IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Mr. Justice Md. Nizamuddin

W.P. A No. 5306 of 2021
M/s. Tata Steel Ltd. & Anr
Vs
State of West Bengal & Ors.

With
WPA No. 5307 of 2021
M/s. Tata Steel Ltd. & Anr.
Vs
State of West Bengal & Ors.

With
WPA No. 5603 of 2021
Usha Martin Ltd. & Anr.
Vs
State of West Bengal & Ors.

With
WPA No. 5864 of 2021
Ambey Mining Pvt. Ltd. & Anr.
Vs
State of West Bengal& Ors.

With
WPA No. 5866 of 2021
Ambey Mining Pvt. Ltd. & Anr.
Vs
State of West Bengal& Ors.

With
WPA No. 5868 of 2021
Ambey Mining Pvt. Ltd. & Anr.
Vs
State of West Bengal & Ors.

With
WPA No. 6424 of 2021
BGR Mining and Infra Ltd. & Anr.
Vs
State of West Bengal & Ors.

With
WPA No. 6737 of 2021
BKB Transport Pvt. Ltd. & Anr.
Vs
State of West Bengal & Ors.

With
WPA No. 6740 of 2021
BKB Transport Pvt. Ltd. & Anr.
Vs
State of West Bengal & Ors.

<u>With</u>
<u>WPA No. 13174 of 2021</u>
<u>M/s. Tata Motors Ltd. & Anr.</u>
<u>Vs</u>
<u>State of West Bengal & Ors.</u>

<u>With</u>
<u>WPA No. 13175 of 2021</u>
<u>M/s. Tata Motors Ltd. & Anr.</u>
<u>Vs</u>
<u>State of West Bengal & Ors.</u>

For the Petitioners in WPA 5306 of 2021 & WPA 5307 of 2021 :- Mr. Kavin Gulati, Sr. Adv.
Mr. Mr. Sumit Gadodia, Adv.
Mr. Ajay Aggarwal, Adv.
Mr. Avra Mazumdar, Adv.
Mr. Ritesh Kr. Gupta, Adv.
Ms. Shilpi Saudil, Adv.
Ms. Riya Bhattacharjee, Adv.
Mr. Sumit Jha, Adv.
Mr. Tapan Bhanja, Adv.

For the Petitioners in WPA 5603 of 2021, WPA 5864 of 2021, WPA 5866 of 2021, WPA 5868 of 2021, WPA 6426 of 2021, WPA 6737 of 2021, WPA 6740 of 2021, WPA 13174 of 2021, WPA 13175 of 2021 :- Mr. Kavin Gulati, Sr. Adv.
Mr. Mr. Sumit Gadodia, Adv.
Mr. Ajay Aggarwal, Adv.
Mr. Avra Mazumdar, Adv.
Mr. Sudeshna Mazumder, Adv.
Mr. Ritesh Kr. Gupta, Adv.
Ms. Shilpi Saudil, Adv.
Ms. Riya Bhattacharjee, Adv.
Mr. Sumit Jha, Adv.
Mr. Tapan Bhanja, Adv.

For the Respondent No. 4 :- Mr. Jaweid Ahmed Khan, Adv.
Mr. Bhaskar Sengupta, Adv.
Mr. Talha Ahmed Khan, Adv.
Mr. Sourav Chunder, Adv.
Mr. Sourav Sengupta, Adv.

For the State :- Mr. A. Roy, Ld. GP
Mr. T.M. Siddiqui, Adv.
Mr. S. Mukherjee, Adv.
Mr. Debasish Ghosh, Adv.
Mr. N. Chatterjee, Adv.

Judgement On :- 06.12.2021

MD. NIZAMUDDIN, J.

Heard learned Advocates appearing for the parties.

All these Writ Petitions are heard together and disposed of by this common judgment in view of similarity of facts and questions of law involved in all these Writ Petitions as agreed by the Learned Counsel appearing for the parties. For the sake of convenience I will be dealing and discussing one of such Writ Petitions being W.P.A No. 5306 of 2021.

These Writ Petitions have been filed by the High Speed Diesel Oil (hereinafter called as HSD oil) dealers registered under Central Sales Tax Act, 1956, who purchased the said oil during the relevant disputed period from the seller of HSD oil dealers Indian Oil Corporation Limited (IOCL) in West Bengal in course of Inter-State sale, challenging the action of refusal on the part of Respondent State Government of West Bengal in refunding the differential amount of tax collected by it from the petitioners through IOCL in excess of concessional rate of tax on such purchase and the impugned assessment order to the extent of refusal to accept the "C" Forms submitted before the Assessing Officer relating to the said relevant inter-State sale by IOCL to the petitioners, causing the petitioners deprivation of statutory benefit of concessional rate of tax on the relevant purchase of the HSD oil.

In my considered opinion following factual and legal issues are involved in these Writ Petitions:

(1) Whether on the facts and in the circumstances of the case petitioners/purchasing HSD oil dealers who have been denied refund of excess tax by the Respondent State Government of West Bengal which were admittedly collected by it from the petitioners through the selling oil dealers/IOCL in West Bengal in excess of concessional rate of tax under Section 8 (1) read with Section 8 (3) and 8 (4) of Central Sales Tax Act, 1956 and which were paid under compelling extra ordinary circumstances beyond its

control of the petitioners, can be called “person aggrieved” and have locus standi to file the instant Writ Petitions?

(2) Whether filing of “C” Forms along with return by the selling dealer is mandatory or directory under the relevant provisions of the Central Sales Tax Act, 1956 and Central Sales Tax Rules, 1956 and whether in view of Rule 12 (7) of the CST Rules, 1956 and under the aforesaid Act and Rules there is any specific or complete statutory bar in filing the “C” Forms belatedly at the stage of assessment proceeding?

(3) Whether on the facts and in the circumstances of the case impugned assessment order is bad in law to the extent of refusal to accept the “C” Forms relating to relevant disputed period causing denial of concessional rate of tax to the petitioners on purchase of HSD oil during the relevant period in course of Inter-State sale in spite of admitted position and specifically recording by the assessing officer in its impugned assessment order that the “C” Forms in respect of the relevant period were submitted before him and conditions for entitlement of concessional rate of tax are fulfilment of conditions under Section 8 (1) of CST Act, 1956 and though ground for refusal to accept the relevant “C” Forms is that the same were not filed along with return and that the IOCL had not filed revised return in this regard but nowhere it has specifically recorded or held in the impugned assessment order that ground for non acceptance of “C” Forms by him is none fulfilment of any of the conditions under Section 8 (1), 8 (3) or 8 (4) of the CST Act or the same were not fulfilled by the IOCL or the petitioners?

(4) Whether on the facts and in the circumstances of the case petitioners who have admittedly fulfilled the terms and conditions under Section 8 (1) read with 8 (3) and 8 (4) of the CST Act, 1956 and Rules 12 (7) of the CST Rules, 1956 are entitled to concessional rate of tax on purchase of HSD oil from selling dealers/IOCL in the State of West Bengal in course of inter-State sale during the relevant period?

(5) Whether on the facts and in the circumstances of the case Respondent State Government of West Bengal is legally justified in refusing to refund the amount of tax in excess of concessional rate of tax collected by it from the purchasing dealers/petitioners through the selling HSD oil dealer/IOCL in West Bengal during the relevant period in spite of admitted position of facts as appear from record that relevant "C" Forms relating to the relevant period were submitted to it by IOCL admittedly before the assessing officer during the impugned assessment proceeding though belatedly, on the plea that the petitioners/purchasing HSD oil dealers cannot claim refund from it directly since the same have not been received by it directly from the petitioners so they should claim the said refund from the selling dealers of HSD Oil company/IOCL in West Bengal and on the plea that since selling dealer has not filed revised returns for such claim in spite of being fully aware of the extra ordinary circumstances of wrongful action of non-issuance of "C" Forms by the purchasing State Government of Jharkhand and Orissa within due time and which is matter of record that the time to file revise return under the statute had already been expired when the "C" Forms were issued by the purchasing State Governments in favour of the petitioners and further by disregarding the fact that petitioners have no control over filing of revised return by the HSD oil selling dealer/IOCL and further on the plea that since the petitioners have already paid the full rate of tax and not at concessional rate of tax now petitioners cannot claim refund of the said amount of tax paid in excess of concessional rate of tax?

(6) Whether on the facts and in the circumstances of the case Respondent State Government of West Bengal is legally justified in not refunding the tax collected by it from the petitioners through IOCL in excess of concessional rate by ignoring and disregarding that the excess amount of tax/full rate of tax which were paid by the petitioners was due to compelling extra ordinary circumstances of non-issuance of "C" Forms by the purchasing State Governments during the relevant period on the basis of relevant notification

issued by them and "C" Forms for the relevant period were issued in favour of the petitioners by the purchasing State Government belatedly only after the said notification was quashed by the Hon'ble High Court of Jharkhand with further order giving liberty to the petitioners to recover the tax paid in question in excess of concessional rate of tax during the relevant period either from the selling dealer/IOCL in West Bengal or from the State Government of West Bengal and it is matter of record that after the SLP of the State Government of Jharkhand was dismissed by the Hon'ble Supreme Court against the said order of the Hon'ble Jharkhand High Court, the "C" Forms in question were issued and by the time "C" Forms were issued by the respective purchasing State Governments time to submit "C" Forms along with return as well as time to file revised return had already expired and delay in submitting the relevant "C" Forms due to this compelling extraordinary circumstances were beyond the control of the petitioners purchasing company?

(7) Whether on the facts and in the circumstances of the case the Respondent State Government of West Bengal is justified in denying the petitioners the aforesaid refund and the petitioners should make claim of refund of such excess amount of tax in question from IOCL and not directly from it while it is matter of record that such excess amount of tax is not lying with the IOCL and admittedly it has already been deposited with the exchequer of State Government of West Bengal and even if IOCL wants to refund the said excess amount of tax to the petitioners, it is impossible and impracticable for it to do so in such circumstances unless the State Government of West Bengal refunds back the said excess tax to IOCL if not directly to the petitioners?

(8) Whether on the facts and in circumstances of the case action of the Respondent State Government of West Bengal in refusing to refund the amount of tax to the petitioners which have been collected by it in excess of concessional rate of tax for the relevant period through the IOCL is legally justified by taking the stand of consent and acquiescence by disregarding the

admitted fact that the Respondent State Government of West Bengal itself had been allowing the petitioners to purchase the HSD oil at a concessional rate of tax before the disputed relevant period and has been allowing them to purchase at a concessional rate of tax even after the disputed relevant period and is still continuing with the same practice?

(9) Whether on the facts and in the circumstances of the case action of Respondent State Government of West Bengal in non-refunding the excess tax in question to the petitioners and withholding the same is contrary to instruction issued by the Government of India, Ministry of Finance, Department of Revenue, State Taxes Section dated 1st November, 2018, to the State Governments on the basis of the judgment of the Hon'ble Punjab and Haryana High Court dated 28.03.2018 and order of the Hon'ble Supreme Court dated 13.08.2018

Common facts which emerge on perusal of the instant Writ Petitions and affidavits filed by the parties in these Writ Petitions are as follows:

Writ Petitioners are purchasing dealers of HSD oil and are registered under the Central Sales Tax Act, 1956 (hereinafter referred to as "CST Act") and their Certificate of Registration in Form B under the Central Sales (Registration and Turnover) Rules, 1957 (hereinafter referred to as "CST Rules") provide for the purchase of High Speed Diesel Oil (hereinafter referred to as "HSD Oil") against "C" Forms at a concessional rate of tax which were belatedly submitted during the course of impugned assessment proceeding though not along with return by IOCL due to compelling exceptional circumstances beyond the control of the petitioners.

According to the petitioners prior to 01.07.2017 petitioners were purchasing HSD Oil (for the purpose of use in manufacturing and/or processing of goods for sale and/or use in mining) from IOCL in the State of West Bengal for their Units situated in the State of Jharkhand at a concessional rate of tax under the CST Act, 1956, in course of inter-State sale, from the State of West Bengal at concessional rates of tax under Section 8(1) read with 8 (3) and 8(4) of the CST Act, 1956, against the issue of "C" Forms to IOCL prior to 1.7.2017 and from 29.10.2018 onwards and currently the same modus operandi is being followed and the Respondent State of West Bengal is regularly accepting the said "C" Forms from the petitioner relating to such Inter-State sale.

From 01.07.2017 with the operationalization of the Goods and Services Tax regime (hereinafter referred to as "GST") the State of Jharkhand and certain other State Governments took a view that the registration of dealers such as the Petitioners herein under the CST Act, 1956 as well as under the local VAT (Value Added Tax)/Sales tax laws stood automatically lapsed and since the final products being manufactured/produced by the dealers, such as the Petitioners herein, would not fall within the definition of the term "goods" under Section 2 (d) of the CST Act as amended by Act No. 18 of 2017 w.e.f. 01.07.2017 and Petitioners would become disentitled to the issue of "C" Forms. Consequently, the sale of HSD Oil by IOCL from State of West Bengal was taxed at the full rate of tax. Accordingly, State of Jharkhand issued a Circular dated 11.10.2017 one of such annexure is Annex. P-2/Pages 83-84 of the Writ Petition being WPA No. 5306 of 2021 and on the basis of such notification IOCL stopped selling HSD to the Petitioner No. 1 at a concessional rate and IOCL recovered full rate of tax from the petitioners and admittedly the said full rate of tax were deposited with the Respondent State Government of West Bengal by the IOCL.

The aforesaid Circular dated 11.10.2017 was accordingly challenged by the Petitioner No. 1, in W.P. (T) No. 6048 of 2017, WP (T) No. 6892 of 2017, W.P. (T) No. 6893 of 2017 and W.P. (T) No. 6897 of 2017, before the Hon'ble High Court of Jharkhand at Ranchi.

The Hon'ble High Court of Jharkhand by its interim order dated 17.05.2018 stayed the implementation and execution of the aforesaid Circular dated 11.10.2017 and directed the State of Jharkhand to issue necessary 'C' Forms to the Petitioner No. 1. Against the said interim order, Special Leave Petition (Civil) No. 26844 of 2018 was filed by the State of Jharkhand which was dismissed by the Hon'ble Supreme Court by order dated 29.10.2018.

The Hon'ble High Court of Jharkhand finally allowed the aforesaid Writ Petitions by its judgment and order dated 28.08.2019 quashing the aforesaid Circular dated 11.10.2017 and consequently directed the State Government of Jharkhand/purchasing State for issuance of "C" Forms in favour of purchasing dealers/petitioners and further holding that the petitioners would be entitled to claim refund of the excess tax collected either by the Oil selling Companies/IOCL or from the State Government concerned, as would appear on perusal of Paragraph 27 of the said judgment against which Respondent State Government of West Bengal could have filed Appeal before the Hon'ble Supreme Court if so aggrieved though it was not a party to the said proceeding before the Hon'ble Jharkhand High Court but it did not file. Special Leave Petition (Civil) Diary No. 7966 of 2020 filed by the State of Jharkhand against the aforesaid final judgment and order of Hon'ble High Court of Jharkhand was also dismissed by the Hon'ble Supreme Court by order dated 13.09.2021. The Hon'ble High Court of Orissa in W.P. (Civil) No. 23585 of 2017, by its final judgment and order dated 12.12.2018 also passed a similar order in favour of the Petitioner No. 1 with respect to the similar Circular dated 17.08.2017 issued by the State of Orissa.

IOCL filed Review Petition before the Hon'ble High Court of Jharkhand primarily contending that it is only the petitioners herein who should be directed to seek a refund from the State Government of West Bengal and that IOCL should not be saddled with the responsibility of refunding the excess tax to the petitioners since the said excess tax had already been deposited with the Respondent/State Government of West Bengal and it is not lying with it. The aforesaid Review Petition filed by IOCL was dismissed by the Hon'ble High Court of Jharkhand by order dated 17.10.2020. While dismissing the said

Review Petitions the Hon'ble High Court of Jharkhand granted liberty to the petitioners as well as to IOCL to approach the appropriate forum in the State of West Bengal for the required refund in question as appears from Paragraphs 9 and 11 of the aforesaid order of the Hon'ble Jharkhand High Court, dated 17.10.2020.

Pursuant to the aforesaid order passed by the Hon'ble High Court of Jharkhand at Ranchi, the petitioners obtained statutory Form 'C' from the purchasing state, i.e. State of Jharkhand for the entire relevant period for which it was compelled to purchase HSD Oil at full rate of tax instead of at concessional rate of tax and submitted the same to IOCL for onward submission to the State Government of West Bengal. Admittedly, IOCL has deposited the aforesaid "C" Forms to the authorities concerned of the State Government of West Bengal during the course of assessment proceeding yet the Respondent/State Government of West Bengal has not refunded the said excess tax which were collected by it from the petitioners through IOCL even after making representation which is a part of annexure to the Writ Petitions.

In these Writ Petitions, petitioners have challenged the impugned assessment orders passed in the assessments of IOCL to the extent of causing the petitioners deprivation of refund of excess amount of tax paid by them to the State Government of West Bengal through IOCL and non-consideration of their representations for refund of the said tax collected by the Respondents/State Government of West Bengal in excess of concessional rate of tax mainly on the following grounds:

"(i) For that the impugned Assessment Order dated 30th June, 2020 is neither sustainable in law nor on facts and the same is liable to be quashed/set aside.

(ii) For that the petitioner is directly aggrieved by the Assessment Order passed in the case of Respondent-IOCL, as due to non-acceptance of statutory Form 'C' by the authority of the State of West Bengal, claim of refund of differential tax due to the petitioner no. 1 has incorrectly and illegally denied to the petitioner no. 1, for no fault of the petitioner no. 1.

(iii) For that it is submitted that the reasoning regarding non issuance of Invoice at the concessional rate of tax by IOCL to petitioner as given in the Assessment Order is untenable in the eyes of law inasmuch as the same fails to take into consideration the effect of the Provisional Credit Notes issued by the IOCL to petitioner no. 1. As such, this reason has no legs to stand in the eyes of law and ought to be rejected as without any substance or merit.

(iv) For that it is submitted that the other and further reasoning given in the Assessment Order regarding non filling of revised returns by IOCL is also not sustainable in the eyes of law. This is so as non submission of revised returns cannot jeopardize the legitimate substantive claim of another party, which is going to be directly affected by the action/non-action of another party, on which it has no control. Further, in any case, such technical plea cannot defeat the substantive right of the petitioners. Still further, even in the hands of IOCL, the said ground has no merit and ought to be overruled. As such, looked at from any angle, it is very clear that the reasoning employed in the Assessment Order cannot affect the substantive and legitimate right of petitioner to have the matter considered in accordance with law, more so, when the petitioner has done, all it could have done in the facts and circumstances of the present case.

(v) For that, it is submitted that it would be travesty of justice, if the legitimate right and claim of the petitioners are allowed to be rejected, in the manner it is rejected by the Assessment Order, for no fault of the petitioner.

(vi) For that, it is submitted that the age old legal maxim ubi jus ibi remedium that where there is a right there is a remedy is fully applicable in the present case to set at naught the illegality committed in the Assessment Order which has a prejudicial bearing on the present petitioner, independent of the conduct of IOCL.

(vii)For that the petitioner was, admittedly, entitled to purchase H.S.D at concessional rate in terms of Section 8 (3) read with Section 8 (4) of the CST Act and, thus, the excess amount realized from the petitioner at full rate of tax by Respondent-IOCL in the compelling circumstances and deposited with the State of West Bengal, is liable to be refunded to the petitioner no. 1 as consequential relief, upon acceptance of the already submitted From 'C' and setting aside of the Assessment Order pro tanto.

(viii) For that Assessing Officer, while passing the impugned order, failed to take into consideration that the Hon'ble High Court of Orissa, in its judgment and order dated 28.08.2019 passed in W.P (Civil) No. 23585 of 2017, has categorically recognized the right of the petitioner no. 1 to claim refund of differential tax and it was specifically ordered that the petitioner no. 1 shall be refunded the differential tax which was realized due to issuance of Circular dated 17.08.2017 issued by the State of Orissa, the said circular stands quashed as on date.

(ix) For that Assessing Officer failed to appreciate that it is an undisputed fact that the goods were sold by Respondent-IOCL to the petitioner no. 1 by way of inter-State movement of goods and the petitioner no. 1, being registered dealer, was entitled to purchase said goods at concessional rate and even in terms of Section 8 (3) read with Section 8 (4) of the CST Act, Declaration Form 'C' has been duly furnished by the petitioner no. 1 to Respondent-IOCL, which was, in turn, deposited by IOCL with the authority of the State of West Bengal. Thus, the petitioner no. 1 and/or Respondent-IOCL have fulfilled all conditions pertaining to concessional sale or purchase and merely because, at the time of raising of Invoices, under compelling circumstances, tax was charged at full rate, cannot be considered as a valid ground for denying the benefit of refund to the petitioner no. 1 of the differential tax, as, admittedly, the petitioner no. 1 was entitled to purchase H.S.D oil at concessional rate.

(x) For that Assessing Officer failed to appreciate that the issue as to whether the petitioners/petitioner is/are entitled to claim refund of the differential tax, which was realized and deposited by Respondent-IOCL to the State of West Bengal, is no longer res integra, as the Hon'ble Orissa High Court has held that the petitioner no.1/petitioner is/are entitled for refund of the amount, which was collected from the Petitioner no.1 in the circumstances narrated above, without any fault of petitioner.

(xi) For that Assessing Officer failed to take into consideration that the present issue has been decided by several Hon'ble High Courts including the High Court of Punjab and Haryana in the case of Carpo Power Limited Vs. State of Haryana and Others and in the said case, while adjudicating the issue, the Hon'ble High Court of Punjab and Haryana further ordered for refund of the differential tax which has been realized by the Oil Companies from the purchasers of HSD oil.

(xii) For that Assessing Officer also failed to take into consideration, that, similarly, the Hon'ble Rajasthan High Court vide its judgment and order dated 18.05.2018, quashed the similar circular issued by the State of Rajasthan and, while quashing the said circular, further ordered for refund of the differential tax which was realized on account of purchase of HSD at full rate of tax.

(xiii) For that pursuant to the judgment and order passed by Hon'ble Rajasthan High Court, one J.K. Cement Ltd. being the purchaser of HSD oil approached the Hon'ble High Court of Gujarat by filing writ application claiming refund of tax which was collected from it by its seller Reliance Industries Ltd. and deposited with the authorities of the State of Gujarat. In the said writ petition it was primarily contended, inter alia, that said company – J.K. Cement Ltd. was entitled under law to purchase HSD at concessional rate, but, under compelling circumstances, it was forced to purchase HSD oil by paying full rate of tax and, thereafter, subsequently, issued Declaration Form 'C' to the seller which led supplied HSD at full rate of tax. It was, thus, contended inter alia that since, subsequently, Form 'C' was obtained by said J.K. Cement Ltd. it is entitled under law to claim refund from the authorities of the State of Gujarat as the seller – Reliance Industries Ltd. had already deposited the tax with the State of Gujarat. The Hon'ble High Court of Gujarat, vide order dated 18.12.2019, was pleased to allow the said writ application and directed the authorities of the State of Gujarat to grant refund to the purchaser as the seller has already deposited the tax with the State authorities."

Petitioners have made the following prayers/reliefs in the instant writ petitions:

"(a) For issuance of an appropriate writ/order/direction, including Writ of Certiorari for quashing/setting aside the assessment order dated 30.06.20210 passed by Respondent No. 2 in the case of IOCL pertaining to the Assessment Year 2017-18, to the extent submission of Additional Form 'C' by Respondent-IOCL pertaining to the petitioner no. 1 has been denied in having consequential effect of denying the benefit of refund of the excess differential tax to the petitioners and borne by it and stands paid to the Respondent/State of West Bengal; and

(b) For issuance of appropriate writ/order/direction, including a Writ, in the nature of Mandamus, directing the Respondent-State of West Bengal to consequentially refund the amount of Rs.13,85,00,494.21/- being the amount of excess differential tax realized from the petitioners by IOCL and deposited with the State of West Bengal in respect of purchase of HSD oil, which the petitioners are entitled under law without any controversy and,

(c) Rule Nisi in terms of prayer (a) and (b) above, and;

(d) Such further and/or other order or orders be passed and/or direction or directions be given as to this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

Common case according to the Respondent/State Government of West Bengal in all the Writ Petitions herein are as follows:

In the assessment for the relevant assessment year 2017-18 of IOCL, the Assessing Officer, by its order dated 30.06.2020 (Annx. P-9/Pages 146-150 of the Writ Petition being WPA No. 5306 of 2021), has rejected the claim in question made by IOCL on inter-State sale of HSD Oil to the petitioners against relevant "C" Forms, on the following grounds:

(i) IOCL has not filed revised returns claiming sale at a concessional rate of tax, in spite of all the necessary "C" Forms being made available to the State of West Bengal by the petitioners through IOCL.

(ii) IOCL has not revised its selling invoices charging CST.

(iii) IOCL has not issued credit note for differential CST.

Respondent/State of West Bengal, in its Affidavit-in-Opposition to the Writ Petition, in substance has raised an issue of the locus standi of the petitioners in filing these Writ Petitions against denial of their claim of refund in question directly from the Respondent/State of West Bengal and further for the reasons stated in the assessment order which were reiterated by it in its affidavit-in-opposition.

During the course of arguments, the Learned Government Pleader for the State Government of West Bengal also resisted the claim of refund in question on the ground that in view of paragraph 27 of the judgment dated 28.08.2019 of the Hon'ble High Court of Jharkhand (supra) that since IOCL had issued Provisional Credit Notes, the refund could only be claimed by the Petitioners not directly from the State Government of West Bengal but only through IOCL. In support of its aforesaid contention reliance was also placed by him on the Representation dated 29.12.2020 being Annxure P-17 to the Writ Petition and more specifically on the prayer clause where request was made to the State

Government of West Bengal to refund the amount of excess tax collected through IOCL.

The State of West Bengal/Respondents authorities, relating to petitioners' claim of concessional rate of tax, submitted that the claim of the petitioners by invocation of Section 8 (1) read with Section 8 (3) and 8(4) of the CST Act is not a claim for refund of any tax, it is for concession to be allowed in specific manner under the Act. IOCL has itself admitted that the taxation for such transaction has been done at the full rate of tax under Section 8 (2) of the CST Act. Accordingly, the taxing authority has accepted such sale being sales under Section 8 (2) of the CST Act and as such there has been no payment for excess tax or illegal tax which has been imposed by the State. The only way to claim concession on the rate of tax according to State Respondent is under the Provision of the CST Act and the Rules. There is completely discrepancy between the return, the invoices in support of the return and "C" Form. The writ petitioner is attempting to create a cloud on the said transaction. Any concession which IOCL was required to make is a contractual obligation of the IOCL and the writ petitioner. The State of West Bengal cannot be a party to the same. Rule 8(2A) of the CST (West Bengal) Rules, 1958 which provides that every dealer registered under the Act, other than those referred to in sub-rule (1) and sub-rule (2) shall, in accordance with the West Bengal Sales Tax Act, 1994 and/or the Value Added Tax Act, 2003, and Rules made thereunder shall furnish a return quarterly in Form-1 in respect of his turnover as referred to in Rule 11 of the Central Sales Tax (Registration and Turnover) Rules, 1957. Hence, the Form-1 (the Return) is a statutory form in which a dealer has to declare its turnover, break-up of his turnover, deductions claimed, if any, and different rates of tax chargeable on the break-up of turnover. In serial no.8 (b) of the form, he has to declare the turnover of sales of goods under Section 8(1) of the CST Act to registered dealers against prescribed declaration forms, here in this case Form-C. In view of this, it is clear that furnishing of return and his declaration of sale at concessional rate of tax in the said return is sine qua non for claiming concessional rate of tax.

The stand of the Respondent/State of West Bengal in paragraphs 4(1) and 9 of its Affidavit-in-Opposition to the Writ Petition being WPA No. 5306 is to the effect that there is no provision under law to make a refund to a non-party to the assessment, and since the Petitioners are not "dealer" within the meaning of Section 2(b) of the CST Act.

Case and stand of the Respondent/IOCL as appears from its Affidavit-in-Opposition dated 18.08.2021 to the Writ Petition is that it has supported the claim of the petitioners and it has been specifically admitted by IOCL in paragraph 4 that IOCL had produced and placed on record "C" Forms issued by the Petitioners before the Assessing Officer. In paragraph 11 of the said Affidavit-in-Opposition it has also been stated by the IOCL that it will not be able to get the refund in question from the State Government of West Bengal since the excess tax which it has collected from the Petitioners has already deposited the same with the Respondent/the State of West Bengal and it is not lying with it and it can't claim for the refund on the principles of unjust enrichment and it is only the Petitioners who would be lawfully entitled to such refund from the State Government of West Bengal.

Respondent No. 4/Indian Oil Corporation Limited supporting the contention and claim of the petitioners has made the following additional common submission and taken the stand in all the aforesaid Writ Petitions:

(i) If the State Respondents decide to refund the aforesaid amount of differential tax, IOCL has no objection provided !OCL is exonerated by the State Respondents from all claims arising from non-entertainment of relevant declaration forms issued by the petitioners now under challenge in pending appeal of IOCL. Also, the petitioners should indemnify IOCL against all future liability arising from refund to them in the peculiar exceptional circumstances of these cases and no adverse effect should fall upon IOCL for any refund so made.

(ii) The refund to the petitioners, by the State Respondents, in the circumstances of these cases, would mean unconditional acceptance of the claim for concessional rate of tax supported by the declaration forms furnished by the petitioners. Such acceptance would result in excess payment by IOCL which may be refunded directly to the petitioners and in such case IOCL shall have no claim over such refund. In case refund is made to IOCL, IOCL would be obliged to and shall make the said refund to the petitioners.

(iii) While making the refund, the actual amount refundable to each of the petitioners has to be carefully ascertained by the State Respondents, preferably after hearing both the petitioners and IOCL. The amounts of refund claimed in these writ petitions, which relate only to the relevant assessment year 2017-18, are excessive. The major reason for the difference in claim for 2017-18 is, perhaps, that the petitioners have mingled the figures of 2018-19 whereto the instant dispute spills over. Adjustments in some cases may also be necessary to arrive at the correct amount.

(iv) The view canvassed by the State Respondents is vitiated. It does not take into consideration the statutory scheme. Return is periodic self assessment of tax payable by the assessee. Non-filing or late filing of return is visited by imposition of late fee and interest. Initiation of prosecution proceeding is permissible for intentional non-filing or wrong filing of returns.

(v) It is nowhere provided in law that claims of the assessee shall not be entertained if not made in returns or wrongly made in returns.

(vi) Assessment is governed by altogether separate provisions applying equally to those who file returns or who fail to file returns. The entertainment and allowance of claims does not depend upon what is declared in the returns. The purpose of the assessment proceeding before the authorities is to assess correctly the tax liability of an assessee in accordance with the law. Such purpose can be achieved only if all aspects, including claims, independent of returns are considered. The assessment is an exercise in finding the actual tax liability.

(vii) The judgment of Hon'ble Mysore High Court at Bangalore in the case of Giridharlal Parasmal, reported at 20 STC 64, is a good exposition of the law. In paragraph 6 of the judgment, it has been observed that "...... the duty of the assessing officer is not merely to impose tax that is lawfully exigible but also to give to the assesses 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." The Hon'ble Supreme Court, in the case of National Thermal Power Co. Ltd., (1997) 7 SCC 489 at page 491, has expressed similar view.

Some of the provisions of law which in my view are relevant to this case are referred hereinbelow:

Central Sales Tax Act, 1956:

"(6). Liability to tax on inter-State sales.—

(1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales [of goods other than electrical energy] effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

[Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5 is a sale in the course of export of those goods out of the territory of India.]

(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this subsection unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,—

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) (b) if the subsequent sale is made to a registered dealer, a declaration referred to in subsection (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,—

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than three percent, or such reduced rate as may be notified by the Central Government, by notification in the Official Gazette, under sub-section (1) of section 8 (whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in this subsection.

(3) Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce, to any official, personnel, consular or diplomatic agent of—

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar international body,

entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or diplomatic agent, as the case may be, has purchased such goods for himself or for the purposes of such mission, consulate, United Nations or other body.

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be.

(8) Rates of tax on sales in the course of inter-State trade or commerce. –

(1) Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be [two per cent] of his turnover 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:

Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within subsection (1), 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.

(3) The goods referred to in sub-section (1)—

(a) *************

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in the telecommunications network or in mining or in the generation or distribution of electricity or any other form of power;

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer 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:

Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

"(9) (1) ....

(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess re-assess, collect and enforce payment of tax, including any [interest or penalty,] payable by a dealer under this Act as if the tax or [interest or penalty] payable by such a dealer under this Act is a tax or [interest or penalty] payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, [refunds, rebates, penalties,] [charging or payment of interest,] compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, be rules made in this behalf make necessary provision for all or any of the matter specified in this sub-section.

(3) The proceeds in any financial year of any tax, [including any interest or penalty] levied and collected under this Act in any State (other than a Union Territory) on behalf of the Government of India shall be assigned to the State and shall be retained by it; and the proceeds attributable to Union territories shall form part of the Consolidated Fund of India.

West Bengal Sales Tax (WBST) Act, 1994:

(2) (1) ....
(2) ....
(3) ....
(4) ....
....
....

(10) "dealer" means any person who carries on the business of selling or purchasing goods in West Bengal or any person making sales under section 15, and includes—

(a) an occupier of a jute-mill or shipper of jute;

(b) Government, a local authority, a statutory body, a trust or other body corporate which, or a liquidator or a receiver appointed by a court in respect of a person, being a dealer as defined in this clause, who, whether or not in the course of business, sells, supplies or distributes directly or otherwise goods for cash or for deferred payment or for commission, remuneration or other valuable consideration;

(c) a person who has set up a business of selling or purchasing goods in West Bengal.

Explanation 1.— A co-operative society or a club or any association which sells goods to its members is a dealer.

Explanation 2.— A factor, a broker, a commission agent, a del credere agent, an auctioneer, an agent for handling or transporting of goods or handling of document of title to goods or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of selling goods and who has, in the customary course of business, authority to sell goods belonging to principals, is a dealer;

(37) (1) ....
(2) ....

“(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 that no application from any buyer shall be entertained unless the same is made within twelve months from the date on which the tax or excess tax, as the case may be, is paid and supported by relevant cash memo or bill issued by the dealer.”

(60) Refunds. --- (1) The Commissioner shall, in the prescribed manner, refund to a dealer any amount of tax, penalty or interest paid by such dealer in excess of the amount due from him under this Act, either by cash payment or by deduction or adjustment of such excess from the amount of tax, penalty or interest due in respect of other period.

(2) Nothing in sub-section (1) shall be deemed to empower the Commissioner to amend, vary or rescind any assessment, or to amend, vary or rescind any order passed on appeal, revision or review under section 79, section 80, section 81, section 82 or section 83, or to confer on a dealer any relief in addition to what he is entitled under the provisions of this Act.

(61) Reimbursement of tax levied under the Act in respect of……. Or inter-State sales of declared goods.--- (1) Where a tax has been levied under this Act in respect of the sale or purchase of any goods referred to in section 14 of the Central Sales Tax Act, 1956, and such goods are subsequently sold in the course of inter-State trade or commerce, and tax has been paid under that Act in respect of sale of such goods in the course of inter-State trade or commerce, the tax levied or paid under this Act shall be reimbursed to the dealer making such sale in the course of inter-State trade or commerce in the manner and subject to the conditions hereinafter provided.

(2) The dealer making the sale of such goods in the course of inter-State trade or commerce referred to in sub-section (1) shall, in the prescribed manner, make an application to the Commissioner for reimbursement of the tax levied under this Act on sale to, or purchase by, him of such goods within one year from the date of such inter-State sale.

(3) On receipt of an application from a dealer under sub-section (2), the Commissioner shall, after giving such dealer an opportunity of being heard and after recording reasons for so doing, make an order either granting or rejecting the application wholly or in part.

(4) When an application for reimbursement of tax is granted under sub-section (3) the amount of tax levied under this Act shall be reimbursed to the dealer in the manner referred to in section 60 as if it were a tax refundable under this Act to the dealer.

West Bengal Value Added Tax (WBVAT) Act, 2003:

(2) (1) ………………………………
(2) ………………………………
(3) ………………………………
………………………………
………………………………

"(11) "dealer" means any person who carries on the business of selling or purchasing goods in West Bengal or any person making sales under Section 14, and includes –

(a) An occupier of a jute-mill or shipper of jute,

(b) Government, a local authority, a statutory body, a trust or other body corporate which, or a liquidator or receiver appointed by a court in respect of a person, being a dealer as defined in this clause, who, whether or not in the course of business, sells, supplies or distributes directly or otherwise goods for cash or for deferred payment or for commission, remuneration or other valuable consideration,

(c) a society including a co-operative society, club or any association which sells goods to its members or others for cash, or for deferred payment, or for commission, or for remuneration, or for other valuable consideration,

(d) a factor, a broker, a commission agent, a del credre agent an auctioneer, an agent for handling of document of title to goods, or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of selling goods and who has, in the customary course of business, authority to sell goods belonging to principles;

CST Rules, 1956

(12). (1) The declaration and the certificate referred to in sub-section (4) of section 8 shall be in Forms C and D respectively:

………………………
………………………

(7) 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:

Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit.

Now I would like to make little discussion on the ambit and scope of the aforesaid relevant provisions of law:

Under Section 6 of CST Act the liability, in the case of an inter-State sale, liability to pay tax is that of the seller (i.e. IOCL herein). This tax is imposed by the Central Government. However, in view of Section 9(2) of the CST Act the authorities of the selling State (i.e. State Government of West Bengal) have been delegated the powers of assessment, re-assessment, collection and refund of tax under the respective State legislations on behalf of the Union of India. Even though the tax is collected by the State Government on behalf of the Union of India, the proceeds so collected are assigned to the State Government and retained by it in view of Section 9(3) of the CST Act.

Section 8 of the CST Act provides for the rate of tax. Sections 8(1), 8(3) and 8(4) of the CST Act read with Rule 12 of the CST Rules provide for a concessional rate of tax, when goods are purchased to be used either for the purposes of resale or for the purposes of manufacture or for use in mining. Such a concessional rate of tax is available provided that:

- the seller (IOCL in the present case) and buyer (Petitioners in the present case) of such goods are registered dealers, and
- the goods (HSD Oil in the present case) being purchased are mentioned in the Certificate of Registration of the purchasing dealer (Petitioners in the present case).

This concessional rate of tax becomes available to the purchasing dealer (Petitioners in the present case) on producing "C" Forms to the selling dealer (IOCL in the present case).

Under Section 8(1) read with Section 8(3) of the CST Act Petitioners are entitled to purchase goods in the course of inter-State trade or commerce at a concessional rate of tax mentioned therein. As per Section 8(2) of the CST Act only those transactions which are not covered by Section 8(1) of the CST would be liable to be taxed at the full rate of sales tax.

Relief of concessional rate of tax under Section 8(1) read with Section 8(4) of the CST Act is not conditioned on the filing of a claim in the return or in the revised return. A plain reading of Section 8(4) of the CST Act makes it clear that once a "C" Form is produced by the selling dealer (i.e. IOCL in the present case) signed by the purchasing dealer (i.e. Petitioners in the present case) the claim for a concessional rate of tax immediately matures. The declaration referred to in Section 8(4) of the CST Act is a Form 'C' as is clear from a perusal of Rule 12(1) of the CST Rules. This position is further fortified from a perusal of Rule 4(4) of the Central Sales Tax (West Bengal) Rules, 1958. In view of these provisions of law even if no claim for a concessional rate of tax has been made at the time of assessment or filing of the returns it can be made during the course of assessment or even at the appellate stage by producing "C" Forms which has been done in the instant by producing 'C' Forms during the course of and before passing the final assessment order.

Purchasers on inter-State sale have an independent right under Section 37(3) of the West Bengal Sales Tax Act, 1994 [hereinafter referred to as the "WBST Act"] to apply for a refund being a buyer of goods as the refund of excess tax has been collected from it and deposited with the State Government of West Bengal. Thus, the statute itself provides for an independent right to the buyer (i.e. Petitioners in the present case) of goods to apply for a refund, which in the instant case was done by moving an application dated 29.12.2020.

Under Article 265 of the Constitution of India, no tax can be collected without any authority of law and any excess tax collected by State is liable to be refunded and the State is bound to act reasonably having regard to the equality clause under Article 14 of the Constitution of India.

Petitioners in support of their contention have relied on several decisions and quoting some of which I feel necessary to refer hereinbelow:

Unreported decision dated 28.03.2018 passed by the **Hon'ble Punjab and Haryana High Court in CWP No. 29437 of 2017** in the case of **Capro Power Limited Vs State of Haryana and Ors.** - **Paragraph No. 28**:

"(28). In these circumstances, the writ petition is allowed. It is held that the respondents are liable to issue "C" Forms in respect of the natural gas purchased by the petitioner from the Oil Companies in Gujarat and used in the generation or distribution of electricity at its power plants in Haryana. In the event of the petitioner having had to pay the oil companies any amount on account of the first respondent's wrongful refusal to issue "C" Forms the petitioner shall be entitled to refund and/or adjustment of the same from the concerned authorities who collected the excess tax through the oil companies or otherwise. The concerned authorities shall process such a claim within twelve weeks of the same being made by the petitioner in writing and the petitioner furnishing the requisite documents/form."

Unreported decision dated 17.05.2018 passed by the **Hon'ble Jharkhand High Court in WP (T) No. 5991 of 2017** in the case of **Usha Martin Limited Vs State of Jharkhand and Ors**. - **Paragraph Nos. 6 & 7**:

"(6). As the petitions are pending, we are not much analyzing the fine nicety of Section 8 (1) to be read with Section 8 (3) to be read with Section 8 (d) of the Central Sales Tax Act, 19956 vis-à-vis Article 246-A and 101st amendment to the Constitution of India, otherwise, at interim stage, al the petitions will be decided finally. As there is a prima-facie case in favour of these petitioners, balance of convenience is also in favour of these petitioners and if the stay, as prayed for, is not granted, it will cause irreparable loss to these petitioners. We, therefore, stay an operation, implementation and execution of the Circular issued by the respondents dated 11.10.2017 which is at Annexure - 4 to the memo of W.P.(T) No. 6892 of 2017 during the pendency and final hearing of these writ petitions. This circular is also annexed at different annexures in different aforesaid writ petitions. We are not mentioning the different annexure numbers. Suffice it to say that the impugned circular dated 11.10.2017 which is common in all the writ petitions issued by the Principle Secretary-cum-Commissioner, Commercial Taxes Department, Jharkhand, Ranchi is stayed on a condition that concerned department will issue necessary 'C' Form to these petitioners which these petitioners can use for the purposes of effecting the inter-state purchase of goods which are defined in Section 2 (d) of the Central Sales Tax Act, 1956 and the petitioners shall produce these 'C' Forms before the selling dealers outside the State of Jharkhand and provide the said dealers with further undertaking that in the event of these petitioners become unsuccessful in these writ petitions and their challenge to the circular issued by the Principle Secretary-cum-Commissioner, Commercial Taxes Department, Jharkhand, Ranchi dated 11.10.2017 fails, these petitioners shall deposit forthwith, the balance of tax benefit which these petitioners otherwise have derived by use of such 'C' Forms."

"(7) The State of Jharkhand is hereby directed to issue necessary 'C' Forms, without prejudice to their rights and contentions and such 'C' Forms may be utilized by these petitioners with the undertaking as noted hereinabove and all such actions shall be subject to the outcome of these writ petitions."

Unreported decision dated 28.08.2019 passed by the **Hon'ble Jharkhand High Court in WP (T) No. 6048 of 2017** in the case of **Tata Steel Limited, Jamshedpur Vs State of Jharkhand and Ors**. - **Paragraph Nos. 26-29**:

"(26). We do not find any merit in the submission of the learned counsel for the State that since the dealers are no more liable to pay tax under the JVAT Act, in view of the fact that the word "goods" used in Section 2(i) of the CST Act defining the 'Sales tax law' shall mean only those six goods as defined under Section 2(d) of the CST Act, their registration under Section 7(2) of the Act shall come to an automatic end. That being the position, the very reasoning for issuance of the circular dated 11.10.2017 has no legs to stand in the eyes of law and the said circular cannot be sustained in the eyes of law. The same view has been taken by the Hon'ble Punjab and Haryana High Court in Capro Power Limited's case (supra), as affirmed by the Hon'ble Supreme Court and the similar views have been taken by the seven other High Courts in the similar facts and circumstances. We see no reason to deviate from the consistent stands taken by the different High Courts of the Country. Accordingly, the impugned circular dated 11.10.2017 issued by the State Government in its Commercial Taxes Department, which have been challenged in all these writ applications, is hereby, quashed."

"(27). Pursuant to the interim orders passed in these writ applications, Form-C have been issued to the petitioners and it is an admitted case by the learned counsel for the petitioners that provisional credit notes have also been given to them by the respective oil companies. We make it clear that the provisional credit notes given to the 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 petitioners. If the respective oil companies have made the deposit to the State exchequer, they shall also be entitled to claim the refund thereof."

"(28). As regards the apprehension of the learned Advocate General in his opinion given to the State Government, as also endorsed by the learned counsel for the State, that Form-C may be mis-utilised by some of the dealers, we can only clarify that appropriate action can always be taken after giving due notice to the individual dealers, and after affording them the reasonable opportunity to show-cause, and in accordance with law, but there cannot be a blanket denial of the benefit of Form-C, as has been done by virtue of circular dated 11.10.2017."

"(29). With these observations and directions, all these writ applications stand allowed. The pending Interlocutory Applications in all the writ applications also stand disposed of."

AIR 1967 SC 234 (State of Madras Vs Radio and Electricals Ltd. & Anr) - Paragraphs 11, 15

"(11) The Scheme of the Rule read with the Act is that the purchasing dealer as well as the selling dealer must register themselves under the Central Sales Tax Act. If declared goods are specified in the certificate of registration of the purchasing dealer and if it be certified that the goods are intended for resale by him, the sale is subject to concessional rate of tax under Section 8(1). In respect of sales of other classes of goods specified in the certificate of registration of the purchasing dealer, if the goods are purchased either for resale by him, or for use in manufacture of goods for sale, or for use in the execution of contracts, the concessional rate of tax is available, provided the selling dealer obtains from the purchasing dealer the declaration in the prescribed form duly filled in and signed by the latter containing the particulars that the goods are ordered, purchased or supplied under a certain specific order, bill or cash memo or chalan, for all or any of the purposes mentioned and that the goods are covered by the registration certificate of the purchaser described therein and issued under the Act. If the certificate is defective in that it does not set out all the details, or that it contains false particulars about the order, bill, cash memo or chalan, or about the number and date of the registration certificate and specifications of goods covered by the certificate of the purchasing dealer, the transaction will not be admitted to concessional rates."

“**(15)** It is implicit in the context in which these observations occur that if the purchasing dealer holds a valid certificate specifying the goods which are to be purchased, 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). It is of course open to the sales tax authority to satisfy himself that the goods which are purchased by the purchasing dealer under certificate in Form 'C' are specified in the purchasing dealer's certificate in Form 'B'. Observation of the High Court that the selling dealer may not enquire whether the requirement is not within the certificate of registration of the purchasing dealer is not accurate. But whether the goods specified in the registration certificate in From 'B' can be used for the purpose is not for the selling dealer to determine. That is a matter which has already been determined by the notified authority issuing the certificate of registration.”

(2005) 6 SCC 499 (State of H.P & Ors. Vs Gujarat Ambuja Cement Ltd. & Ors.) - Paragraphs 37 and 38

“**(37)** It was urged on behalf of the appellant-State that declaration forms under the Central Act were not filed within the time and/or were defective. That does not in reality amount to non-compliance of a statutory provision. The respondent No.1-company was claiming exemption and, therefore, had not filed the declaration forms. Some of the forms which were filed were treated to be defective. Undisputedly, before the revisional authority a prayer was made for grant of opportunity to rectify the defects, if any. That was turned down. It is to be noted that under Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957 (in short the `Registration Rules') the declaration form can be filed at a subsequent point of time and not necessarily along with returns. On an application being made before the Assessing Officer the exemption can be granted. The object of the Rule is to ensure that the assessee is not denied a benefit which is available to it under law on a technical plea. The Assessing Officer is empowered to grant time. That means that the provisions requiring filing of declaration forms along with the return is a directory provision and not a mandatory provision. In a given case even the declaration forms can be filed before the appellate authority as an appeal is continuation of the assessment proceedings. In a given case, if the appellate authority is satisfied that 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 deduction. In the instant case, respondent No.1 company made a specific request before the revisional authority which was turned down. Therefore, the question of any non-compliance with the relevant statutes does not arise. It was noted by this Court in Sahney Steel and Press Works Ltd. and Anr. v. Commercial Tax Officer and Ors., [1985] 4 SCC 173 that even in a given case, an assessee can be given an opportunity to collect Declaration Forms and furnish them to the assessing authority if the challenge of the assessee to taxability of a particular transaction is turned down.”

“(38) Respondent No.1 company's stand was that it was granted exemption from payment of sales tax and, therefore, there was no requirement of furnishing any "C Form" for certain periods relating to which there was a doubt about availability of the concession, the declaration Forms were filed. Therefore, the assessing officer shall grant opportunity to the respondent No.1-company to cure the defects, if any in the Declaration Forms.”

(2009) 1 SCC 540 (Corporation Bank Vs Saraswati Abharansala & Anr.) - Paragraphs 19 & 20

“**(19)** Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by authority of law. In terms of the said provision, therefore, all acts relating to the imposition of tax providing, inter alia, for the point at which the tax is to be collected, the rate of tax as also its recovery must be carried out strictly in accordance with law.”

“**(20)** If the substantive provision of a statute provides 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. If a 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. The State, furthermore is bound to act reasonably having regard to the equality clause contained in Article 14 of the Constitution of India.”

(1986) 3 SCC 50 (Commissioner of Sales Tax, UP Vs M/s Auriya Chamber of Commerce, Allahabad) - Paragraph 31

“**(31)** Where indubitably there is in the dealer legal title to get the money refunded and where the dealer is not guilty of any latches and where there is no specific prohibition against refund, one should not get entangled in the cobweb of procedures but do substantial justice. The above requirements in this Case, in our opinion, have been satisfied and therefore we affirm the direction of the Additional Judge (Revisions), Sales Tax for refund of the amount to the dealer and affirm the High Court's judgment on this basis.”

(1978) 4 SCC 271 (Hindustan Sugar Mills Vs State of Rajasthan & Ors.) - Paragraph 18

“**(18)** “.. We think that, in the circumstances, fairness and justice demand that the Central Government should pay to the assessee the amount of sales tax on the freight component of the price in respect of transactions of sale of cement entered into by the assessee with them under the provisions of the Control order. It is true and we are aware that there is no legal liability on the Central Government to do so, but it must be remembered that we are living in a democratic society governed by the rule of 'law and every Government which claims to be inspired by ethical and moral values must do what is fair and just to the citizen, regardless of legal technicalities. We hope and trust that the Central Government will not seek to defect the legitimate claim of the assessee for reimbursement of sales tax on the amount of freight by adopting a legislatic attitude but will do what fairness and justice demand. After all, the motto of every civilized State must be: "Let right be done'."

(2015) 11 SCC 513 (District Magistrate, Haridwar & Anr. Vs Harish Malhotra) - Paragraphs 14 and 15

"**(14)** "As long as there is no statutory sanction for imposition of a tax, no liability of paying a fee can be imposed relying on the alleged "consent" or acquiescence to the same imposition in part. The statutory sanction cannot be found under the Uttar Pradesh Entertainments and Betting Tax Act, 1979 or any rules made thereunder."

(2003) 5 SCC 461 (Commissioner of Income Tax, Bhopal Vs Shelly Products & Anr.) - Paragraph 36

"**(36)** We cannot lose sight of the fact that the failure or inability of the revenue to frame a fresh assessment should not place the assessee in a more disadvantageous position than in what he would have been if a fresh assessment was made. In a case where an assessee chooses to deposit by way of abundant caution advance tax or self-assessment tax which is in excess of his liability on the basis of return furnished or there is any arithmetical error or inaccuracy, it is open to him to claim refund of the excess tax paid in the course of assessment proceeding. He can certainly make such a claim also before the concerned authority calculating the refund. Similarly, if he has by mistake or inadvertence or on account of ignorance, included in his income any amount which is exempted from payment of income-tax, or is not income within the contemplation of law, he may likewise bring this to the notice of the assessing authority, which if satisfied, may grant him relief and refund the tax paid in excess, if any. Such matters can be brought to the notice of the concerned authority in a case when refund is due and payable, and the authority concerned, on being satisfied, shall grant appropriate relief. In cases governed by section 240 of the Act, an obligation is cast upon the revenue to refund the amount to the assessee without his having to make any claim in that behalf. In appropriate cases therefore, it is open to the assessee to bring facts to the notice of the concerned authority on the basis of the return furnished, which may have a bearing on the quantum of the refund, such as those the assessee could have urged under section 237 of the Act. The concerned authority, for the limited purpose of calculating the amount to be refunded under section 240 of the Act, may take all such facts into consideration and calculate the amount to be refunded. So viewed, an assessee will not be placed in a more disadvantages position than what he would have been, had an assessment been made in accordance with law."

(1996) 5 SCC 373 (IDL Chemicals Ltd. Vs Union of India) - Paragraph 13

"**(13)** There is, in our view, no doubt that the reclassification of ammonium nitrate by the order of the Central Board dated November, 1980, fasts upon the appellants the obligation to pay the excise duty that is leviable as a result. Such obligation does not arise merely by reason of an agreement between SAIL and the appellants but also by virtue of the provisions of Chapter X of the Central Excise Rules, 1944 the appellants suffer adverse civil consequences and have therefore, the locus to challenge the reclassification. There is no form other than the High Court under Article 226 where they can do so, and the High Court was in error in not entertaining the later writ petition (No. 183/1981) and referring the appellants to a civil suit. Insofar as the earlier writ petition (NO. 86/1980) is concerned, the High Court ought, for the same reason, toe have dealt with the contention of the appellants that ammonium nitrate remained except from excise duty by reason of the Exemption Notification until 21st July, 1979, when ammonium nitrate was removed from the purview thereof."

(1994) 5 SCC 100 (State of AP Vs M/s Hyderabad Asbestos Cement Production Ltd.) - Paragraphs 3, 4, 5 and 11

"**(3)** Sub-section (4) thus prescribes a condition for applicability of sub-section (1) of Section 8. It says that if a dealer wishes to avail of the lower rate of tax prescribed by sub-section (1), he has to comply with the requirements prescribed by it. If the sale is to the Government [Section 8(1)(a)] the selling dealer must produce before the prescribed authority (assessing authority) a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government. The rules made under the Act have prescribed the form of the certificate contemplated by the clause it is called 'Form-D'. Similarly, if the selling dealer says that he (Jeevan Reddy, J.) has sold the goods of the description referred to in sub-section (3) to a registered dealer [Section 8(1)(b)] he shall have to produce a declaration duly filled and signed by a registered dealer to whom the goods are sold containing the prescribed particulars in the prescribed form obtained from the prescribed authority. The Rules made under the Act have prescribed the form in which such declaration has to be issued by the purchasing dealer it is called 'Form-C'. In case form-D or Form-C is produced, the assessing authority would levy tax on inter-State sales @ 4% only; otherwise the sales will attract the higher rate of tax prescribed in sub-section (2)."

"(4). Before we deal with the proviso to sub-section (4), it would be appropriate to refer to the rule relevant in this behalf. It is Rule 12. It is a lengthy rule containing as many as ten sub- rules. Sub-rule (1) says that the certificate and the declaration referred to in clauses (a) and (b) of sub-section (4) of Section 8 shall be in Forms C and D respectively. The other provisions in sub-rule (1) and sub-rules (2) to (6) deal with various aspects relating to the said forms which it is not necessary to refer to for the purpose of this case. Sub-rule (7) reads as follows:

"(7) 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 up to the time of assessment by the first assessing authority:

Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit."

[It may be noted that proviso to sub-rule (7) was added in the year 1972 with effect from 1-4-1972, i.e., the date on and from which the proviso to sub-section (4) of Section 8 was added by the Amendment Act 61 of 1972.] Sub-rule (7), it is evident, deals with Form-C and certain other forms. It does not deal with Form-D. The main limb of sub-rule says that the declaration in Form-C shall be furnished to the prescribed authority (which means the assessing authority) up to the time of assessment by the first assessing authority."

"(5). At this stage, we may consider the reasons for which the proviso to sub-section (4) was added by the Amending Act 61 of 1972 and the proviso to sub-rule (7) of Rule 12 was inserted. In STO v. K.I. Abraham1, it was held by this Court that the phrase "in the prescribed manner" occurring in Section 8(4) of the Act confers upon the rule-making authority the power to prescribe a rule stating the particulars to be mentioned in the prescribed form, the nature and the value of the goods sold, the parties to whom they are sold and to which authority the- form is to be furnished but that it does not authorise the rule-making authority to prescribe a time-limit within which the (1967) 20 STC 367: AIR 1967 SC 1823: (1967) 3 SCR 518 declaration is to be filed by the registered dealer. With a view to remedy the lacuna pointed out by this Court, Parliament enacted the aforesaid (Amendment) Act 61 of 1972. The proviso empowers the rule-making authority to prescribe the time within which Form-C, i.e., the declaration referred to in clause (a) of sub-section (4) is to be furnished. The proviso not only empowers the rule-making authority to prescribe such time but also to provide that for sufficient reasons, the assessing authority may permit the said forms to be filled within the time prescribed. Pursuant to the said proviso, the rule-making authority introduced the proviso to sub-rule (7). While the main limb of sub-rule (7) says that Form-C can be furnished "up to the time of the assessment by the first assessing authority", the proviso says that if the prescribed authority is satisfied that the dealer was prevented by sufficient cause from furnishing such certificate "within the aforesaid time-limit" he may allow such certificate to be furnished within such further time as he may permit. Reading sub-rule (7) as a whole it follows that Form-C shall be furnished up to the time of assessment by the first assessing authority but in a proper case the prescribed authority (which means in the context the assessing authority) may permit such forms to be filed within such further time as he may permit. This necessarily means that the assessing authority will complete the assessment but at the same time permit the dealer to file Form-C within the time specified by him. 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.

"(11). We are unable to agree with the Revenue's contention that because Rule 12(7) speaks of "up to the time of assessment by the first assessing authority" or for that matter the proviso to the said sub-rule it excludes, by necessary implication, the appellate authorities. The decision in MacMillan furnishes a complete answer to this contention. We may elaborate. Section 13 of the Indian Income Tax Act, 1922 (corresponding to Section 145 of the present Act) read as follows:

"13. Income, profits and gains shall be computed, for the purposes of Sections 10 and 12, in accordance with the method of accounting regularly employed by the assessee 7 (1958) 33 ITR 182: AIR 1958 SC 207: 1958 SCR (Jeevan Reddy, J.) Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income Tax Of ficer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income Tax Officer may determine."

(2009) 1 SCC 540 - paragraphs 10 and 18-26 (Corporation Bank –vs- Saraswati Abharansala & Anr.)

"**(10)** An intra court appeal was filed by the first respondent and a Division Bench of the High Court by reason of the impugned judgment dated 7th November, 2006 allowed the said writ appeal opining:

"When the legislature or the government had given that relief with retrospective effect, necessarily, that relief shall reach the concerned eligible citizen. The bank had opportunity to file the return showing the real tax liability based on Ex.P1 and claiming refund in terms of Section 33 and could pay over the amount to the appellant, the customer of the first respondent. If that had been claimed, necessarily, the assessing authority would have refunded it with 10% interest as provided in Section 44(4)."

"(18) Sales tax is leviable on sale of goods. It must be collected by the dealer as an agent of the State at such rate as may be specified. Neither the State nor the agent is entitled to collect tax at a rate higher than specified. The Kerala General Sales Tax Act, 1963 also contains a provision for refund in Section 44 thereof which reads as under :

"Refund:- (1) When an assessing authority finds at the time of final assessment, that the dealer has paid in excess of what is due from him, it shall refund the excess to the dealer.

(2) When the assessing authority receives an order from any appellate or revisional authority to make refund of tax or penalty paid by a dealer it shall effect the refund.

(3) Notwithstanding anything contained in sub- section (1) and (2), the assessing authority shall have power to adjust the amount due to the refunded under sub-section (1) or sub-section (2), towards the recovery of any amount due on the date of adjustment, from the dealer.

(4) In case refund under sub-section (1) or sub- section (2) or adjustment under sub-section (3) is not made within ninety days of the date of final assessment, or as the case may be, within ninety days of the date of receipt of the order in appeal or revision or the date of expiry of the time for preferring appeal or revision, the dealer shall be entitled to claim interest at the rate of ten percent per annum on the amount due to him from the date of expiry of the said period upto the date of payment or adjustment."

"(19) Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by authority of law. In terms of the said provision, therefore, all acts relating to the imposition of tax providing, inter alia, for the point at which the tax is to be collected, the rate of tax as also its recovery must be carried out strictly in accordance with law."

"**(20)** If the substantive provision of a statute provides 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. If a 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. The State, furthermore is bound to act reasonably having regard to the equality clause contained in Article 14 of the Constitution of India."

"(21) It is not even a case where the doctrine of unjust enrichment has any application as it is not the case of the respondent//State that the buyer has passed on the excess amount of tax collected by it to the purchasers."

"(22) In view of the admitted fact that tax had been collected and paid for the period 6th April, 1999 and 10th December, 1999 @ 1 % of the price which having been reduced from 1st April, 1999 to 0.5 %, the State, in our opinion, is bound to refund the excess amount deposited with it."

"(23) Furthermore the Notification having been given a retrospective effect must be construed on the touchstone of the purpose and object it sought to achieve. Principle of purposive construction should be applied in a case of this nature to find out the object of the Act. When a statute cannot be considered in such a manner which would defeat its object, the legislature is presumed to be aware of the consequences flowing therefrom. The statute should be considered in such a manner so as to hold that it serves to seek a reasonable result. The statute would not be considered in such a manner so as to encourage defaulters and discourage those who abide by the law."

"(24) The statute furthermore, it is trite, should be read in the manner so as to do justice to the parties. If it is to be held, without there being any statutory provision that those who have deposited the amount in time would be put to a disadvantageous position and those who were defaulters would be better placed, the same would give rise to an absurdity. Construction of the statute which leads to confusion must be avoided.”

“(25) Thus the condition of non refund of the excess amount must be held to have been repealed by necessary implication as the rate of tax so applied to the transaction of sale of gold bullion was with retrospective effect.”

“(26) As all the facts are admitted and the State had refused to refund the excess amount of tax realized from the appellant, in our opinion, the writ petition was maintainable. We are, therefore, of the opinion that the interest of justice would be served if instead of the appellant refunding the amount to the first respondent and later claiming refund from the authorities, if the State of Kerala is directed to refund the amount of tax collected with interest at the rate of 10% per annum to the first respondent at an early date, and not later than four months from the date of communication of this order. It is ordered accordingly. If, however, the amount is not paid within the aforementioned period, the outstanding amount shall carry interest @ 15 % per annum.”

1975 SCC OnLine All 503 : (1978) 41 STC 315 (Indian Explosives Ltd. Vs Commissioner, Sales Tax, UP & Ors.) - Paragraphs 3,4 and 8

“(3) The first hurdle that the petitioner-company has to cross is whether it is entitled to maintain this petition. Under the U.P. Sales Tax Act, tax is levied on a dealer effecting sale. The dealer in the instant case is the IOC and the tax has been levied upon it. Ordinarily it is the dealer alone who can question the validity or quantum of tax. The petitioner is not the dealer even though it is liable to pay tax to the IOC under the agreement. The contention of Mr. Basu, the learned counsel for the petitioner, is that even though the company is not a dealer, as defined in the U.P. Sales Tax Act, yet it is the aggrieved person because the tax has ultimately to be borne by it. It is, therefore, entitled to maintain this petition. It is further urged that because the petitioner is not a dealer it cannot avail of the statutory remedies of appeal, etc., provided under the U.P. Sales Tax Act nor can it file a suit to challenge the assessment order by virtue of the prohibition contained in Section 17 of the U.P. Sales Tax Act and the only course available to the petitioner is to approach this court under Article 226 of the Constitution. In our opinion, there is a good deal of force in this contention. In Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal A.I.R. 1962 S.C. 1044, the Supreme Court while dealing with the scope of Article 226 of the Constitution has made the following observation:

“Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the court seeking a relief thereunder.”

“(4) This observation has been quoted with approval by the Supreme Court in Gadde Venkateswara Rao v. Government of Andhra Pradesh A.I.R. 1966 S.C. 828. Directly bearing on the point are the following observations of Lord Danning, J., in R. v. Thames Magistrates' Court, Ex p Arte Greenbaum (1957) 55 L.G.R. 129 at 132, as reproduced at page 228 in a book called "A Source Book of English Administrative Law" by D. C. M. Yardley, second edition:

“There is one other matter which was taken before us and that is this. It was said that Mr. Greenbaum had no locus standi to come before the Court of Queen's Bench because he was not a party to the proceedings before the Magistrate; that the only people before the Magistrate were Mr. Gritzman and the borough council and, therefore, Mr. Greenbaum had no place from which to come before the court and ask for a certiorari to quash the Magistrate's decision. Upon that matter I would say that the remedy by certiorari is not confined to the parties before the lower court. It extends to any person aggrieved and, furthermore, to any stranger. The Court of Queen's Bench, by virtue of its inherent jurisdiction over the inferior tribunals, has always the right to interfere if it sees that the lower tribunal is going or has gone beyond its jurisdiction, or has acted in a way contrary to law, or appears from the record to have fallen into error in point of law; and it can so interfere, not only at the instance of a party or a person aggrieved but also at the instance of a stranger if it thinks proper. When application is made to it by a party or a person aggrieved, it will intervene ex debito justitiae, in justice to the applicant. When application is made by a stranger it considers whether the public interest demands its intervention. In either case, it is a matter which rests ultimately in the discretion of the court.”

“(8) Before we leave this topic we might as well refer to a decision of Grover, J., of the High Court of Punjab, as he then was, which deals directly with the point arising before us. It was held in that case that relief under Article 226 of the Constitution can be sought not only by a dealer as defined in the Sales Tax Act, who is liable to pay the tax, but also by a purchaser or a consumer from whom the tax is charged by the dealer (see Dr. Diwan Chand Aggarwal v. Commissioner of Sales Tax, Delhi [1963] 14 S.T.C. 51. The preliminary objection is accordingly overruled and it is held that the petitioner-company is entitled to maintain the present writ petition.”

(2011)1 SCC 484 (M. Sudakar Vs V. Manoharan & Ors.) - Paragraphs 14,15

“(14) The power to mould relief is always available to the Court possessed with the power to issue high prerogative writs. In order to do complete justice it can mould the relief, depending upon the facts and circumstances of the case. In the facts of a given case a 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. Further delay and latches does not bar the jurisdiction of the Court. It is a matter of discretion and not of jurisdiction. The learned Single Judge had taken note of the relevant facts and declined to dismiss the writ petition on the ground of delay and latches."

"(15) True it is that the learned Single Judge had observed that the writ petition had become infructuous and still proceeded to grant relief to the appellant. In our opinion, the learned Single Judge may not be absolutely right in observing that the writ petition had become infructuous as the resolution debarring the appellant was still operative. In our opinion a writ petition broadly speaking is held infructuous when the relief sought for by the petitioner is already granted or because of certain events, there may not be necessity to decide the issue involved in the writ petition. Here in the present case the resolution of the Governing Body was still holding the field when the writ petition was heard and in fact was to operate for a further period, hence it cannot be said that the relief claimed by the appellant had become infructuous. In any view of the matter, as the effect of the order continued, the learned Single Judge was right in molding the relief. The act of the appellant in removing a large number of members and financial impropriety will not clothe the General Body to pass resolution debarring the appellant from holding the post for 10 years, as no such power is conferred by the bye-laws. The action being patently illegal, the learned Single Judge could not have declined the relief taking into account the alleged action."

(2014) 6 SCC 335 (Union of India Vs Tata Chemicals) - Paragraph 38

"(38) Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing Statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there-being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which ex ae quo et bono ought to be refunded, the right to interest follows, as a matter of course."

Learned Government Pleader appearing for the Respondent/State of West Bengal has not cited any decision and he has simply tried to distinguish the aforesaid decisions relied upon by the petitioners by submitting that those are not applicable to the case of the petitioners herein.

Whole case after perusing the Writ Petitions, affidavits filed by the parties, stand taken by IOCL and upon considering the facts as appear from record, relevant provisions of law and the judgments cited in course of hearing can be summarized as hereinbelow:

It is the admitted position as appears from record that the purchasing HSD oil dealer /petitioners as well as IOCL/the selling dealer in West Bengal have registered themselves under the Central Sales Tax Act and the declared goods are certified in the certificate of registration of the petitioner as well as purpose for purchase has also been certified, petitioners are entitled to concessional rate of tax under Section 8 (1) of the CST Act, 1956 since the IOCL/selling dealer has obtained from the petitioner/purchasing dealer the declaration in the prescribed form duly filled and signed by them containing the particulars of the goods that were ordered/purchased/supplied under a certain specific order and all the purpose mentioned and the goods are covered by the registration certificate of the purchaser/petitioner under the CST Act. Nowhere respondents/State Government of West Bengal has made out any case that those certificates were defective or did not set out all details or contained false particulars about the order, bill, cash memo, challan or about the number and date of registration certificate and specification of goods covered by the certificate of purchasing dealer or that the transaction is not admitted to a concessional rate of tax.

It is of course open to the authority concerned of the State Government of West Bengal as well as tax authority to satisfy themselves that the goods which were purchased by the purchasing dealer/petitioner under the certificate in Form “C” are specified in the purchasing dealer in Form B.

Since the petitioners have submitted the “C” Forms to the respondents State Government of West Bengal through the selling dealer/IOCL relating to inter-State sale in question during the course of impugned assessment there cannot be a case of non-compliance of submission of “C” Forms and neither it is a case of defective “C” Forms in any manner by the State Government of West Bengal.

It appears from Paragraph 7 of the affidavit-in-opposition on behalf of the Respondent/the State of West Bengal filed by Shri Anirban Talukdar, dated 25.08.2021, that it has been conceded that “C” Forms issued by the petitioners were duly produced by IOCL during its assessment proceedings. However, in the entire Affidavit, the State of West Bengal has nowhere contended that IOCL is in law liable to pay higher rate of tax or that the petitioners were wrongly issued “C” Forms or the same were not genuine or the relevant provision of concessional rate of tax was not applicable to the case of the petitioner during the relevant period on the sale in question or the amount of tax in question collected by the IOCL from the petitioners in excess of concessional rate was not deposited with the Respondent/State of West Bengal.

In the present case it has not been disputed by the Respondent State Government of West Bengal that the Petitioners are duly registered under the CST Act and HSD Oil is a product mentioned in the Certificate of Registration of the Petitioners and that “C” Forms have duly been produced during the course of assessment of the seller (i.e. IOCL herein). The Petitioners’ claim of being entitled to purchase at a concessional rate on production of “C” Forms relating to goods in question is therefore undisputed.

The State of West Bengal in its Affidavit-in-Opposition has not disputed the fact that the Petitioners were otherwise entitled to purchase HSD Oil at concessional rate but have only relied upon alleged technicalities as stated above for denying the claim of refund to the Petitioners that the petitioners cannot claim refund of excess tax in question directly from it.

Petitioners may not be considered a “dealer” under the WBST Act or WBVAT Act and may not be entitled to file an appeal under the aforesaid Acts, it would nevertheless be entitled to challenge the impugned order of assessment of IOCL and maintain the present writ petition as well as seek a refund as it is the Petitioners who have borne the brunt/burden of the tax in question.

During the course of hearing on specific query by this Court, the Learned Government Pleader as to whether petitioners herein are ‘person aggrieved’ or not for the purpose of invoking constitutional writ jurisdiction of this Court under Article 226 of the Constitution of India to which he fairly conceded but contended that still petitioners have no right to make any claim against the Respondent/State of West Bengal directly. He also could not deny that after the interim order dated 17.05.2018 passed by the Hon’ble High Court of Jharkhand in the case of the Petitioners and after the dismissal of the Special Leave Petition by the Hon’ble Supreme Court against the said order of the Hon’ble High Court, ‘C’ Forms were issued by the State of Jharkhand in favour of the Petitioners and submitted by IOCL were being used to entertain and were given effect to by the State of West Bengal by granting concessional rate of tax and therefore, the denial of relief by the State Government of West Bengal was only confined to the disputed period between 01.07.2017 to October, 2018 against which the instant writ petitions have been filed by the petitioners.

Stand of the Respondent/State of West Bengal in justification of not allowing concessional rate of tax on purchasing of HSD oil in course of inter-State sale during the relevant period and refusal to refund the excess tax in question is contrary to law and equity as well. Firstly, the Respondents are trying to resist the claim of refund by entangling the Petitioners in the cobwebs of procedures and legal technicalities, which approach has not been appreciated by the Courts in the various decisions referred hereinabove. Secondly, there is no requirement under any statute to allow refund only if the Provisional Credit Notes have been given effect to. In fact, there is no requirement of issuing a Provisional Credit Note under any of the statutes involved in the present case. Third, the Provisional Credit Notes were issued by IOCL only on the request of the Petitioners, as the State of Jharkhand was refusing to issue “C” Forms until and unless it was satisfied that IOCL had agreed to make a sale to the Petitioners at a concessional rate of tax and not at the full rate as mentioned in the invoices. Pleading in this regard is in paragraphs 20-22 of the Writ Petition. Fourth, perusal of the Provisional Credit Note as appears at Page-90 of the Writ Petition would make it clear that the refund would be processed by IOCL only if it received the excess differential tax from the State Government of West Bengal and not otherwise. Since, in the present case the State Government of West Bengal has till date not processed the refund, the Provisional Credit Notes have not been given effect to by IOCL. Fifth, the logical effect of the judgments of the Punjab and Haryana High Court, Rajasthan High Court and Jharkhand High Court as referred above which were affirmed by the Hon'ble Supreme Court is that the Impugned Circulars, which denied the concessional rate of tax to the assessees have been set aside which necessarily would mean that the purchasers/Petitioners would become entitled to purchase HSD Oil at a concessional rate of tax from 01.07.2017 onwards. If the State Government of West Bengal is successful in refusing to refund the tax deposited by IOCL, which was recovered from the Petitioners, it would effectively amount to denying the concessional rate of tax to the Petitioners, which would be in direct conflict with the decisions of those Hon'ble High Courts as discussed above and as approved by the Hon'ble Supreme Court. Sixth, in any event, even if the stand of the State Government of West Bengal is to be accepted on its face value then, with regard to its interpretation of the direction contained in paragraph 27 of the judgment of the Hon'ble High Court of Jharkhand (supra), the Provisional Credit Notes have to be given effect to by IOCL. This can only be done as per the terms of the Provisional Credit Note only when the State Government of West Bengal refunds the excess tax to IOCL which were admittedly collected by it. In the present case, since the State Government of West Bengal itself is refusing to refund the excess tax either to IOCL or directly to the petitioners it cannot be allowed to take advantage of its own wrong. Looking at from another angle, once the State Government of West Bengal has itself admitted that the said

Provisional Credit Note has to be given effect to, the State Government of West Bengal is bound to provide the refund of excess tax to IOCL which would in turn pass it on to the Petitioners. Seventh, moreover, stand of the State of West Bengal to insist on a revisions of the returns filed by IOCL for the relevant period as a condition precedent for refund, is not authorised by law. More so, when Section 30(6) of the West Bengal Sales Tax Act read with Rule 152(1) of the West Bengal Sales Tax Rules, 1995 *inter-alia* provide for filing of a revised return for each quarter before the filing of the return for the next quarter. In the present case, by the time the Hon'ble High Court of Jharkhand at Ranchi passed its interim order dated 17.05.2018 and the Hon'ble Supreme Court dismissed the Special Leave Petition filed by the State of Jharkhand against that order on 29.10.2018, the time for filing of revised returns by IOCL for the period commencing 01.07.2017 had long expired. The issue finally came to be resolved once the final judgment was rendered by the Hon'ble High Court of Jharkhand at Ranchi on 28.08.2019 and the Special Leave Petition filed by the State of Jharkhand was dismissed by the Hon'ble Supreme Court on 13.09.2021.

Submission of the petitioners while making a Representation dated 29.12.2020 being Annxure P-17 of the Writ Petition to the Respondent/State of West Bengal, in paragraph 23 a prayer was made by the Petitioners that "refund ought to be granted to Tata Steel Limited". The submission made in the subsequent paragraph was therefore, to directly refund to the Petitioners the amount of excess tax collected by them/the Respondent/State of West Bengal through IOCL.

The Learned Government Pleader for the Respondent/State of West Bengal is therefore wrongly interpreting and taking a hyper technical stand that the prayer for refund was made by the Petitioners "through" IOCL. The representation, if correctly read, makes a prayer to refund to the Petitioners directly, the excess tax collected by the petitioners through IOCL.

The Respondent/State of West Bengal is expecting IOCL to do the impossible. Returns were being furnished by IOCL on a quarterly basis. As per Section 30(6) of the West Bengal Sales Tax Act returns had to be revised before the expiry of 30 days from the end of each quarter. At the time when IOCL had filed its returns, the Impugned Circular issued by the State Government of Jharkhand dated 11.10.2017 was still in operation, which prevented the issue of "C" Forms. IOCL therefore could not have made a claim or a revised claim at that point of time and the aforesaid Circular was finally set aside by the Hon'ble High Court of Jharkhand at Ranchi only on 28.08.2019, by which time the time for filing the revised returns for the period 01.07.2017 to July 2019 was already over. The issue attained finality only on the dismissal of Special Leave Petition preferred by the State of Jharkhand on 13.09.2021.

In the peculiar facts and circumstances of the present case the stand of the State Government of West Bengal to insist upon refund only on the returns being revised now by the IOCL, is a stand which is impossible of compliance under the statute. Furthermore, the buyer/petitioners have absolutely no role to play as this aspect of filing a revised return by IOCL for making claim of refund, is a matter between the State Government of West Bengal and its seller IOCL.

In identical circumstances, the Hon'ble Rajasthan High Court, in the case of Hindustan Zinc Ltd. –vs- State of Rajasthan by order (Civil Writ Petition No. 1503/2018) dated 18.05.2018, had similarly set aside a similar Circular issued by the State of Rajasthan and had ordered for refund. A writ petition was filed by the purchasers of HSD Oil before the Hon'ble Gujarat High Court from where the purchases had been made for refund of excess tax deposited. The Hon'ble Gujarat High Court, in the case of J.K. Cement Ltd. –vs- State of Gujarat (R/Special Civil Application No. 15333 of 2019) by order dated 18.12.2019, allowed the said writ petition at the instance of the purchasers of HSD Oil.

Special Leave Petition (Civil) Nos. 2279-2280 of 2021 filed by the

State of Gujarat against the said order of Hon'ble Gujarat High Court was dismissed by the Hon'ble Supreme Court, by order dated 10.02.2021.

Similarly, the Hon'ble Punjab & Haryana High Court in the case of ***Capro Power Ltd. v. State of Haryana & Ors.*** (CWP No. 29437 of 2017) by order dated 28.03.2018, had taken a similar view and directed for refund to the Petitioners therein of the excess tax collected.

Special Leave Petition against the aforesaid judgment of the Hon'ble Punjab & Haryana High Court has also been dismissed, by order dated 13.08.2018, passed by the Hon'ble Supreme Court in SLP (C) No. 20572 of 2018.

In the present case the decision of the Hon'ble Jharkhand High Court (supra) dated 28.08.2019, in which in paragraph 27 of the judgment a positive mandate has been given in favour of the Petitioners to apply for and obtain refund of the excess tax deposited by it. The judgment of Hon'ble Jharkhand High Court (supra) dated 28.08.2019 (as reported in ***2019 SCC Online Jharkhand 1255***) has attained finality as Special Leave Petition filed by the State Government of Jharkhand against the same has been dismissed by the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of ***The Commissioner of Commercial Taxes & Anr. v. The Ramco Cements Ltd.*****, in Special Leave Petition (Civil) Nos. 15785-15788 of 2020,** by order dated 24.03.2021 has specifically approved the aforesaid decision of Hon'ble Jharkhand High Court and the Respondent State Government of West Bengal though it was not a party in the said proceeding it could have challenged the same before the Hon'ble Supreme Court if so aggrieved since there was no bar, but it did not do so.

Central Sales Tax is a tax leviable at the instance of Government of India, even though assessed and collected by the State Government. The Union of India has also accepted the aforesaid position in law, as has been delineated by the Hon'ble Punjab & Haryana High Court in the case of ***Carpo Power*** (***supra***) and has directed all the States to follow the said judgment, through its Circular dated 01.11.2018 being Annexure P-15 Page.197 of Writ Petition.

If the judgments of the Hon'ble Supreme Court affirming the aforesaid order of the Hon'ble High Court of Jharkhand at Ranchi (***supra***) is to be followed in letter and in spirit, then it is clear that the Petitioners are entitled to a concessional rate of tax on inter-State sale in question and consequently entitled to a refund the amount of tax paid by them in excess of concessional rate of tax.

Since the Respondent/State of West Bengal has withheld the amounts paid by the Petitioners in excess of statutory concessional rate without any authority of law, the Petitioners are entitled to get refund with interest in view of the decision of the Hon'ble Supreme Court in ***Union of India v. Tata Chemicals*** **paragraph 38 (supra)**.

In view of Section 79 of the WBST Act and Section 84 of the West Bengal Value Added Tax Act, 2003 [hereinafter referred to as the "WBVAT Act"] an appeal against an assessment order can only be filed by a "dealer". Similarly, as per Sections 60 & 61 of the WBST Act and Sections 61 & 62 of WBVAT Act refund of excess tax collected can only be granted to a "dealer". The definition of "dealer" is provided under 2(10) of WBST Act and 2(11) of WBVAT Act which does not include the Petitioners herein.

Further, it is settled principle of law that cobwebs of procedures and legal technicalities cannot deter the legal rights of the Petitioners to get a refund of excess tax collected by the Respondents. This proposition of law is supported by the judgments passed by the Hon'ble Supreme Court in the case of ***Commissioner of Sales Tax, U.P. v. M/s. Auriaya Chamber of Commerce, Allahabad***, reported in **(1986) 3 SCC 50 at Paragraph 31** and ***Hindustan Sugar Mills v. State of Rajasthan & Ors.***, reported in **(1978) 4 SCC 271 at Paragraph 18, Corporation Bank Vs. Saraswati Abharansala & Anr.** Reported in **(2009) 1 SCC 540 at Paragraphs 19 & 20.**

With regard to the contention of the Respondent/State of West Bengal that since IOCL has failed to revise its returns by claiming the sales in question to be sales under Section 8(1) read with Section 8(3) of the CST Act, its claim for sales at a concessional rate of tax was to be rejected is not sustainable in law since Petitioners herein have no control over its seller i.e. IOCL and the Petitioners cannot direct IOCL to revise/amend its returns. As a buyer/purchaser Petitioners' duty ends with the furnishing of "C" Forms. Once the "C" Forms had been furnished by the Petitioners and had been produced at the time of assessment by IOCL, the purchaser/buyer (i.e. Petitioners in the present case) is absolved of its obligation in law and is entitled to purchase HSD Oil at a concessional rate of tax. In similar circumstances in the case of *Corporation Bank* (*supra*) it was noticed by the Hon'ble Supreme Court in paragraph 10 of its judgment that even though the seller had not revised its returns showing its real tax liability, it will appear that the Hon'ble Supreme in paragraphs 18-26 of its judgment has directed the State Government concerned to refund directly in favour of the buyer/purchaser, notwithstanding the failure by the seller to revise its returns. On a parity of reasoning even assuming the that there was a failure by IOCL to fulfil its legal obligations of revising its returns, the Petitioners should not be made to suffer on that account and would nevertheless be entitled to a concessional rate of tax.

In the case of ***District Magistrate, Haridwar & Anr. v. Harish Malhotra***, reported in **(2015) 11 SCC 513 at paragraphs 14-15** and in the case of ***Commissioner of Income Tax, Bhopal v. Shelly Products & Anr.***, reported in **(2003) 5 SCC 461 at paragraph 36**, the Hon'ble Supreme Court has categorically held that if there is no sanction in law to levy tax, then the State cannot impose/collect it on the basis of consent or ignorance or mistake of the assessee. The same point has been reiterated by the Hon'ble Bombay High Court in the case of ***Nirmala L. Mehta v. A. Balasubramaniam, C.I.T. & Ors.***, reported in **2004 SCC OnLine Bom 390 at paragraphs 13-15**. Further, the Hon'ble Supreme Court in the case of ***Share Medical Care v. Union of India & Ors.***, reported in **(2007) 4 SCC 573** has held that the assessee is entitled to claim the benefit available to it under law even at a later stage of the proceedings if it has not been claimed earlier. Thus, the State Government of West Bengal cannot retain the excess tax admittedly collected by it on the alleged consent/acquiescence of IOCL in not revising its quarterly returns, when admittedly the actual liability has been borne by the Petitioners.

If a 'C' Form is being produced for the first time at the appellate stage, there would be no question of revising the returns at that stage as appears from the judgment in the case of ***Radio and Electricals*** (***supra***) at **paragraphs 14 and 15**; ***Gujarat Ambuja*** (***supra***) **at paragraphs 37 and 38** and the decision of the Hon'ble Supreme Court in ***State of A.P.& Ors. v. M/s Hyderabad Asbestos Cement Production Ltd. & Ors.***, reported in **(1994) 5 SCC 100 at paragraphs 3, 4, 5 and 11**.

It is well settled that if a claim is otherwise admissible on the basis of documents on record, the failure to revise a return would be immaterial as it is the duty of the Assessing Officer to impose tax on the basis of law as not the basis of an alleged concession, acquiescence or mistake or failure on the part of the assessee to make a correct claim as appears from the judgments in the case of ***Jupiter International Limited v. The Senior Joint Commissioner Sales Tax***, reported in **2014 SCC OnLine Cal 4122**;***Tarapore and Company, Jamshedpur v. State of Jharkhand***, reported in **2019 SCC OnLine Jhar 1918**, ***CIT v. Bharat General Reinsurance Company Limited***, reported in **1970 SCC OnLine Del 301at paragraphs 6 and 11**, ***Corporation Bank*** (***supra***) **at paragraphs 10, 18-26**.

In any event as held by the Hon'ble Supreme Court in ***Corporation Bank*** (***supra***) and in ***State of Punjab & Ors. v. Atul Fasteners Ltd.***, reported in **(2007) 4 SCC 471 at paragraph 5** a seller of goods is an agent of the State Government while collecting taxes on its behalf. Therefore, even assuming, that IOCL was in default in revising its returns, even in such an eventuality, the Petitioners being buyers of goods, have fulfilled their obligations by producing the "C" Forms and in such circumstances Petitioners could not be made liable for any alleged default of the seller IOCL being tax collecting agent of the

Respondent State Government of West Bengal as the buyers i.e. Petitioners in the present case have no control over the activities of the seller i.e. IOCL in the present case.

It is a well settled position of law that a writ petition would be maintainable at the instance of a party who has suffered the liability to tax. Thus, in view of the judgment passed by the Hon'ble Supreme Court in ***I.D.L. Chemicals Ltd. v. Union of India & Ors.***, reported in **(1996) 5 SCC 373 at Paragraph 13,** unreported judgment dated 03.01.2019 passed by the Hon'ble Jharkhand High Court at Ranchi in W.P. (C) No. 3318 of 2018 **(*Jharkhand State Mineral Development Corporation Ltd. v. Central Coalfields Limited & Ors.*at Paragraphs 6-7)**, and the judgment of Hon'ble Allahabad High Court in ***Indian Explosives Ltd. v. Commissioner, Sales Tax, U.P. & Ors.***, reported in **1975 SCC Online All 503 at Paragraphs 3-7**, a writ petition under Article 226 of the Constitution is the only remedy available for the Petitioners in the present case.

In the decision of Indian Explosives Ltd. (supra) the Hon'ble High Court of Judicature at Allahabad quashed an order of assessment of the seller at the instance of a buyer/purchaser in identical circumstances such as the present case.

The Hon'ble Supreme Court in the case of ***State of H.P. & Ors. v. Gujarat Ambuja Cement Ltd. & Anr.***, reported in **(2005) 6 SCC 499 at Paragraphs 37-38** has categorically held that 'C' Forms can be produced by the assessee even after the assessment order has already been passed by the Assessing Officer.

The Hon'ble Supreme Court in the case of ***M. Sudakar v. V. Manoharan & Ors.***, reported in **(2011) 1 SCC 484 at paragraphs 14-15** and in the case of ***B.C. Chaturvedi v. Union of India & Ors.***, **(1995) 6 SCC 749 at paragraph 23** has categorically held that the Hon'ble High Court, in exercise of its powers under Article 226 of the Constitution of India, has the appropriate powers in issuing high prerogative writs to mould the relief in a manner to do complete justice, depending upon the facts and circumstances of the case. This Writ Court has the appropriate powers to grant any other relief not even prayed for by the Petitioners in view of the judgment of the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh & Anr. v. Bhailal Bhai & Ors.***, reported in **AIR 1964 SC 1006 at paragraphs 4 and 10**.

Considering the submission of the parties, relevant records, legal provisions of law and decisions cited before me and the stand taken by the Respondent IOCL and the Respondent State Government of West Bengal on the issues involved in these Writ Petitions I am inclined to allow these Writ Petitions by holding as hereunder:

(1) In the facts and circumstances of the case petitioners who are the purchasing dealers of HSD oil can be called "person aggrieved" and have locus standi to file these Writ Petitions in view of admitted factual position that the impugned action on the part of the Respondent State Government of West Bengal have deprived the petitioners of their legitimate right to purchase the HSD oil at statutory concessional rate of tax under Central Sales Tax Act, 1956 in course of inter-State sale during the relevant period and to get refund of tax which was collected by the Respondent Government of West Bengal from the petitioners through IOCL/selling dealer in course of such inter-State Sale in excess of concessional rate of tax under Section 8 (1) read with 8 (3) and 8 (4) of the Central Sales Tax Act, 1956, since it is the petitioners who actually suffered and borne excess higher rate of tax.

(2) On a plain reading of Rule 12 (7) of the Central Sales Tax Rules, 1956, and considering various decisions of High Courts and the Hon'ble Supreme Court referred above in my considered opinion filing of "C" Forms along with return by the selling dealer is directory and not mandatory and under the provisions of the Central Sales Tax Act, 1956 and Central Sales Tax Rules, 1956 nowhere there is any specific or complete statutory bar in filing "C" Forms by the dealers and the same may be filed belatedly at the stage of assessment proceeding and the action of the assessing officer in refusing to accept the

same which were admittedly produced before him in course of impugned assessment order on the ground of delay in filing the "C" Forms relating to relevant period is arbitrary, unreasonable, unjustified and in wrongful exercise of his jurisdiction.

(3) In the facts and in the circumstances of the case impugned assessment order is bad in law to the extent of causing denial of concessional rate of tax to the petitioners on purchase of HSD oil in course of inter-State sale during the relevant period in spite of admitting position as appears from recording by the assessing officer in its impugned assessment order that the "C" Forms in respect of the relevant period were submitted before him and that conditions for entitlement of concessional rate of tax are fulfilment of conditions under Section 8 (1) of CST Act, 1956 and in spite of such recording nowhere in the impugned assessment order has recorded or held that ground for non acceptance of relevant "C" Forms is non-fulfilment of any of the conditions under Section 8 (1) read with 8 (3) and 8 (4) of the CST Act and in view of these facts action of the Assessing Officer refusing to accept relevant "C" Forms is patently arbitrary, unreasonable and is in wrongful exercise of his jurisdiction.

(4) It is established fact as appears from record and which could not be denied or contradicted by the Respondent State Government of West Bengal or IOCL that in the instant case petitioners have fulfilled the conditions under Section 8 (1) of the CST Act, 1956 and that the petitioners had complied with the terms and conditions of Section 8 (3) and 8 (4) of the Central Sales Tax Act, 1956 and accordingly petitioners were entitled to purchase HSD oil from selling dealers in the State of West Bengal at a statutory concessional rate of tax in course of inter-State sale during the relevant disputed period pertaining to which "C" Forms have been submitted by IOCL before the Assessing Officer.

(5) Respondent State Government of West Bengal is unjust and unfair in taking the plea that the petitioners/purchasing dealers cannot claim refund in question from it directly and it should claim the same from IOCL/the selling

dealers of HSD Oil company in West Bengal and that since selling dealer/IOCL has not filed the relevant "C" Forms along with return or revised returns for such claim in spite of being fully aware of the extra ordinary compelling circumstances which are matters of record that the time to file the relevant "C" Forms along with return or revise return under the statute had already expired when the "C" Forms were issued by the purchasing respective State Governments in favour of the petitioners pursuant to the order of the Hon'ble Jharkhand High Court and further petitioners had no control over the unjustified and wrongful action of State Government of Jharkhand in not issuing the relevant "C" Forms within due time and or on filing of revised return by IOCL/the seller oil dealer.

(6) In the facts and in the circumstances of the case Respondent State Government of West Bengal is legally not justified in penalising the petitioners by way of non-refunding of the excess tax collected by it by ignoring and disregarding that the full rate of tax instead of concessional rate of tax were paid by the petitioners to it due to compelling extra ordinary circumstances of wrongful action of non-issuance of "C" Forms by the purchasing State Government during the relevant period was on the basis of relevant notification and the relevant "C" Forms were issued in favour of the petitioners by the purchasing State Government belatedly only after the said notification was quashed by the Hon'ble High Court of Jharkhand and after the dismissal of the Special Leave Petition by the Hon'ble Supreme Court against the said order of the Hon'ble Jharkhand High Court and reason for such delay in submitting the "C" Forms is bona fide and not wilful and deliberate and were beyond the control of the petitioners/purchasing company as appears from record.

(7) In the facts and in the circumstances of the case the Respondent State Government of West Bengal is legally not justified in refusing to refund the excess amount of tax collected by it by taking the plea that petitioners should make claim of refund of such excess amount of tax in question from IOCL while

it is matter of record that such excess amount of tax are not lying with the IOCL and it has already been deposited with the exchequer of State Government of West Bengal and even if IOCL wants to refund the said excess amount of tax to the petitioners, it is impossible and impracticable to do so by the IOCL in such circumstances unless the State Government of West Bengal refunds the said excess tax to IOCL if not directly refunding to the petitioners and such action of withholding and retention of refundable amount in question by the State respondent is arbitrary, unfair, unjust, not authorised by law and amounts to unjust enrichment.

(8) In the facts and in circumstances of the case action of the Respondent State Government of West Bengal refusing to refund the amount of tax collected by it in excess of concessional rate of tax for the relevant period by taking the plea of consent or acquiescence against the petitioners or IOCL not legally justified since it is admitted factual position that the Respondent State Government of West Bengal had been allowing the petitioners to purchase the HSD oil at a concessional rate of tax before the relevant disputed period and is still continuing to allow the petitioners to purchase the HSD oil at a concessional rate of tax after the relevant disputed period and only during the relevant dispute period it has denied the petitioner benefit of statutory concessional rate of tax on purchase of HSD oil.

(9) In the facts and in the circumstances of the case action of the Respondent State Government of West Bengal denying the petitioners their legitimate right to purchase HSD oil in course of Inter-State sale on statutory concessional rate of tax during the relevant disputed period and act of refusal to refund the excess amount of tax in question collected by it in excess of concessional rate of tax is without statutory sanction and is contrary to in disregard to instruction dated 1.3.2018 issued by the Government of India, Ministry of Finance, Department of Revenue, State Taxes Section and such action of not giving the petitioner benefit of concessional rate of tax and non

refund of excess tax collected by the Respondent State Government of West Bengal is arbitrary, unreasonable, unjust and unfair.

(10) In view of Article 265 of the Constitution of India it is not proper on the part of the Respondent State Government of West Bengal to levy or collect the tax not authorised by law and collection of tax must be strictly in accordance with law and admitted excess tax in question collected by it in course of Inter-State sale of HSD oil during the relevant period must be refunded by it to the petitioners by acting reasonably which it is bound to being a State.

(11) In the instant cases neither petitioners nor IOCL is guilty of any latches and when there is no specific prohibition under the statute against such refund petitioners should not get entangled in the cobweb of procedures and the State should do substantial justice by refunding the amount of tax in question collected by it in excess of statutory concessional rate of tax during the relevant period either to the selling oil dealers/IOCL or to the purchasing oil dealers/petitioners and State should not deprive the legitimate claim of the petitioners to purchase the HSD oil at a concessional rate which is their statutory right under Central Sales Tax Act, 1956, in course of inter-State sale since they have fulfilled the conditions under Section 8 (1) read with 8 (3) and 8 (4) of the Central Sales Tax Act, 1956 by doing what fairness and justice demand of a State and which is the motto of every civilised society.

(12) On the basis of alleged consent or waiver or acquiescence Respondent State Government of West Bengal cannot impose any tax if there is no statutory sanction for imposition of a tax or no liability of paying such tax.

(13) The State cannot behave like an unfair private businessman and practice unjust enrichment by taking undue advantage of its own wrong in justification of its action of depriving the petitioners benefit of their statutory right to purchase HSD oil at concessional rate of tax under Section 8 (1) of the Central Sales Tax Act, 1956 and withholding and refusing to refund excess tax

collected by it which petitioners were compelled to pay to it due to extra ordinary circumstances beyond their control. High Court has power under Article 226 of the Constitution of India to grant relief thereunder to any "person aggrieved" in the interest of justice if the State herein this case Respondent State Government of West Bengal has acted in a way contrary to law appears from record that it has error on the point of law and committed.

(14) The Writ Court has the power to mould the relief and to issue high prerogative writs in order to do complete justice and can mould the relief in the facts and circumstances of this case.

In view of foregoing discussions all the instant Writ Petitions are allowed by passing the following orders/directions:

(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 during the impugned assessment proceeding by the HSD oil purchasing dealers/petitioners through the oil selling dealers/IOCL 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/IOCL 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/IOCL during the impugned assessment proceedings, directly to the petitioners instead of refunding the same to the Respondent IOCL after formal verification of the same along with relevant documents and by affording opportunities of hearing to the petitioners and IOCL in course of the said verification and in the alternate it shall refund the said amount to the IOCL after such verification and in that event IOCL 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 Respondent State Government of West Bengal.

With these observations and direction all these Writ Petition being 5306 of 2021, WPA 5307 of 2021, WPA 5603 of 2021, WPA 5864 of 2021, WPA 5866 of 2021, WPA 5868 of 2021, WPA 6424 of 2021, WPA 6737 of 2021, WPA 6740 of 2021, WPA 13174 of 2021, WPA 13175 of 2021 are accordingly disposed of by allowing the same. No order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(MD. NIZAMUDDIN, J.)