Rule (3) of Rule 12 deal with contingencies where the declaration form is lost and as to the procedure to be adopted in such an event. Rule 12(7) states that the declaration in Form "C" or Form "F" or the certificate in Form E-i or Form E-(ii) shall be furnished to the prescribed authority within three months after the end of the period to which the declaration or the certificate relates. The proviso under the Rules states that if the prescribed authority is satisfied that the persons concerned was prevented from furnishing such declaration or certificate within the aforesaid time, the authority may allow such declaration or certificate to be furnished within such time as the authority may permit. Thus, the rule empowers the prescribed authority to allow the

dealer to submit the declaration forms beyond the prescribed period of three months provided the prescribed authority is satisfied that the persons concerned was prevented by "sufficient cause" from furnishing such declaration within the time stipulated in Rule 12(7) of the Act. It is not disputed by the appellants/State that the Form "C" declaration submitted by the IOCL to their assessing officer was accepted. To mean that the prescribed authority was satisfied that IOCL was prevented by "sufficient cause" from furnishing such declaration form within the time stipulated under Rule 12(7).The appellant/state also do not dispute the correctness of the Form "C" declarations submitted by the IOCL which were furnished to them by the writ petitioner. The reasons for refusing to grant concessional rate of tax is on the ground that the IOCL has not revised their returns, they have not amended the invoices and not issued credit notes to the writ petitioner. Therefore, it is to be seen that whether there is a necessity for IOCL to file a revised return so as to enable the assessing officer to take note of the Form "C" declaration and levy concessional rate of tax. A combined and conjoint reading of Section 8(4) of the CST Act and the proviso to Rule 12(7) of the CST rules shows that the necessity to file revised return does not arise.

74. In ***Arulmurugan and Company***, the question which was referred for the decision before the Full Bench was whether the appellate authority can entertain Form "C" declarations filed by the registered dealer at the appellate stage either under the CST Act or the Rules made thereunder. While answering the question, it was held that the proviso in the Act simply says

that “C” Form shall be filed before the prescribed authority either within the prescribed time or within such further time as that authority may for “sufficient cause”, permit. It was pointed out that as a matter of construction of the proviso in the statute, if there is “sufficient cause” further time will have to allowed. The proviso to the section does not insist that the assessee should establish before the prescribed authority that he was prevented by “sufficient cause” from filing “C” Forms in time, though “sufficient cause” spoken of by Parliament in Section 8(4) is sufficient cause which appeals to the mind of the authority concerned and which enable it to allow further time without bothering about any onus on the assessee. The proviso to Rule 12(7) however, is a study in contrast. The power to allow further time under this Rule is severely circumscribed by the language of its proviso. It was further pointed that this proviso is more of less fashioned after Section 5 of the Limitation Act. Under the requirement laid down by the rule making authority, the burden is on the assessee to make out sufficient cause by explaining why he did not file and what prevented him from filing the “C” forms before the completion of the assessment. It is for the assessing authority to be satisfied about the existence of “sufficient cause” and its having prevented the assessee from filing the declarations within time. The difference between two provisos is not merely one of language or emphasis. The difference lies in the basic approach to the substance of the power to allow further time. Further it was held that where an assessee seeks to file “C” Forms beyond the stage of assessment, the relative power which the concerned authority should invoke is the power defined in the proviso to Section 8(4) and not the power defined in the

proviso to Rule 12(7). Finally it was held that the tribunal has the power to receive "C" Form at the time of the appeal for "sufficient cause"; the tribunal can then proceed to the next stage of applying the concessional rates of tax to the turn over covered by this "C" Forms or the tribunal may remand the case to the Appellate Assistant Commissioner; the remand may be for the specific purpose of going into the question of sufficient cause or the remand may also be loaded with a finding by the tribunal that there has been sufficient cause leading the scrutiny of the "C" Forms alone to be undertaken on remand. Further it was held that the tribunal may, if satisfied about the sufficient cause set aside even the assessment order and direct the assessing authority to redo the assessment in which event there would be no occasion for the assessing authority to go into any question of delay in filing the "C" Form for with the setting aside of the assessment the whole thing is once again at large.

75. In ***Gujarat Ambuja Cement Limited***, the Hon'ble Supreme Court pointed out that under Rule 12(7) of the CST Rules, the declaration forms can be filed at a subsequent point of time and not necessarily along with returns. On application being made before the assessing authority, the exemption can be granted. It was held that the object of the rule is to ensure that the assessee is not denied the benefit which is available to it under law on a technical plea and the assessing officer is empowered to grant time which means that the provisions requiring filing of declaration forms "C" along with the return is a directory provision and not mandatory provision. The declarations forms can be filed before the appellate authority as an

appeal is continuance of the assessment proceedings. The appellate authority if satisfied that the assessee was prevented by reasonable and sufficient cause which disenabled him to file the forms in time it can be accepted. It can also be accepted as additional evidence in support of the claim for reduction. On the facts of the said case, it was noted that the company had made a specific request before the revisional authority which was turned down and therefore it was held that the question of any non-compliance with the relevant statute does not arise. The decision in the case of ***M/s. Sahney Steel and Press Works Limited Versus Commissioner Tax Officer*** [73] was noted where in it was held that in the given case the assessee can be given an opportunity to collect declaration forms and furnish them to the assessing authority, if the challenge of the assessee to the taxability of a particular transaction is turned down.

76. In ***Radio and Electricals Limited***, the Hon'ble Supreme Court held that though the tax under the Act is levied primarily from the seller; the burden is ultimately passed on to the consumer of goods because it enters into price paid by them. The Parliament with a view to reduce the burden on the consumer arising out of the multiple taxation as provided in respect of sales of declared goods which have special importance in interstate trade or commerce and other classes of goods which was purchased at an intermediate stage in the stream of trade or commerce prescribed low rates of tax when transactions take place in the course of interstate trade or commerce. It was further held that the seller can have in these transactions

[73] (1985) 4 SCC 173

no control over the purchaser and he has to rely upon the representation made to him, and he must satisfy himself that the purchaser is a registered dealer and the goods purchased are specified in the certificate and his duty extends no further. Further it was held if he is satisfied on this two matters on a representation made to him in a manner prescribed by the rules and the representation is recorded in the certificate in Form "C" as selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. Further it was held that the selling dealer is under the Act authorised to collect from the purchasing dealer as amount payable by him as tax on the transaction and he can collect the amount only in the light of the declaration mentioned in the certificate in Form "C", he cannot hold an enquiry whether the notified authority who issued the certificate of registration acted properly or ascertain whether the purchaser notwithstanding the declaration was likely to use the goods for the purpose other than purpose mentioned in the certificate in form "C". It was further held that if the purchasing dealer holds a valid certificate the goods which are to be purchased and furnished and furnishes the required declaration to the selling dealer the selling dealer becomes on production of the certificate entitled to the benefit of Section 8(1) of the Act.

77. In ***M/s. Hyderabad Asbestos Cement Production Limited,*** after examining the provisions of the Act and the rules particular Sub Rule (7) of Rule 12, it was held that Form "C" shall be furnished up to the time of assessment by the first assessing authority but in the proper case the

prescribed authority which would mean to be the assessing authority may permit such forms to be filed within further time as he may permit and this necessarily means that the assessing authority will complete the assessment but at the same time permit the dealer to file form "C" within time specified by him. It was further held that in case, the dealer files form C within the time specified, it is obvious the assessing authority will revise the order of assessment granting the requisite relief.

78. The legal principle that can be culled out from the above decision is that when Form "C" declarations are filed beyond the time prescribed the prescribed authority is empowered to accept such forms on being satisfied that the dealer was prevented by "sufficient cause" for not filing the forms within the time prescribed. In the instant case, the appellants/state have not raised any such contention that the dealer has not shown "sufficient cause" for having not been able to produce the form "C" declaration along with their returns or within the time prescribed. Thus, it goes without saying that the appellants are aware of the legal position as time limit prescribed for filing the form "C' declaration was directory as the statute empowered the prescribed authority to accept the declarations even after the expiry of the time prescribed. The underlying principle behind this interpretation is Article 265 of the Constitution of India.

79. In ***Corporation Bank's*** case, the Hon'ble Supreme Court held that in Article 265 of the Constitution mandates that no tax shall be levied or

collected except by authority of law. It was further held that in terms of the said provisions all acts relating to the imposition of tax, inter alia for the point at which the tax is collected the rate of tax as also its recovery must be carried out strictly in accordance with the law. It was further held that if the substantive provisions of statute provide for refund the state ordinarily by a subordinate legislation could not have laid down that the tax paid even by mistake would not be refunded. It was further held that if the tax has been paid in excess of the tax specified, save and except the cases involving the principle of unjust enrichment, excess tax realized must be refunded. Further the state is bound to act reasonably having regard to the equality clause contained in Article 14 of the Constitution. Therefore, the stand taken by the appellant that Form "C" declarations submitted cannot be considered as IOCL has not filed revised return or that the invoices have not been amended or credit notes have not been issued is a stand which is legally unsustainable. If the contention raised by the appellant is to be accepted, it will fall foul of Article 265 of the Constitution as the State can levy or collect tax except by authority of law and the rate of tax to be recovered must also be carried out strictly in accordance with law. Therefore, we have no hesitation to hold that the reason for not accepting the Form "C" declaration was wholly untenable. While on this issue we need to consider as to whether the appellants could have not suited to the claim for concessional rate of tax on the ground that revised return have not been filed by IOCL. Section 30 (2) of the WBST Act prescribed the period for filing the return and Sub-section (6) of Section 30 prescribed the time limit for filing the revised return. Admittedly on the date on which the Form "C"

declaration was filed before the assessing authority of IOCL, the time stipulated for filing revised return under Section 30(6) had expired. If that be so can IOCL be compelled to do an act which is legally impermissible and impossible to perform. The Hon'ble Supreme Court in ***Cochin State Power and Light Corporation Limited*** applied the maxim *lex non cogitia ad impossible* and held that the performance of an impossible duty must be excused. Therefore, on this ground also the appellants were wholly unjustified in taking a stand that IOCL ought to have filed revised return. In any event filing of a return is a procedural aspect forming part of the machinery provision under the statute and such machinery provision cannot override the substantive claim of concessional rate of tax.

80. In ***Sha Sukraj Peerajee,*** the question which arose for consideration was whether Rule 21A of the Madras Sales Tax Rules is intra vires of the power of the State Government under Sections 19(1)(2)of the Madras General Sales Tax Act, 1939. Section 3(1) of the said Act is the charging section which imposes a liability to pay sales tax on every dealer for each year and the tax is to be calculated on his turn over for that year. The question was whether the State Government has the authority under its rule making power under Section 19 of the said Act to create a legal fiction by which the transferee of the business is construed as the dealer liable to pay tax in respect of turnover of the transferor. The state government contended that it has power under Section 19(1) and 19(2)(c) of the said Act to frame the impugned rule. This argument was rejected holding that Section 19(1) of the said Act empowers the State Government to make rules to carry out the

purposes of the Act but the section cannot be utilized to enlarge the scope of Section 10 regarding recovery and payment of tax from some other persons other than the dealer under the Act. Further it was held that Section 19(2)(c) of the said Act deals with assessment to tax of businesses which are discontinued or the ownership of which has changed. After referring to the decision of the Hon'ble Supreme Court and the Federal Court, it was held that the liability to tax does not depend upon the assessment, the liability which are under the charging sections and the assessment order only quantifies the liability which has already been definitely and finally created by the charging sections and the provision in regard to the assessment relates only to the machinery of taxation. Thus, it was held that the Rule 21A of the said rules is beyond the rule making power of the state either under Section 19(1) or Section 19(2)(c) of the said Act. While on this issue, we wish to reiterate that the purpose of assessment proceedings is to correctly asses the tax liability. The Hon'ble Supreme Court in ***National Thermal Power Corporation Limited*** held that the purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. An illustration was given where as a result of judicial decision it was found that a non-taxable item was taxed or an impermissible deduction was denied. It was pointed out that in such circumstances the assessee should not be prevented from raising that question before the tribunal for the first time so long as the relevant facts are on record in respect of that item. Reference was made to the decision in ***Jute Corporation of India Limited Versus Commissioner***

***of Income Tax*** [74]**,** wherein while dealing with the powers of the Appellate Assistant Commissioner it was observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations if any prescribed by the statutory provisions.

81. In ***Goetze (India) Limited***, the assessee claimed a deduction under provision of the Income Tax Act after filing the return. The deduction was disallowed on the ground that there is no provision under the Income Tax Act to make amendment in the return of income by modifying the application at the assessment stage without revising the return. The assessee therein filed appeal before the Commissioner (Appeals) which was allowed. However, on an appeal filed by the department before the Tribunal the order was set aside and the assessee approached the Hon'ble Supreme Court contending that it is open to the assessee to raise the points of law even before the appellate tribunal. To support such contention, the assessee relied upon the decision in ***National Thermal Power Corporation Limited Versus Commissioner of Income Tax*** [75]**.** The Hon'ble Supreme Court though dismissed the appeal held that the case is limited to the power of the assessing officer and does not impinge on the power of the Income Tax Appellate Tribunal under Section 254 of the Income Tax Act, 1961. The aforementioned three decisions were followed in ***Commissioner of Income***

[74] (1991) 187 ITR 688
[75] (1998) 229 ITR 383 (SC)

***Tax Versus Jai Parabolic Spring Limited*** [76]**,** and it was held that there is no prohibition on the powers of the Income Tax Appellate Tribunal to entertain the additional ground which according to the tribunal arises in the matter and for the just decision of the case. Similar view was taken in the case of ***Commissioner of Income Tax, Chennai Versus M/s. Abhinitha Foundation Private Limited*** [77] wherein it was held that even if the claim made by the assessee company does not form part of the original return or even revised return it could still be considered if, the relevant materials was available on record either by the appellate authorities by themselves or on remand by the assessing officer. In ***M/s. Bali Trading Private Limited Versus Principal Commissioner of Income and Another*** [78] after taking note of the decisions in ***National Thermal Power Corporation Limited, Goetze (India) Limited*** and other decisions it was held that material which was not available to the Income Tax Officer when he made the assessment could be taken into consideration by Commissioner of Appeals after holding an enquiry, though such materials has come on record subsequent to the making of the assessment; the embargo placed on an assessing officer in considering a new claim would not impinge on the power of the appellate authority or the revisional authority. Similar view was taken in ***Anugraha Valve Castings Limited***.

82. In ***Areva T and D India Limited Versus Commissioner of Income Tax***, the assessing officer, the Commissioner of Income Tax (Appeals) and

[76] (2008) 306 ITR 42
[77] (2017) 396 ITR 251
[78] (2018) 402 ITR 271

the Tribunal found fault with the assessee in not filing a return or the revised return raising that the transactions done by them cannot be considered as a sale of business. After noting several decisions including the decision in ***Goetze India Limited*** it was held that failure to advert to the claim in the original return or the revised return could not denude the appellate authorities of their power to consider the claim if the relevant material was available on record and was otherwise tenable in law. In ***Commissioner of Income Tax Versus Perlo Telecommunication and Electronics Components India Private Limited*** [79] it was held that the power of tribunal under Section 254 of the Income Tax Act, 1961 cannot be curtailed, after referring to the decision in ***Goetze (India) Limited*** and the facts of the case it was noted that the assessee therein was only claiming expenditure which was left out at the time of filing of original income tax return and noting that the assessing officer has power to make upward or downward adjustment in the income return filed by the assessee and when the assessee had not claimed certain expenditure clearly evident from the records and it comes to the knowledge of the assessing officer at the time of assessment proceedings, the assessing officer should grant relief to the assessee. Thus, on a cumulative application of all the above legal principles leads us to the only conclusion that can be arrived at is that the stand taken by the appellant for refusing to accept Form "C" declaration filed by IOCL is unsustainable in law, arbitrary and perverse.

[79] MANU/TN/6874/2021

83. We will now revert back to the decision of the High Court of Jharkhand wherein the challenge was to the circular issued by the State of Jharkhand refusing to issue Form "C" declarations on ground of the amendment made to Section 8 of the CST Act with effect from 01.07.2017. The writ petition was admitted by the Division Bench by order dated 17.05.2018 having found that the writ petitioners have made out the prima facie case and the State of Jharkhand was directed to issue necessary "C" Forms without prejudice to the rights and contentions and such "C" Forms may be utilized by the writ petitioners with the undertaking that if they are unsuccessful, they will deposit forthwith the balance of tax benefit which the writ petitioners otherwise have derived by use of such form "C" declaration. The writ petitions including the writ petition filed by the present writ petitioner were allowed by common order dated 28.08.2019 and the circular issued by the State of Jharkhand was quashed. Noting the interim order which was passed when the writ petitions were admitted, it was made clear that the provisional credit notes given to the writ petitioners shall be given effect to or in any case in which the provisional credit notes have not been given the required refund shall always be given to the writ petitioners and if the respective oil companies have made deposit to the state exchequer, they also be entitled to claim the refund thereof. IOCL filed review application before the High Court of Jharkhand on the ground that they could not claim any refund of the extra amount of CST already deposited by them to the state exchequer in the State of West Bengal and they cannot be made liable to refund the amount to the writ petitioners. By order dated 17.10.2020, the review application was dismissed with an observation/direction that if the

refund of the CST deposited to the state exchequer of the State of West Bengal is refused by the State authorities of West Bengal, it is open to the writ petitioners or even to the review petitioners to approach the appropriate forum for the required relief. As pointed out earlier in ***Capro Power Limited Versus State of Haryana*** [80]**,** the assessee similarly placed to that of the writ petitioner before us challenged the orders of the State of Haryana refusing to issue form C declaration in respect of natural gas purchased by them in the course of interstate trade or commerce and used by it for generation of electricity. The said writ petition was allowed holding that the state of Haryana was liable to issue Form "C" declaration in respect of natural gas purchased by the petitioners therein from the oil companies in the State of Gujarat and used in the generation or distribution of electricity at its power plant in Haryana. Further it was observed that in the event the petitioners therein had to pay oil companies any amount on account of the wrongful refusal of Form "C" declaration, the writ petitioners therein shall be entitled to refund and/or adjustment of the same from the concerned authorities, who collected the excess tax through oil companies or otherwise. The special leave petition filed against the said decision in SLP C No. 20572 of 2018 was dismissed by order dated 13.08.2018.The decision in the case of the writ petitioner before us in the case filed before the High Court of Jharkhand reported in ***2019 SCC Online Jharkhand 1255*** was approved by the Hon'ble Supreme Court in its decision dated 24.03.2021. In an appeal arising out of the order passed by the High Court of Madras in the case of the ***Commissioner of Commercial Taxes and Another Versus***

[80] (2018) VIL 154 P&H

***Ramco Cements Limited*** dated 24.03.2021, the Hon'ble Supreme Court while dismissing the special leave petition by order dated 24.03.2021 observed that nine High Courts have taken the same view and once such decision rendered by the High Court of Rajasthan was affirmed by the Hon'ble Supreme Court by dismissal of special leave petition vide order dated 03.02.2020 and considering the consistent view of nine High Courts including the dismissal of the special leave petition by the different benches of the Hon'ble Supreme Court and being satisfied about the exposition on the matters in issue by the High Court of Madras that being a possible view, the Hon'ble Supreme Court declined to interfere with the same. Further the Hon'ble Supreme Court noted that after the decision of the Punjab and Haryana High Court, the Union of India has issued memorandum dated 01.11.2018 directing all the States and Union Territories to follow the decision taken by the High Court of Punjab and Haryana Court in ***Capro Power Limited***. Thus, the decision rendered in ***Capro Power Limited***, ***Usha Martin Limited***, and ***Tata Steel Limited*** have all attained finality. The circular issued by the Central Government dated 01.11.2018 is binding on the state Government since the State Government is acting as an agent of the Central Government for recovery of Central Sales Tax. Notably the State of West Bengal understood this legal position in a correct manner and even much earlier by circular dated 07.08.2018 directed the continuance of issuance of Form "C" declaration as was done prior to 01.07.2017 though the other State Governments declined to issue Form "C" declaration on or after 01.07.2017. Therefore, it is rather surprising to note as to the contrary plea being taken before this Court by the State of West Bengal which is

diametrically opposite to the stand taken by them in their circular dated 07.08.2018 and as to how understood the legal position. As mentioned above the circular issued by the Central Government dated 01.11.2018 directs the State of West Bengal to follow the decision in ***Capro Power***. The state Government being as an agent of the Central government for levy and collection of Central Sales Tax is bound by the circular. The State of West Bengal did not question the circular issued by the Central Government dated 01.11.2018 in such factual scenario it is specious plea raised by the State of West Bengal before this Court stating that the circular would not bind the State Government and at best the circular is only understanding of the decision of the Court. The State of West Bengal cannot be heard to take such a stand because the decision which was directed to be followed in the circular was upheld by the Hon'ble Supreme Court and has become a binding legal precedent. The delegatee cannot over step or supersede the delegator and this being an elementary principle, the State of West Bengal cannot and could not wriggled out of their obligation in following the decision and continuing to accept the Form "C" declaration submitted by the selling dealers. After the legal issue had settled down and the state of Jharkhand issued Form "C" declaration to the writ petitioners who in turn submitted the same to the IOCL, the selling dealer, who in turn have filed the same before their assessing officer when time came to consider the Form "C" declaration and extend the concessional rate of tax, a road block has been created by the appellants and the state presumably with a view to continue retaining the excess tax collected by raising certain unsustainable grounds and non-suiting IOCL and the writ petitioners on hyper technical

and untenable grounds. That apart yet another hyper technical stand has been taken before us by stating that the circular dated 01.11.2018 issued by the Central Government pertains to Form "C" declaration only and there is no direction to refund tax to the purchasers This is yet another specious plea. If direction has been issued to issue Form "C" declaration, consequences which flow thereafter are to be sequential. None gains by holding in his hands a Form "C" declaration without realizing the fruits of such declaration. The purchasing dealer namely the writ petitioners have borne the burden of tax, in the purchasing state Form "C" declaration were not issued on account of the stand taken by State of Jharkhand which stand was held to be unsustainable and direction was issued to issue Form "C" declarations. It is only thereafter such declaration forms were issued which were in turn submitted by the writ petitioner to IOCL, the selling dealer. By the time IOCL received the Form "C" declaration, the time for filing the revised return had already expired. During the course of assessment proceedings, the IOCL had produced Form "C" declaration. Therefore nothing prevented the assessing officer to scrutinize those forms and if there is no defect in the same and it complies with the provisions of the Rule 12, the necessary consequence would be to extend the benefit of concessional rate of tax. Having been fully aware that the Form "C" declaration could be accepted at any stage of the assessment proceedings including the appellate stage and revisional stage by sheer dint of ingenuity the appellants have attempted to retain the excess tax collected by taking a stand that the Form "C" declarations cannot be accepted unless and until the revised return was filed by IOCL which to their knowledge was

impossible of being performed. As pointed out earlier, no person can be left without a remedy and none can be compelled to do the impossible. Therefore, the stand taken by the appellant and the State of West Bengal is liable to be outrightly rejected.

84. Learned Advocate General had elaborately made submission with regard to the *locus standi* of the appellant to file the writ petition. The contentions advanced by the learned Advocate General have been set out by us in the preceding paragraphs. It is not in dispute that the selling dealer IOCL has passed on the tax burden to the purchasing dealer, the writ petitioner. The writ petitioners have specifically averred in the writ petition that they have not passed on the tax burden. As rightly pointed out by Mr. Gulati, the appellants have not specifically denied or disputed such an averment in their affidavit in opposition. That apart in the present appeal writ petitioner has filed an affidavit of their chartered accountant affirming that the tax burden has not been passed on by the writ petitioner to their customers. Therefore, the appellant and the state cannot raise any contention in this regard nor attempt to plead the theory unjust enrichment qua the writ petitioners.

85. In ***India Council for Enviro-Legal Action,*** the concept of unjust enrichment was discussed. It was pointed out that unjust enrichment has been defined as benefit obtained from another, not intended as a gift and not legally justifiable for which the beneficiary must make restitution or

recompense. Further by referring to the *Black's Law Dictionary 8th Edition*, *(Bryan A. Garner)* it was stated that the claim for unjust enrichment arises where there has been an unjust retention of a benefit to the loss of another or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. Considering the facts of the present case, we can safely hold that there is nothing brought on record by the appellants to hold that the writ petitioners have unjustly retained a benefit to the loss of another nor they have retained money of another against the fundamental principles of justice or equity and good conscience. Therefore, such a plea of unjust enrichment can never be raised against the writ petitioners. In more or less identical circumstances, ***M/s. ASI Industries Limited*** a writ petition was filed before the High Court of Punjab and Haryana challenging the order passed by the taxing authority rejecting the claim for refund of excess tax. The said writ petitioner was engaged in mining of kota stone in the State of Rajasthan and duly registered as a dealer under the CST Act. For the purpose of operating the earth moving equipment and for operating generation sets they purchased HSD from IOCL located in the State of Haryana. Prior to introduction of the goods and service tax, the authorities of state of Rajasthan issued form "C" declaration to the said writ petitioner enabling it to purchase HSD at concessional rate of tax. For the sales till 01.07.2017 "C" Forms were issued by the State of Rajasthan and goods were being purchased at the concessional rate. On 01.07.2017, the CGST Act, 2017 was enacted and the petitioner therein had to switch over its registration as dealer under the CGST Act. It is thereafter the State of Rajasthan refused to issue Form "C" declarations for purchase

of HSD at concessional rate despite the fact the commodity was governed by the respective state value added tax laws. In the absence of Form "C" the writ petitioner there in had to purchase HSD after paying higher rate of tax during the period October 2017 to March 2018. The petitioner filed a writ petition before the Rajasthan High Court seeking refund of the said amount of excess tax paid. The writ petition was allowed. Aggrieved by the same, the state preferred the appeal before the Division Bench which was dismissed and the said decision was upheld by the Hon'ble Supreme Court. Subsequently Form "C" declarations were issued by the State of Rajasthan to the petitioner therein. IOCL informed the petitioner therein that they have deposited the tax with the Haryana Sales Tax Department and they should approach the concerned department for refund of the tax paid by the petitioner therein. Pursuant there to, they approached the authorities in Haryana claiming refund which came to be rejected on the ground that excess tax can be refunded only to those to whom it was charged as per the provisions of the Haryana Value Added Tax Act, 2003. Challenging the said order, the writ petition was filed. The writ petition was allowed and refund was directed to be granted to the petitioner, purchasing dealer. The operative portion of the judgment is as follows:-

- *It is not disputed that the Petitioner/Company has furnished proof of bearing the burden of the excess tax to the respondent authorities. The stand taken by the respondent authorities while rejecting the representation of the Petitioner/Company is that the excess tax can be refunded only to those from whom it was charged as per the Section 20(1) and (7) of HVAT Act. A similar controversy came up for consideration before this Court in the case of Capro Power Limited (supra) as also before Gujarat High Court in J.K. Cement's case (supra), wherein a number of judgments of the*

*Hon'ble Supreme Court have been discussed. The relevant observations recorded in J.K. Cement's case (supra) read as under:-*

> *"19. In the opinion of this Court, in the light of the clear directions issued by the Rajasthan High Court in the judgment and order referred to hereinabove, which the respondent authorities are bound to comply with, upon the petitioners making applications for refund along with the requisite documents, the respondents were duty bound to process such claim within a period of twelve weeks from the date of such application. The stand adopted by the respondents that the refund can be made to only to Reliance Industries Limited flies in the face of the order passed by the Rajasthan High Court as well as the above-referred decisions on which reliance has been placed by the learned advocate for the petitioners and is nothing but a purely hyper technical stand adopted by them. Once Reliance Industries Limited has, in clear terms, written to the authorities that various buyers who have purchased HSD in the course of inter-state trade for use in mining activities will be approaching their office for refund of the differential tax amount and has enclosed therewith Customer-wise details of inter-state sales made to buyers in Rajasthan at full rate, it is evident that Reliance Industries Limited is not disputing the fact that it is the petitioners who are entitled to claim the refund. Under the circumstance, the respondent authorities are not justified in not processing the refund claims of the petitioners.*
>
> *20. In case of the petitioners, it is an admitted position that the HSD has been purchased by them from Reliance Industries Limited in the course of inter-state trade for use in mining activities and they are, therefore the ultimate consumers thereof and hence, the question of passing on the tax burden to anyone would not arise. Consequently, the question unjust enrichment would also not arise."*

- *From the reading of the above-said judgment, it can be safely concluded that the HSD has been purchased by the*

*Petitioner/Company from Indian Oil Corporation in the course of inter-State trade for use in mining activities and therefore, the question of passing of the tax burden to anyone would not arise and the respondent authorities are not justified in not processing the refund claims of the Petitioner/Company.*

- *In view of the above-said discussions, the present writ petition is allowed. The respondents are directed to process the refund claim of the petitioner and grant refund of the tax amount collected from the petitioner an deposited by the seller in accordance with law within a period of four (4) weeks from the date of receipt of certified copy of this judgment. However, it is made clear that once the refund claim of the petitioner is processed, Indian Oil Corporation would not be entitled to claim any such refund.*

86. The Learned Advocate General referred to the decision in ***Tata Iron and Steel Company Limited*** for the proposition that the liability to pay tax is on the seller, consequently, the question of seeking for refund of tax by the writ petitioner, purchasing dealer does not arise. Referring to paragraph 17 of the said decision, wherein the argument that the sales tax is an indirect tax on the consumer; the idea is that the seller will passes it on to the purchaser and collect it from them. The seller collects the sales tax from the purchaser on the occasion of the sale and once the time passes, the seller loses the chance of realizing it from the purchaser and if it cannot be realized from the purchaser, it cannot be called sales tax. This argument made by the Attorney General before the Hon'ble Supreme Court was rejected and it was held that under the Bihar Sales Tax Act, 1947 the primary liability to pay the sales tax so far as the state is concerned is on the seller. Before the amendment to the said 1947 Act, the seller had no authority to collect the sales tax as such from the purchaser. After the amendment, the Act permitted the seller who was a registered dealer to

collect the sales tax as a tax from the purchaser and it does not do away with the primary liability of the seller to pay the sales tax. Further it was pointed out that the registered dealer need not, if he so pleases or chooses to collect the tax from the purchaser and was sometimes by the reason of competition with other registered dealers, he may find it profitable to sell his goods and to retain its old customers even at the sacrifice of the sales tax. It was further submitted that in the said decision the Hon'ble Supreme Court pointed out that the buyer is under no liability to pay sales tax in addition to the agreed price unless the contract specifically provide otherwise. Reliance was placed on the decision of the ***George Oakes (Private) Limited*** wherein it was held that when the seller passes on the tax and the buyer agrees to pay the sales tax in addition to the price, the tax is really part of the entire consideration and the distinction between the two amongst taxes and price loses all significance from the point of view of legislative competence. The said decision was also pressed into service to support the contention that the seller is not an agent of the state for collecting the tax. For the same proposition, reliance was placed on the decision in ***Central Wines*** and ***Mahalaxmi Cotton Ginning Pressing and Oil Industries***. After referring to the above decisions, the learned Advocate General submitted that the Section 6 of the CST Act makes only the seller liable to pay tax and there is no liability on the buyer. Section 8 provides for concessional rate of tax to be given only to the seller and there is no right recognized in favour of the buyer and Section 9 provides for levy and collection of tax only from the seller. Section 60 of the WBST Act and Section 62 of WBVAT Act provide for refund of excess tax only to be paid to the dealer who was paid such excess

tax under the Act namely the selling dealer and there is no right of the purchasing dealer recognized by the statute to claim refund.

87. Thus, we are required to examine as to whether the decisions which was referred to by the learned Advocate General more particularly the decision in ***George Oakes*** and ***Central Wines*** could be applied to the facts and circumstances of the case on hand. ***George Oakes (Private) Limited*** where dealers in motor cars, spare parts and accessories, for the years 1951-1952 and 1952-1953, they submitted their return and claimed exemption from tax with regard to the certain amount realized on transactions of sales which the appellant therein contended as interstate sales and hence exempt from tax under Article 286 of the Constitution as it stood at the relevant time. The assessing officer not only rejected the claim for exemption but added to the turn over certain amounts which the appellant had collected by way of tax. Aggrieved by such order, appeals were preferred before the First Appellate Authority which was dismissed and the matter was taken to the Sales Tax Appellate Tribunal. By the said time, the Madras Legislature had passed The Madras General Sales (Definition of Turnover and Validation of Assessments) Act, 1954. The Constitutional validity of the said Act was also put to challenge. The tribunal negatived the claim of the appellant therein arising out of the contention that some of the sales transactions were interstate sales and therefore exempt from tax. With regard to the Constitutional validity of the Act, the Tribunal declined to go into the same. The Revision Petitions filed to the High Court against the said order of the tribunal were dismissed in. Aggrieved by the same, appeals were

preferred before the Hon'ble Supreme Court. In Paragraph 12 of the decision, the Hon'ble Supreme Court while rejecting the argument with regard to the validity of the statute observed that either the Principle Act or the impugned Act (Madras Act 17 of 1954) proceeds on any immutable distinction between sale price and tax as contended by the appellant. It was further pointed out that the Principle Act does not contain any separate definition of sale price and after referring to the definition of sale and turn over, it was held that there is nothing in those provisions which would indicate that when the dealer collects any amount by way of tax that cannot be part of the sale price and so far as the purchasing dealer is concerned, he pays for the goods what is sellers demand namely price even though it may include tax and therefore there is no reason why the whole amount paid to the seller by the purchaser should not be treated as the consideration for the sale and included in the turn over. Further the Hon'ble Supreme Court pointed out that when the seller passes on the tax and the buyer agrees to pay sales tax in addition to the price, the tax is really part of the entire consideration and the distinction between the two amounts tax and price loses all significance. Firstly, the decision cannot be applied to the facts of the case on hand as in the said decision, the Hon'ble Supreme Court was considering the constitutional validity of statute which did not contain a definition for "sale price". Secondly, in paragraph 14, the observation made by the Hon'ble Supreme Court that distinction between the two amounts, tax and price loses significance is from the point of view of legislative competence. Therefore, the decision in ***George Oakes*** cannot be made applicable to the case on hand. In ***Central Wines***, the Court was examining

the question whether the amount collected by the seller from the buyer which comprises of two components the actual sale price and the sales tax is a part of turnover and comes within the expression "any other sum charged by the dealer whatever be the description, paid or object thereon" occurring in Section 2(s) of the Andhra Pradesh General Sales Tax Act, 1957. While examining the provisions of the said Act, it was held that the dealer under the said Act who sells the goods does not act as agent of the state in collecting sales tax from the person to whom he sells the goods because the act does not cast any obligation on the purchaser of the goods to pay any tax and therefore what is collected by the vendor from the vendee by way of consideration for passing the property in the goods to the vendee is the sale price charged by whom and not taxed collected by whom from the purchaser. As rightly pointed out by Mr. Gulati in none of these decisions, the provisions of the Central Sales Tax Act was subject matter of consideration; the scheme of taxation under the CST Act is unique and the decisions referred by the learned Advocate General which were interpreting the state Acts could have no application to the case on hand. Notably Section 9 of the CST Act makes the position amply clear. Section 9 deals with levy and collection of tax and penalties. Sub section 1 of Section 9 states that the tax payable by any dealer under the CST Act on sale for goods effected by him in the course of interstate trade or commerce, whether such sales fall within clause (a) and clause (b) of Section 3 shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of the sub section 2 in the state from which the movement of goods commenced. A closer examination

of certain other provisions of the CST Act would also be beneficial. Section 2(j) defines "turnover" used in relation to any dealer liable to tax under the CST Act to mean the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of interstate trade or commerce made during any prescribed period and determined in accordance with the provisions of the CST Act and the rules made thereunder. In terms of the said definition what is important is not only the sale price received and receivable by the dealer, but determined in accordance with the provisions of the CST Act. We have seen Section 9 of the Act which deals with rates of tax on sales in the course of inter-state trade or commerce. Section 8A deals with determination of turnover. Therefore, the determination as mentioned in Section 2(j) has to be in accordance with Section 8A of the CST Act. Sub-Section (1) of Section 8A states that in determining the turnover of a dealer for the purposes of the CST Act, the following deduction shall be made from the aggregate of the sale prices; namely :-

the amount arrived at by applying the following formula-

$$\frac{\text{rate of tax} * \text{aggregate of sale prices}}{100 + \text{rate of tax}}$$

88. The proviso states that no deduction on the basis of the above formula shall be made if the amount by way of tax collected by a registered dealer, in accordance with the provisions of the Act, has been otherwise deducted from the aggregate sale prices. Thus, the proviso prohibits a second deduction from being made. The scheme of the CST Act and in particular by a

conjoined reading of Section 2(j) with Sections 8 and 8A clearly shows that the tax received by the seller under the CST Act does not form part of the turnover. This is a very important and distinguishing feature in the scheme of the CST Act which would lead us to hold that the decision in ***George Oaks P. Ltd.*** and ***Central Wines*** can have no application to the facts of the case. The above aspect is further clear from a reading of Section 9A of the Act which deals with the collection of tax to be only by registered dealers. It states that no person who is not a registered dealer shall collect in respect of any sale by him of goods in the course of Inter-State Trade and Commerce any amount by way of tax under the CST Act and no registered dealer shall make any such collection except in accordance with the Act and the Rules made thereunder. If the dealer violates the said provision penalty is imposed under Section 10(f) of the Act. The purchasing dealer also is liable for penalty if there is violation as spelt out to Clauses (a) and (b) of Section 10 of the Act. Therefore, the scheme of the Act clearly shows that the tax burden is being passed on by the selling dealer to the purchasing dealer and if that be the scheme then it goes without saying that the selling dealer is an agent of the State for collection of tax. The Hon'ble Supreme Court in ***Anand Swarup Mahesh Kumar*** held that where a dealer is authorized by law to pass on any tax payable by him on the transaction of sale to the purchaser, such tax does not form part of the consideration for the purposes of levy of tax on sales or purchasers but where there is no statutory provision authorizing the dealer to pass on the tax to the purchaser, such tax does not form part of the consideration when he includes it in the price and realizes the same from the purchaser. It was further pointed out that the essential

factor which distinguishes the former class of cases from the latter class is the existence of a statutory provision authorizing a dealer to recover the tax payable on the transaction of sale from the purchaser.

89. While on this issue it is of relevance to note the decisions of the West Bengal Taxation Tribunal in the case of ***Steel Authority of India Limited Versus ACCT, Durgapur and Others***.[81] The appellant therein in course of its business sold its different products to different purchasers, realized full taxes from them and deposited with the State Exchequer. Ultimately it was found that the appellant had paid excess tax. The excess amounts had been generated due to the fact that the appellant realized full amount of tax from its purchases at the time of sales as those purchases could not supply declarations forms in time. The appellant approached the tribunal seeking refund of the said excess amounts of tax. The state of West Bengal resisted the claim by contending that only the customers from whom the tax had been realized, could seek for refund. The Tribunal referred to the judgment of the Hon'ble Supreme Court in ***Sahakari Khand Udyog Limited Versus Commissioner of Central Excise and Customs reported in MANU/SC/0187/2005*** and held:-

> *9. It is thus clear from the judgment of the Supreme Court in Sahakari Khand Udyog Mandal Limited MANU/SC/0187/2005 that even if there is no restriction or prohibition in the statute, no private person can claim to retain or to enjoy an undue benefit. Doctrine of unjust enrichment is of universal application. It applies even to the state. State is also under an obligation to return any unlawfully or*

[81] MANU/ST/0016/2007

*unauthorized realized tax, penalty of interest to the person who has actually paid the same. But as the State holds and spends money lying with it for public interest every individual in the State is directly or indirectly benefited by State expenditure. Unjust enrichment of the State, if any, is in the ultimate analysis, for the benefit of the public at large. Private unjust enrichment serves only private interest. Unjust enrichment of private persons is to be avoided. Enrichment of the State, even if unjust, is preferred to unjust enrichment of private persons so long as the person who has paid the money does not claim or demand it. Once the person from whom tax has been actually collected comes forward, demands within prescribed time and proves that he/it has paid the tax found to be not payable, State is under an obligation to refund or adjust, as the case may be.*

*11. Although Section 37 is not strictly applicable those buyers from whom tax has been collected but have been ultimately found to be exempted from paying tax cannot be left without remedy. State cannot retain money not legally payable by a person as same will amount to realization of tax without authority of law and State is under an obligation to refund/ return such money to the person who has actually paid the amount if such person demands refund. So long as the realized tax does not become unlawful realization and refundable no occasion to apply for refund arises. In case of buyers who had to pay tax to the seller as they could not submit the declaration forms or did not get the eligibility certificate at the time of purchase, taxes cannot be said to be unduly realized until necessary declaration forms are obtained and cause of action for applying for fund does not arise until required declaration forms are made available. In such situations the buyers may approach the Commissioner with request for refund within the prescribed time, if any commencing from the date of obtaining declaration forms. If approached the Commissioner himself or his delegate should consider the claim and take appropriate steps for refund in accordance with the prescribed procedure. A seven judge Bench of the Supreme Court in R.S.*

*Joshi, Sales Tax Officer, Gujarat Versus Ajit Mills Limited [1977] 40 STC 497, expected " a sensitive Government not to bluff but to hand back" and directed that "State shall disgorge the sums by some easy process back to the buyers helps the dealers against claims from the former".*

*18. According to us, under Section 60 of the 1994 Act, the Commissioner or the appropriate assessing authority is under a legal obligation to refund the excess amount of tax in the manner indicated therein to the dealer or to the buyer/ customer of the dealer, as the case may be, and doctrine of unjust enrichment is applicable in appropriate cases even for refund under Section 60 of the 1944 Act. It is for the appropriate assessing authority to decide whether doctrine of unjust enrichment is to be applied in a particular case. Thus before directing refund in the manner indicated in Section 60 of the 1994 Act the assessing authorities may follow the procedure and act in the manner indicated below so long as appropriate Rules are not framed:*

*(i) Before directing refund of the determined excess tax the assessing authorities will ascertain whether such excess tax has been paid by the assessee himself/ itself or the assessee has deposited such excess tax after realizing the same from customers/ buyers, shoo were at the time of realization, liable to pay such tax. If it is found that excess tax has been paid by the assessee itself out of its own fund, the concerned authority will pass appropriate order in accordance with Section 60 of the 1944 Act.*

*(ii) In cases where the assessing authority finds that excess tax or non-payable tax has been realized from buyers or customers, he will direct the assessee to submit a statement disclosing particulars of the buyers/ customers from whom such tax has been realized but who, because of subsequent developments, ceased to be liable to pay such tax, including their*

*registration numbers, amounts realized from them and to produce documents in support of the statement.*

*(iii) In cases where the assessee has realized the tax amount from buyers/ purchasers the assessing authority will mention in the assessment order the names of such buyers/ purchasers who are entitled to get actual refund if necessary particulars are made available.*

*(iv) The assessing authority will direct the assessee to communicate the said order to the buyers/ customers found to be entitled to get refund.*

*(v) Whatever possible, the assessing authority will also communicate such assessment order to the buyers/ customers found to be entitled to get refund.*

*(vi) If the assessee can satisfy the assessing authority that he has already paid back the amount realized from the buyers/ customers, the assessing authority will record such finding and refund to or adjust such excess amount in favour of the assessee.*

*(vii) If the assessee has issued credit notes in favour of any buyer/ customer from whom taxes has been realized and such buyer/ customer submits a written declaration that he has received such credit note and he has no objection to refund of the amount to the assessee, the assessing authority will refund such excess amount in favour of the assessee in the manner indicated in Section 60 of the 1994 Act.*

*(viii) Upon receipt of the copy of the assessment order the buyers/ customers who has actually paid the tax may apply before the Commissioner of Commercial Taxes for refund with supporting materials and if such application is made, the*

> *Commissioner or an officer duly authorised by him, after being satisfied that such applicant is entitled to get the refund under the assessment order, will refund the amount refundable to such applicants.*

90. This decision would fully support our conclusion in holding that the writ petition is entitled to refund of the excess tax collected and deposited with the State Exchequer.

91. It would be beneficial to refer to the commentary on Central Sales Tax Act, 1956, by K. Chaturvedi's, Tenth Edition 2012 on the question of inclusion of sales tax component in the sale price and in the turnover. The commentary takes note of various decisions of the Hon'ble Supreme Court and English decisions and in particular the decision of the Full Bench of the Andhra Pradesh High Court in Government of Andhra Versus East India Commercial Company Limited, ((1957) 8 STC 114 (APFB) and elucidates the concept in the following manner:

> *Broadly speaking, so far as the question of inclusion of sales tax component in the 'sale-price' and for that matter in the 'turnover', is concerned the sales tax statutes may be divided as under:-*
>
> *(1) Where the statute specifically contains provisions for the inclusion of the amount so collected in the sale price or the turnover, as the case maybe. Such instances would no present with any difficulty.*
>
> *(2) Where there is provision in statute enabling the seller to collect tax and to pass the same onto the Government, the seller acts as if he were acting as an*

*agent of the Government. The amount so collected would not form part of sale price or turnover.*

*(3) Where there is provision in the Sales Tax Statute, permitting a seller to pass on the sales tax to the purchases, the amount collected as sales tax would not form part of the sale price or the turnover.*

*(4) Where the sales tax statute is silent on the point, the amount so collected would form part of the sale price or the turnover.*

*The matter was elaborate considered by the Andhra Pradesh High Court. After reviewing many a cases on the topic, both foreign as well as Indian, both of Supreme Court and other High Courts, the said Andhra Pradesh High Court observed as below:-*

*"What is deductible from these decisions and in fact uniformly laid down is that the burden of paying sales tax is on the "dealer". If any tax is levied by a particular enactment on the purchaser and if such tax is collected by the dealer at the time of sale specifically showing that he has paid it as tax, then the dealer, in such a case, collects it not as a part of the price for the sale of the goods but collects it as tax as an agent of the Government. In such an event, the tax so collected, not being the consideration for the sale of goods, is not includible in the turnover, much less is it includible in the taxable turnover. Also in a case where a particular enactment expressly authorizes the dealer to pass on the tax to the purchaser and in fact it is passed on at the time of sale to the purchaser, the amount of tax so collected by the dealer cannot be treated as part of the turnover. But where the particular enactment is silent and the seller collects a certain amount for the sale of the goods, even if he specifies part of that amount in the bill to be sales tax and the rest of the amount to be the price of the goods the entire amount so collected from the purchaser is paid by the purchaser as price for the purchase of the goods. When the seller is not expressly empowered by law to collect tax under the provisions of the Act from the purchaser, the amount so paid, forms part of the consideration for the purchase of the goods.*

***Deduction for sales tax.***- *When there was no specific provision in the Act or the rules made thereunder for the exclusion of sales tax in the computation of sale-price and turnover, sales tax was to be included in such computation. In fact, when the Central Sales Tax (Registration and Turnover) Rules, 1957, came into force, rule 11 did not contain any provision for exclusion of the amount of sales tax collected by the selling dealer. By Notification S.R.O. No. 3613, dated 6th November, 1957, a formula for deduction of sales tax was first introduced in rule 11(2) whereby a dealer could deduct from his receipts on account of the sale-consideration an amount equivalent which works out to the*

$$\frac{\text{rate of tax} * \text{aggregate of the sale prices}}{\text{100 plus rate of tax}}$$

*amount of sales tax. For example, if goods are sold for Rs. 2,000 and sales tax at the rate of 10 per cent. amounting to Rs. 200 is charged thereon, the formula provides for a deduction, out of the total sale-consideration of Rs. 2,200 of*

$$\text{Rs. } \frac{10*2200}{100+10} = \text{Rs. } \frac{22000}{110} = \text{Rs. } 200$$

*By Notification No. G.S.R. 896, dated 23rd September, 1958, rule 11(2) was substituted and this particular deduction was omitted in such substitution. Rule 11(2) was again substituted by Notification No. G.S.R. 770, dated 2nd June, 1961, and the provision for exclusion of tax collected again came in on the basis of the same formula. If, however, sales tax was separately charged in the relative bill, the amount so charged by way of sales tax could itself be deducted without the application of the formula.*

*Later by Section 5 of the Central Sales Tax (Amendment) Act, 1969, Section 8A was introduced, with retrospective effect, in the principal Act providing the same formula for effective deduction of the tax-element from the sale-price for the purpose of avoiding tax on tax. As a result, rule 11(2) was omitted by Notification No. G.S.R. 1362, dated 9th June, 1969.*

92. The above exposition clearly supports the argument of Mr. Gulati. The decision in Giridharlal Parasmal referred to by Mr. Khan in no uncertain terms holds that the duty of the assessing officer is not merely to impose tax that is lawfully exigible but also to give to the assessees the benefit of any reduction or exemption that may become due to them upon facts actually found to be true by the assessing authorities, whether or not the assesses out of ignorance or by mistake make a claim thereto. Further when the mistake is so obvious and the matter is taken on appeal, it is the duty of the appellate authority to correct the mistakes.

93. It is matter of regret to note that in respect of the period 2018-19 the assessing officer by order dated 29.06.2021 rejected the Form "C" declarations on the similar grounds as done for the previous period, the appeal filed by the IOCL was dismissed on the ground that this appeal is pending before this Court. To say the least the approach of the appellate authority in rejecting the appeal by order dated 24.03.2022 is perverse. The appellate authority has abdicated his duties as an appellate forum. Presumably he was of the opinion that he is the recovery agent of the state. The least that he could have done is to keep the appeal pending till we decide the matter. The said officer be sensitized as to the independent role of an appellate authority. In any event the appeals which are pending before the appellate authority/Revisional Board can no longer be proceeded in view of our above conclusion and the same are to be allowed in terms of this judgment and order. The appellate authority/Revisional Board are directed to allow the appeals/revision in terms of this judgment and order.

94. The contention raised by the writ petitioner that they are entitled to refund in terms of Section 37 of the WBST Act, 1994 was accepted by the learned Single Bench. The learned Advocate General would submit that the said provision is not applicable to the facts of the case as it does not relate to excess tax paid to the authority. It is argued that Section 37 realizes the excess amount collected by the selling dealer from the purchaser in contravention of the provisions of the Act and not deposited to the authority as tax and only in those situations the selling dealer is obligated to deposit the excess amount collected to the RBI or the Government Treasury. It is further submitted that Section 37 does not relate to tax paid to the authorities by the selling dealer for which the selling dealer is entitled to claim refund. Therefore, it is contended that the learned Single Bench's reliance on Section 37(3) to recognize an independent right to refund of tax by the purchaser is wholly misplaced. Section 37 of the WBST Act, 1994 is as follows:

> *(1) No dealer who is not liable to pay tax under this Act shall collect, in respect of any sale of goods by him, any amount of tax under this Act, and no dealer, who is liable to pay tax under this Act, shall make any such collection except in accordance with the provisions of this Act or in excess of the amount of tax payable by him under this Act.*
>
> *Provided that the provisions of this sub-section shall not apply to any dealer who avails of the benefit of exemption from payment o tax under section 39 or the benefit o remission of tax under Section 41, Section 42 or Section 43.*
>
> *(2) If any dealer contravenes the provisions of sub-section (1), he shall, notwithstanding anything*

*contained elsewhere in this Act, deposit the amount collected by way of tax or the amount collected by way of tax in excess of the amount payable under this Act, as the case may be, into a Government Treasury or the Reserve Bank of India within thirty days from the date of such collection and intimate the Commissioner of such deposit along with a receipt from such Treasury or Bank showing payment of such amount.*

*(3) The Commissioner shall, on application made by the buyer in respect of sales of goods to him referred to in sub-section (1) and on such terms and conditions as he may deem fit and proper, refund to such buyer the tax or the excess tax, as the case may be, collected from such buyer and deposited by the dealer in the manner referred to in sub-section (2):*
*Provided…….*

95. Sub-Section (1) of Section 37 recognizes two categories of dealers the first of which are the dealers who are not liable to pay tax and the second category are dealers who are liable to pay tax. The first category shall not collect tax in respect of any sale of goods by him under the provision of the Act and in the second category, the collection should be in accordance with the provisions of the Act and not in excess of the amount of tax payable by him under the Act. In terms of Sub-Section (2), if the dealer contravenes the provisions of Sub-section (1), he shall, notwithstanding anything, contained elsewhere in the act, deposit the amount collected by way of tax or the amount collected by way of tax in excess of the amount payable under the Act as the case may be into a Government Treasury or the Reserve Bank of India within a time frame. Sub-Section (3) empowers the Commissioner, on

an application made by the buyer in respect of sales of goods to him referred to in Sub-section (1) of Section 37, refund to such buyer the tax or excess tax as the case may be collected from such buyer and deposited by the dealer in the manner referred to in Sub-section (2) of Section 37. Thus, while recognizing two categories of dealers, those who were not liable to pay tax under the Act and those who are liable to pay the tax under the Act, the provision makes it clear that if a dealer who is not liable to pay tax, collects any amount of tax under the Act, he shall deposit the same in accordance with Sub-section (2). Likewise, if a dealer who is liable to pay tax, collects by way of tax in excess of the amount payable under the Act, he shall also deposit the same in terms of Sub-section (2). Upon such deposit, when an application is made by the buyer from whom the tax or excess tax was collected by the seller and deposited or in terms of Sub-section (2) of Section 37 is entitled to refund to such buyer the tax or the excess tax as the case may be collected from such buyer and deposited by the dealer. Thus, if Form C declarations produced by a selling dealer are accepted, then it goes without saying that the tax which was recovered from the writ petitioner and deposited by IOCL to the State of West Bengal is a tax in excess of the amount payable as tax and if that be so Section 37 could be applied. While on this issue it is beneficial to refer to the decision of the Constitution Bench in ***R.S. Joshi***. The core of the dispute in the said case was whether it was permissible for the State Legislature to enact a law to the effect that sums collected by the dealers by way of sales tax who are not exigible under the State law, but prohibited by it, shall be forfeited to the public exchequer punitively under Entry 54 read with Entry 64 of List 2 of the Constitution.

The Hon'ble Supreme Court was examining the Bombay Sales Tax Act, 1959 and in particular, Section 46 of the said Act which we find to be in para materia with Section 37(1) of the WBST Act, as also Section 46 of the said Act is para materia with Section 37(2) of the WBST Act, held as follows:

> *In a developing country, with the mass of the people illiterate and below the poverty line and most of the commodities concerned constitute their daily requirements, we see sufficient nexus between the power to tax and the incidental power to protect purchasers from being subjected to an unlawful burden. Social justice clauses, integrally connected with the taxing provisions, cannot be viewed as a mere device or wanting in incidentality. Nor are we impressed with the contention turning on the dealer being an agent (or not) of the State vis a vis swales-tax; and why should the State suspect when it obligates itself to return the moneys to the purchasers? We do not think it is more feasible for ordinary buyers to recover from the common run of dealers small sums than from Government. We expect a sensitive government not to bluff but to hand back. So, we largely disagree with Ashoka while we generally agree with Abdul Quader. We must mention that the question as to whether an amount which is illegally collected as sales-tax can be forfeited did not arise for consideration in Ashoka.*

96. The argument as was placed before us, contending that the seller was not an agent of the State of West Bengal, was also considered and rejected in the said decision. Furthermore, the decision in ***George Oaks*** which was also referred to was held to be not relevant while deciding the question of refund to the buyer. The decision in ***R.S. Joshi*** has been affirmed in

***Mafatlal Industries.*** After taking note of the decision in ***Mafatlal Industries*** and other decisions, it was held that the excess entertainment duty which was collected should be returned back to the buyers and Paragraph 31 of the judgment would be relevant which as follows:

> *In the absence of any express statutory provision, allowing the proprietors of the multiplex theatre to retain the benefit, it is difficult for us to arrive at such an inference. The State has power to impose tax. The State has a power to grant exemption or concession in respect of payment of tax. It has no power in terms of the provisions of the Constitution or otherwise to allow an assessee to collect the tax and retain the same. We will assume that to that effect the provisions are not very clear but the superior courts will not interpret the statute in such a way which will confer an unjust benefit to any of the parties i.e. either the taxpayer or tax collector or the State. The statute must be interpreted reasonably. It must be so interpreted so that it becomes workable. Interpretation of a statute must subserve a constitutional goal. A statute of this nature, in our considered opinion, cannot be interpreted in such a manner so as to enable an entrepreneur to get undue advantage to the effect that he would collect tax from the cinema-goers and appropriate the same. When a person collects tax illegally, he has to refund it to the taxpayers. If the taxpayers cannot be found, the court would either direct the same to be paid and/or appropriated by the State.*

97. The learned Advocate General referred to Section 6 of the CST Act and submitted that only a selling dealer is liable to pay tax under the said provision. Reference was also made to Section 60 of the WBST Act and Section 62 of the WBVAT Act and submitted that under those enactments as

well, it is only the selling dealer who has paid excess tax is entitled for refund. Reliance was placed on the decision in ***Saraf Trading Corporation*** and submitted that the Hon'ble Supreme Court has held that only a person entitled under law to claim the refund can do so. It is submitted that in the said case the Hon'ble Supreme Court was considering Section 44 of the Kerala General Sales Tax Act, 1963 which is similar to Section 60 of the WBST Act and it was held that the purchasing dealer would have no right to claim a refund when the statute allows the refund to be made only to the selling dealer and that the court will not take a proactive stand and grant refund to a purchasing dealer *de hors* the provision of the statute, even though the burden of tax may have been passed on by the selling dealer to the purchasing dealer. Further it is submitted that the learned Single Bench had referred to the decision of the Hon'ble Supreme Court in ***Indian Explosive Limited Versus Commissioner, Sales Tax U.P and Others*** [82] to hold that the writ petitioner has locus standi.It is submitted that the said conclusion is incorrect as in the said case the court did not consider the effect of a provision similar to Section 60 of the WBST Act and in the light of the decision in ***Saraf Trading Corporation***, the writ petitioner will have no locus to claim the refund. For the same proposition, reliance was placed on the decision in ***N Bala Baskar*** and in the case of ***Uttar Pradesh Road Transport Corporation Versus Commissioner of Central Excise and Service Tax and Another*** [83]**.** Further it is submitted that the concession which was made before learned Single Bench as to the locus of the writ

[82] (1978) 41 STC 315
[83] (2011) 15 SCC 451

petitioner would not be binding on the state or the court as the same is the concession in law and in any event the concession made by the Government Pleader is not binding on the state. For such proposition, the decision in the case of ***Employees' State Insurance Corporation Versus Union of India and Others*** [84] and the decision in ***Periyar and Pareekanni Rubber Limited Versus State of Kerala*** [85]**.**

98. To consider as to whether the decision in ***Saraf Trading Corporation*** would have application to the facts of the present case we have to first note as to whether the language of Section 44 of the Kerala General Sales Tax Act is similar to the provisions of the WBST Act. On a reading of the Section 44 of the Kerala General Sales Tax Act and Section 37(3) of the WBST Act, we find that the language of both the Sections are different, this aspect of the matter was dealt with by the learned Single Bench elaborately to which we fully agree. This position becomes clear question on a reading of paragraph 8, 9 21, 22 and 23 of the decision in ***Saraf Trading Corporation,*** after considering the provisions of the Kerala General Sales Tax, it was concluded that the court cannot overlook the mandate of the provisions of the Kerala General Sales Tax Act which clearly rules that it is only the dealer on whom the assessment has been made can claim for refund of tax and no one else. The learned Advocate General had also referred to Section 46A(2) of the Kerala General Sales Tax Act and submitted that the provisions is similar to Section 37(3) of the WBST Act. Mr. Gulati is

[84] (2022) SCC Online SC 70
[85] (1991) 4 SCC 195

right in his submission that if ***Saraf Trading Corporation*** the Hon'ble Supreme Court was only considering Section 44 of the Kerala General Sales Tax Act as to whether the appellants therein are entitled for refund of tax collected from them at the time of purchase of in view of the provision for refund as contained in Section 44 of the Kerala General Sales Tax Act. We find that the Hon'ble Supreme Court had no occasion to examine Section 46A of the Kerala General Sales Tax Act. Therefore, the said contention cannot be pressed into service by the state. Interestingly, in ***Corporation Bank,*** Section 44 of the Kerala General Sales Tax Act was considered and the Court directed refund of the excess tax collected to the purchaser. The decision in ***Corporation Bank*** was rendered on 19.11.2008 which decision was not placed for consideration before the Hon'ble Supreme Court in ***Saraf Trading Corporation*** which was decided on 13.01.2011.In any event the factual position in the case on hand is of paramount consideration. The litigation which commenced in the State of Jharkhand and the circular issued by the said State was challenged before the High Court of Jharkhand and the circular was quashed and the said decision had attained finality. The selling dealer, IOCL filed review application which was dismissed. Thereafter, Form "C" declarations have been issued. The said Form "C" declarations were submitted by the writ petitioner to IOCL who in turn have filed the same before their assessing officer. The State of West Bengal cannot contend that the decision rendered by the State of Jharkhand will not bind them as they are not parties to the said litigation. In our view, the State of West Bengal is neither proper nor necessary party to the litigation in the State of Jharkhand. The appropriate authority in the purchasing state is

competent authority to issue the Form "C' declarations. Once the Form "C" declaration is issued all that the selling dealer can examine is whether the products have been registered in the certificate issued to the purchasing dealer. It is not for the selling dealer to examine as to what use the products were put to by the purchasing dealer and once the statutory form satisfies the basic requirement, nothing further can be done by the selling dealer who has to submit the same to his assessing officer for claiming concessional rate of tax. No doubt, it is true that the assessing officer is entitled to verify the correctness of the Form "C" declaration. In the case on hand such an exercise appears to have been done and no defect has been pointed out by the assessing officer of IOCL as could be seen from the order of the assessing officer refusing to extend the benefit of concessional rate of tax. As mentioned above, the concessional rate of tax was denied not on account of any defect in the Form "C" declarations but on the specious plea that revised return has not been filed by the IOCL which we have held is unnecessary, not required to be done an act impossible of performance. That apart, the learned advocate appearing for the IOCL along with their written submission has produced a list showing that all the form "C" declarations have been verified by the State Tax Officer and found to be correct. In such circumstances, the writ petitioner has locus standi to approach the court for seeking refund having borne the burden of tax and therefore the contention advanced by the state in this regard does not merit acceptance. Having held so, the next aspect is the purported concession made by the Government Pleader with regard to the locus of the writ petitioner. We are fully satisfied that in law the writ petitioner had locus to maintain the claim for refund

and the same having not been acceded to by the State of West Bengal/appellants was entitled to file the writ petition before this Court. Therefore, in our view the observations made by the learned Single Bench recording the concession stated to have been made by the learned Government Pleader becomes superfluous, be eschewed and accordingly stand eschewed in its entirety.

99. Learned Advocate General contended that the decision in ***Ramco*** is of no application to the case on hand. It is his submission that there was no question of law decided by the Hon'ble Supreme Court and the order is simple dismissal of the special leave petition arising from an order passed by the High Court of Madras. It is submitted that at the highest decision in ***Ramco*** can be said to approve issuance of Form "C' declarations which were prevented by reason of the circulars of the Government and the decision cannot be said to be law decided for the case involving refusal of refund to the buyer. Equally the decisions of the High Courts at Punjab and Haryana, Rajasthan and Jharkhand which have been noted in the orders passed by the Hon'ble Supreme Court in ***Ramco*** also pertain only to issuance of Form "C' declaration and not regarding the issue of whom would be entitled to a refund under the CST Act. Further it is submitted that the decision of the Gujarat High Court dated 18.10.2019 is the only case where the matter had gone from the stage of issuance of Form "C' declaration to the stage of refund and the said decision was not under consideration in ***Ramco***. Further the question of applicability of Section 36 which is *para materia* with Section 60 of the WBST Act had been left open to the special leave

petition preferred from the decision of the Gujarat High Court. Further it is submitted that even if the decision of the Jharkhand High Court is accepted and the writ petitioner was to apply for refund such refund could be claimed by the writ petitioner from IOCL and not from the State of West Bengal.

100. On perusal of the decision of the Hon'ble Supreme Court in ***Ramco***, we find that the order is not a simple dismissal of the special leave petition but the Hon'ble Supreme Court has assigned reasons. The Hon'ble Supreme Court has pointed out that they are in agreement with the view taken by the Punjab and Haryana High Court in ***Capro Power Limited*** and also pointed out that the said decision has been upheld by the Hon'ble Supreme Court as Special Leave Petition (C) No. 20572 of 2018 was dismissed by order dated 13.08.2018. Furthermore, the Hon'ble Supreme Court also noted that the High Court of Jharkhand on the very same issue in the case of ***Tata Steel Limited*** has exhaustively answered all the points which were urged in the case of ***Ramco*** before the Hon'ble Supreme Court. Furthermore, the Hon'ble Supreme Court noted that 9 High Courts have taken the same view and even the decision of the High Court of Rajasthan has been affirmed by the Hon'ble Supreme Court as Special Leave Petition (C) No. 27529 of 2019 and connected cases were dismissed by order dated 03.02.2020. After nothing these decisions which were affirmed by the Hon'ble Supreme Court it was held that considering the consistent view of 9 High Courts, including dismissal of special leave petitions by different Benches of the Hon'ble Supreme Court and being satisfied about the exposition on the matters in issue by the High Court of Madras vide impugned judgment and order being

a possible view, the Hon'ble Supreme Court declined to interfere with the said order. Furthermore, the Hon'ble Supreme Court noted that after the decision in ***Capro Power Limited*** the Union of India has chosen to act upon the said decision by issuing office memorandum dated 01.11.2018 and directing all the States and Union Territory to follow the view taken by the Punjab and Haryana High Court in ***Capro Power Limited***. With these reasons the special leave petitions were dismissed. Therefore, it would be incorrect to state that the special leave petition was a simple dismissal. The reasons assigned by the Hon'ble Supreme Court will clearly show that the law on the subject has been fully settled. It would not be permissible for the State of West Bengal to contend that the decisions which was referred to in ***Ramco*** and the decision in ***Ramco*** cannot apply to the facts and circumstances of the case on hand because those decisions related only to the validity of the circular refusing to issue Form "C' declaration and those decisions did not consider as to who would be the entitled to maintain an application for refund of excess tax. In our opinion, this would be as incorrect way of interpreting the decision which has laid down the legal principle. The core issue itself was as to the entitlement for Form "C" declaration. The said issue having been settled and conclusively held that Form "C" declarations have to be issue and the same having been issued and found to be in order the plea raised by the State of West Bengal to deny refund to the writ petitioner is absolutely untenable. We have in the earlier paragraphs referred to several decisions of the Hon'ble Supreme Court which have held that the person who has borne the burden of tax is entitled

to maintain a claim for refund. Therefore, we are of the clear view that the applications for refund at the instance of writ petitioner were maintainable.

101. The learned Advocate General had contended that if refund to IOCL is allowed before IOCL gives effect to the provision credit notes the same would unjustly enrich IOCL and such refund would be contrary to the decision in ***Mafatlal***. Further it was contended that there is no admission by the state that any refund has to be provided to IOCL. Further, at the time assessment, IOCL was asked by way of email dated 18.06.2020 whether they have issued any credit notes to the purchaser or not and no reply was given by the IOCL. It is contended that merely because IOCL has stated that it would give effect to provisional credit notes after receiving refund from the state, does not create any obligation on the state. Having held that the writ petitioner who would be entitled to maintain an application for refund and seek for refund to be directly made to them the issue as to whether provisional credit notes were given effect to by IOCL or not has become purely academic. Therefore, nothing turns out of the said submission made on behalf of the state.

102. The learned Advocate General submitted that the finding of the learned Single Bench that withholding the excess tax would amount to unjust enrichment for the State of West Bengal cannot be sustained as Article 265 of the Constitution would not stand in the way if the refund of tax would unjustly benefit the assessee who has already passed on the

burden of such tax. Further it is submitted that there is no question of unjust enrichment as the lower rate of tax is only the concession granted by the state which cannot be claimed as a matter of right but strictly in terms of the conditions prescribed for claiming such concession. Further it is only IOCL who can ask for this concession and the writ petitioner cannot claim any right in this regard from the taxing authority.

103. Firstly, we need to mention that the lower rate of tax granted is under a Central Legislation and the State of West Bengal is only an agent of the Central Government to collect the correct rate of tax in accordance with the provisions of the CST Act. It is not disputed by the State of West Bengal that the conditions prescribed for claiming lower rate of tax have not been fulfilled by the writ petitioner. In such circumstances, the right to be assessed at lower rate of tax becomes a vested right and such vested right accrues in favour of the writ petitioner who has borne the burden of tax. Furthermore, the concept of unjust enrichment was dealt with by the High Court of Gujarat in ***J.K. Cements Limited*** wherein the stand taken by the State of Gujarat, similar to the stand taken before us by the State of West Bengal was repelled by pointing out that the selling dealer (Reliance Industries in the said case) cannot make an application for refund in as much as the such claim would be barred by the principles of unjust enrichment, and it was held that if the refund claim of the selling dealer is processed during the course of assessment, it may take years together and in the mean time, the purchasing dealer would be deprived of such amount and moreover while processing the refund claim during the course of

assessment of the selling dealer (Reliance Industries) the state may even adjust the refund amount against its dues. With these observations, the Court held that the stand of the State of Gujarat that Reliance Industries Limited (selling dealer) should file the refund claim and then the amount so refunded to the purchasing dealer is neither legally tenable nor is it practically workable. The special leave petition filed against the decision in ***J.K. Cements*** was dismissed by the Hon'ble Supreme Court on 10.02.2021. The decision in ***J.K. Cements*** was followed by the High Court of Punjab and Haryana in ***ASI Industries Limited*** and it was held that the HSD purchased by the ***ASI Industries*** from IOCL in the course of interstate trade for use in mining activities, the question of passing of tax burden to anyone would not arise and the authorities in the State of Haryana are not justified in not processing the refund claims of ***ASI Industries***, the purchasing dealer. As discussed above, there would be no question of unjust enrichment in the case of the writ petitioner as the concept of unjust enrichment would apply only if a tax is collected from the third party which is not the case on hand. On the contrary, if argument of the State of West Bengal is to be accepted then it would tantamount to the State retaining the excess tax collected without authority of law and it would fall foul of Article 265 of the Constitution.

104. The next aspect which was submitted by the learned Advocate General is that if this Court is to decide against the appellant, the State of West Bengal should be permitted to be adjust the refund amount from the amount due from IOCL in terms of Section 60 of the WBST Act. We are

unable to persuade ourselves to agree with the said submission. In fact, similar submission was repelled by the High Court of Gujarat in ***J.K. Cements Limited*** and we borrow the finding rendered by the Court in paragraph 18 of the judgment to reject the argument made on behalf of the State of West Bengal. That apart, we have held that the writ petitioner is entitled to maintain claim for refund and the contention raised on behalf of the State of West Bengal that refund can be claimed only by IOCL has been rejected. In such circumstances, the refund has to be directly made to the writ petitioner and the question of adjusting the same against the tax dues of IOCL would not arise. We are conscious of the fact that there has been long drawn litigation and the period in dispute is from 01.07.2017 to October 2018. There is no dispute for the period prior to 01.07.2017 or post October 2018. Therefore, this Court while exercising jurisdiction under Article 226 of the Constitution is empowered to grant such relief which will ensure finality, considering the facts and circumstances of the dispute before it. The Hon'ble Supreme Court in ***M Sudakar Versus V Manoharan and Others*** [86] held that the power to mould relief is always available to the court possessed with the power to issue prerogative writs. It was further held that in order to do complete justice, it can mould the relief, depending upon the facts and circumstances of the case. Further it was held that in the facts of the given case, the writ petitioner may not be entitled to the specific relief claimed by him but this itself will not preclude the writ court to grant such other relief which he is otherwise entitled. In the instant case, the order of assessment passed in the case of IOCL has been challenged by

[86] (2011) 1 SCC 484

the writ petitioner, in so far as it denies the benefit of concessional rate of tax by not accepting the Form "C" declarations, having held that the rejection of Form "C" declarations to be not sustainable, the consequences that should follow is to issue a writ of mandamus to direct the appellants and the State of West Bengal to refund the excess tax collected directly to the writ petitioner and this court exercising jurisdiction under Article 226 of the Constitution is fully empowered to issue such a direction.

105. The last aspect which needs to be considered is with regard to the payment of interest. The learned Single Bench in the impugned order has directed the appellant/State of West Bengal to refund amount to the writ petitioner with interest at the rate of 10% per annum. The learned Advocate General referred to Section 34 of the WBST Act and submitted that the said provisions deals with interest payable by the Commissioner in case of refund and interest is payable per month of delay starting from the first day of the month following the order of refund up to the month preceding the month in which refund is waived as per Section 60 by the statutory authority. It is submitted that interest on refund is to be strictly in terms of the statutory provisions and modification of the period of charging such interest in contravention to the provisions of the statute is not called for. Further it is submitted that the writ petitioner had placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Union of India Versus Tata Chemicals Limited*** [87] to contend that interest on refund is always available for the excess tax paid and enjoyed by the authorities. It is submitted that

[87] (2014) 6 SCC 335

the said decision has no application to the facts of the case since the Hon'ble Supreme Court was dealing with Section 244A of the Income Tax Act, 1961, the language of which is different from Section 34 of the WBST Act. While it may be true that the language of Section 244A of the Income Tax Act is quite different from that of Section 34 of the WBST Act, the appellant having erroneously rejected the Form "C" declaration, it goes without saying that retention of the excess tax paid after submission of the Form "C' declaration is unauthorized and unlawful. Therefore, the writ petitioner would be entitled to statutory interest as per the WBST Act, from the date on which the Form "C' declarations were refused to be accepted by the assessing authority of IOCL. We are not convinced to grant interest for the anterior period, i.e. the period commencing from the date of payment of the tax in full. This is so because the issue as to whether Form "C" declaration should be issued or not was subject matter of legal interpretation and attained finality only after the decision of the High Court of Jharkhand. Pursuant to the direction issued by the said court Form "C" declarations were issued by the authority of the State of Jharkhand which were in turn submitted by the writ petitioner to IOCL which were filed before the assessing officer during the course of assessment proceedings. Therefore, it would not be appropriate to grant interest for the period prior to which the assessing officer of IOCL rejected the Form "C" declaration as the legal position was uncertain during the anterior period and stood settled only after the decision of the High Court of Jharkhand. Therefore, the writ petitioner would be entitled to grant of statutory interest as per the WBST

Act, from the date on which the form "C" declaration were rejected by the assessing officer of IOCL.

106. In the result, the appeal is dismissed and the issues which were raised are answered in the following terms:-

**Issues:-**

**(1)** The writ petitioner/purchasing dealer has locus standi to maintain the claim for refund of the excess tax collected directly to them and the writ petition is maintainable.

**(2)** To be entitled to concessional rate of tax filing of Form "C" declaration is mandatory. However, the time limit prescribed for filing such declarations is directory and not mandatory and in the case on hand the assessing officer having accepted the Form "C" declarations and considered the same, it is deemed that the assessing officer of IOCL was satisfied that there was sufficient cause which prevented the dealer from filing Form "C" declaration within the time stipulated under the Act and the rules framed thereunder.

**(3)** Having held that the rejection of the Form "C" declarations was erroneous, unsustainable and illegal the assessment order dated 30.06.2020 to the said extent is set aside.

**(4)** The writ petitioner is entitled to the concession rate of tax as they have fulfilled the conditions in Section 8 of the Central Sales Tax Act, 1956 and the Form "C" declarations having been verified and found to be in order by the concerned authority of the State of West Bengal.

**(5)** For the reasons set out above, it is held that the writ petitioners are entitled to claim refund of tax directly from the State of West Bengal and they are not required to make the claim through the selling dealer, IOCL.

**(6)** Refund cannot be denied to the writ petitioners by the State of West Bengal disregarding the fact that excess tax was paid under compelling circumstances namely non-issuance of form "C" declarations.

**(7)** For the reasons set out above, it is held that the writ petitioner can claim refund directly from the appellants/State of West Bengal having borne the burden of tax which have been collected from the writ petitioner and deposited by IOCL with the Exchequer of the State of West Bengal.

**(8)** The State of West Bengal/ appellants are unjustified in refusing to refund the excess tax as it had been allowing concessional rate to the writ petitioners before and after the disputed period.

**(9)** The circular issued by the Union of India dated 01.11.2018 is binding on the appellants/State of West Bengal as they being the agent of the Central Government for levy and collection of Central Sales Tax and non-refunding of the excess tax collected is contrary to the instruction dated 01.11.2018.

107. In the light of the conclusion which we have arrived at, the order and directions issued by the learned Single Bench stands affirmed and the appellants/State of West Bengal is directed to effect the refund of the excess

tax collected directly to the writ petitioner within 45 days from the date of receipt of the server copy of this order together with interest at the statutory rate as stipulated under the WBST Act, from 01.07.2020 that is the day after the date on which the assessment order in the case of IOCL was passed that is 30.06.2020 till the date on which refund is effected. If there is any discrepancy in the date, it is clarified that interest shall be payable from the next day after the date of the assessment order till the date of payment.

**(T.S. SIVAGNANAM, J.)**

I Agree.

**(SUPRATIM BHATTACHARYA, J.)**

*(P.A.- PRAMITA/SACHIN)*