

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**

APPELLATE SIDE

RESERVED ON: 21.01.2022

DELIVERED ON: 31.01.2022

CORAM:

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

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

W.P.T.T. NO. 02 OF 2018

M/S. NARSI & ASSOCIATES

VERSUS

DEPUTY COMMISSIONER, COMMERCIAL TAXES & ORS.

WITH

MAT 1911 OF 2017

M/S. NARSI & ASSOCIATES

VERSUS

SR. JOINT COMMISSIONER COMMERCIAL TAXES, 24 PGS. CIRCLE &

ORS.

+

IA NO. CAN 1 OF 2017 (OLD NO. 10773 OF 2017)

Appearance:-

Mr. Vinay Kr. Shraff

Mr. Himangshu Kumar Ray

Ms. Priya Sarah Paul

Mr. Preet Kamal Chawla

.....For the Petitioners

**Mr. Anirban Ray, Learned Government Pleader.
Ms. S. Mukherjee
Mr. T.M. Siddiqui
Mr. Debasish Ghosh**

.....For the Respondents

JUDGMENT

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

1. The petitioner/appellant in both the matters is a proprietorship concern registered as a dealer under the provisions of the West Bengal Value Added Tax Act, 1956 (WBVAT) and Central Sales Tax Act, 1956 (CST). In this judgment and order the petitioner/appellant shall be referred to as the assessee and the respondent as the revenue.
2. In WPTT No 02 of 2018, the assessee has challenged the order passed by the West Bengal Taxation Tribunal in Case No. R.N 1540 of 2017 dated 22.12.2017. In MAT No 1911 of 2017, the assessee has challenged the correctness of the order in WP No. 23339 (W) of 2017 dated 11.09.2017 by which the writ petition filed by the assessee challenging the notice of assessment under Section 46 of WBVAT was dismissed.
3. The facts giving rise to both the matters are as hereunder. The revenue issued a notice under Section 46 read with Section 66 of WBVAT dated 16.08.2017. By the said notice the revenue was of the opinion that an assessment is required to be made under Section 46 of WBVAT as the assessee has carried forward excess ITC over Rs. 5,00,000/- to the next financial year. The said notice was challenged before the tribunal in Case No. R.N 1540 of 2017 on the ground that it is without jurisdiction as none of the grounds mentioned in the said provision are attracted for initiating

assessment proceedings under Section 46. It appears that the tribunal disposed of the application at the admission stage by observing that, on going through the provisions of Section 46, it is found that none of the grounds for initiating assessment proceedings under the said provision were made out. The revenue contended that certain provisions of Section 47 would apply. The tribunal without assigning any reasons stated that they are not satisfied with the explanation given by the revenue and accordingly quashed the notice dated 16.08.2017 with liberty to the revenue to act strictly as per the provision of the law. The revenue filed Review Case No. RW 02 of 2017 to review the order passed by the tribunal dated 13.09.2017 in R.N No. 1540 of 2017. It was contended that identical notice dated 16.08.2017 was issued to the assessee under Section 9 of the CST Act read with Section 46 of the WBVAT on the same ground that excess ITC over Rs. 5,00,000/- has been carried forward by the assessee to the next financial year. The said notice was challenged by the assessee in WP No. 23339(W) of 2017 on the same grounds which were canvassed before the tribunal challenging the notice dated 16.08.2017 under Section 46 of the WBVAT. The Learned Single Bench by order dated 11.09.2017 dismissed the writ petition on the ground that the assessee cannot contend that the revenue has acted wholly without jurisdiction in issuing the notice and it is within his purview to take cognizance of the situation mentioned under Section 46(1)(b) of WBVAT as the revenue was prima facie satisfied that the State Government has suffered loss of revenue and there are adequate reasons for the purpose of calling for an explanation. Thus, the Learned Single Bench held that the notice is not vitiated by any perversity and cannot be interfered

in a writ petition. The revenue filed the review petition before the tribunal by referring to the order passed in WP No. 23339(W) of 2017 dated 11.09.2017 on the ground that sub clause (b) of Subsection (1) of Section 46 provides for reasons to initiate proceedings of assessment which includes “for any other reasons to be recorded in writing” by the Commissioner and such reasons was recorded in the notice. Secondly, it was contended that in so far as an identical notice issued under the CST Act, the validity of the notice was upheld by this Court and the writ petition filed by the assessee was dismissed considering the very same grounds raised by the assessee before the tribunal. The tribunal by order dated 06.12.2017 allowed the review petition and recalled the order passed earlier, dated 13.09.2017. The tribunal pointed out that it is not in dispute that this Court upheld an identical notice issued by the assessee in its order dated 11.09.2017, however on 13.09.2017, the tribunal quashed an identical notice and merely because the order passed by the High Court was not brought to the notice of the tribunal, the tribunal cannot be stated to be without jurisdiction to entertain the review applications. Therefore, the tribunal held that having regard to the observation made by this Court in the said writ petition and having regard to the judicial discipline and propriety and that the order passed in the writ petition has ample persuasive force on the tribunal and therefore the order passed by the tribunal dated 13.09.2017 has to be recalled as there was a mistake apparent on the face of the said order. Challenging the correctness of the order passed by the tribunal in the review petition filed by the revenue, the assessee has filed WPTT No. 02 of 2018. The order passed by the Learned Single Bench has been challenged in MAT

No. 1911 of 2017 on the same grounds which are canvassed in WPTT No. 02 of 2018 by contending that carry forward of input tax credit to the next year is not one of the reasons specified in Section 46 of the WBVAT to enable the review to initiate the assessment proceedings. It is further contended that the notice nowhere directly, indirectly or even remotely states that the State Government has suffered loss of revenue and therefore, it would be far-fetched to presume that the notice has been issued because the State Government has suffered loss of revenue. Further it is contended that in terms of Section 22(6) of the WBVAT, if the input tax credit (ITC) of a particular year exceeds output tax for that year, then the assessee is eligible to carry forward the excess credit to the next year and therefore on the said ground the assessment proceedings under Section 46 cannot be initiated.

4. Mr. Vinay Kumar Shraff, Learned Counsel appearing for the assessee contended that the power to initiate assessment proceedings under Section 46 of the WBVAT are limited to four circumstances namely when no return has been filed; when there has been short payment of net tax; when there has been excess claim of net tax credit and when the State Government has suffered loss or any other reasons. Therefore, it is submitted that only if any of these four circumstances are attracted assessment proceedings can be initiated under Section 46 of the Act. Further, it is contended that the carrying forward of excess input tax credit (ITC) does not connote loss of revenue to the Government and therefore Section 46 could not have been invoked. It is further submitted that the phrase “for any other reasons” used in Section 46 (1) (b) of the WBVAT should be interpreted in terms of the rule of construction “*noscitur a sociis*”. It is submitted that according to the said

rule when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense and they take their colour from each other, that is, the more general is restricted to a sense analogous to less general. Therefore, it is submitted that, applying the rule of *noscitur a sociis*, the phrase “for any other reason” being general in nature will take its colour from specific words which convey a meaning of loss of revenue to the State Government. Thus, it is submitted that if this interpretation is adopted, then the notice issued under Section 46 or under Section 9 of the CST Act read with Section 46 of the WBVAT are without jurisdiction.

5. Further it is submitted that Section 46(1)(b) provides that the Commissioner must be prima facie satisfied before issue of notice of assessment and such prima facie satisfaction must be on the basis of material before the issue of notice by the revenue. It is further submitted that the phrase “prima facie” is akin to the phrase “reasons to believe” and such reasons to believe must be based on some rational basis for the revenue to form a believe that an assessment has to be made under Section 46 of the Act. It is submitted that the impugned notices do not reveal any prima facie satisfaction on the part of the authority before issuing the said notice. Therefore, the notices are liable to be set aside. Further it is submitted that the decision rendered by the Learned Single Bench of this Court while refusing to set aside an identical notice issued under the CST Act cannot be pressed into service by the revenue to review the order passed by the tribunal dated 13.09.2017. Further it is submitted that, unless and until the revenue is able to point out any mistake which is apparent from

the record, the review jurisdiction of the tribunal cannot be invoked. On the above grounds, the Learned Counsel seeks for setting aside the order passed by the tribunal in the review application filed by the revenue and sustaining its earlier order dated 13.09.2017 and also to set aside the order passed by the Learned Single Bench refusing to quash the notice issued under the CST Act and to allow the appeal of the assessee, thereby quashing the said notice as well.

6. In support of the contention that the rule of construction namely *noscitur a sociis* has to be applied, reliance was placed on the decision of the Hon'ble Supreme Court in *Commissioner of Trade Tax, UP Vs. Kartos International 2011 (268) ELT 289 (SC)*. Reliance was placed on the decision of the Hon'ble Supreme Court in *Chief Information Commissioner Vs. State of Manipur 2012 (286) ELT 485 (SC)* for the proposition that the legislature does not waste words or say anything in vain or for no purpose. Thus, a construction which leads to redundancy of a portion of the statute cannot be accepted in the absence of compelling reasons. Though, the Learned Counsel had placed reliance on the decision of the Hon'ble Supreme Court in *L. Chandra Kumar Vs. Union of India (1997) 3 SCC 261*, to contend that the writ petition could not have been entertained as the jurisdiction tribunal and in terms of the decision in *L. Chandra Kumar*, an aggrieved party can approach the Division Bench of this Court against any order passed by the tribunal which exercises jurisdiction equal and to that of the Single Bench of this Court and therefore there was no infirmity in not bringing to the notice of the tribunal about the order passed by the Learned Single Bench refusing to quash the notice as the two orders were delivered under separate

legislation namely the notice which was challenged in the writ petition was issued under the CST Act and the decision of the tribunal was on a challenge to the notice issued under the WBVAT. Though such contention was advanced during the course of argument, the Learned Counsel for the appellant would fairly state that the said issue may not be of much relevant to the case on hand, as the assessee would press their contention as regards the validity of the notice issued under Section 46 of the WBVAT Act and Section 9 of the CST Act on the grounds mentioned above. With the above submissions, the Learned Counsel for the assessee prayed for allowing both the matters.

7. Mr. Anirban Ray, Learned Government Pleader appearing for the respondents submitted that Section 46 of the Act of the WBVAT should not be read in isolation and it is important to take note of Section 22 (4) of the Act which states that subject to the other provisions of the said Section, ITC or input tax rebate shall be allowed to the extent of the amount of tax paid or payable by the purchasing dealer on his purchase of taxable goods, other than such taxable goods as specified in the negative list appended to the said Section. It is further submitted that subsection (4) has various clauses which are required to be fulfilled for the assessee to be entitled to ITC and it cannot be stated that whatever claim of ITC made by the assessee would be automatically allowed. It is submitted that subsection (6) of Section 22 would also to be relevant which states that if input tax credit or input tax rebate available to a registered dealer for a year exceeds output tax for that year, the excess input tax credit or input tax rebate shall be carried forward to the next year in the manner as may be prescribed. Therefore, it is

submitted that subsection (6) of Section 22 is not to be read in isolation but has to be read in conjunction with Section 22 (1) (2) (3) and (4) of the Act. Further it is submitted that, in terms of Section 22A penalty is imposable on the assessee for any false claim of ITC or input tax rebate. It is submitted that bearing in mind the above provisions, Section 46 (1) of the Act, if read would clearly show that the Commissioner may after giving a notice to registered dealer, assess to the best of his judgment the amount of net tax or any other tax payable or net tax credit of such dealer in respect of a year or thereof where the circumstances mentioned in clauses (a) and (b) stands attracted. It is submitted that a reading of the said provision will clearly show that it is an inclusive provision and to cover all proceedings under the Act and such inclusive provision should be given widest meaning.

8. It is submitted that the word “include” occurring in Section 2 (34) of the Rajasthan Sales Tax Act 1944 came for an interpretation. It was held that word include gives a wider meaning to the words or phrases in the statute as the words are usually used in the interpretation clause in order to enlarge the meaning of the words in the statute. It was further pointed out that when the word “includes” is used in the words or phrases, it must be construed as comprehending not only such things as they signify according to their nature and impact but also those things which the interpretation clause declares they shall include. (In *Commercial Taxation Officer, Udaipur Vs. Rajasthan Taxchem Limited* (2007) 3 SCC 124). Further it is submitted that the theory of “*ejusdem generis*” is wholly inapplicable as clause (b) of Section 46 (1) uses the words “or for any other reasons to be recorded in writing, including for the purpose of refund of tax”. It is submitted that what

is important to note is there is a comma before the words or “for any other reasons”. Thus, the Learned Single Bench was right in refusing to interfere with the impugned notice. Further it is submitted that in terms of Section 46(3) of the Act, principles of natural justice have to be complied with and the assessee has sufficient opportunity to put forth their contention and they cannot be stated to be in any manner prejudiced on account of the notice issued for initiating assessment proceedings. Further it is submitted that the order passed in the writ petition was on 11.09.2017 which ought to have been placed before the tribunal, when the matter was heard and disposed of on 13.09.2017 as the writ petitioner and the petitioner before the tribunal is the same dealer and the matter relates to the very same excess ITC which has been carried forward. Therefore, the Tribunal was fully justified in reviewing its order and it is well within its jurisdiction as provided for under Section 16 of the relevant Act. Further the error committed by the tribunal in its order dated 13.09.2017 is manifest on the face of the order and the tribunal rightly entertained the review application and recalled its earlier order.

9. With regard to the scope of review, the Learned Government Pleader placed reliance on the decision of the Hon’ble Supreme Court in *Satyanarayan Laxminarayan Hegde & Ors. Vs. Mallikarjun Bhavanappa AIR (1960) SC 137*.
10. On the above grounds the Learned Government Pleader seeks to sustain the order passed by the Learned Single Bench as well as the order passed by tribunal in the review application.

11. We have elaborately heard the Learned Counsels for the parties and perused the materials placed on record.
12. The first aspect which strikes our mind is with regard to the similarity of both notices, one which was impugned before the tribunal and the other which was impugned in the writ petition. The assessee is precluded from taking a stand that they are not required to place the decision of the Learned Single Bench of this Court before the tribunal as jurisdiction exercised by the tribunal is with regard to the proceedings under the WBVAT Act and the notice which was impugned in the writ petition is under the CST Act read with WBVAT Act. This contention of the assessee deserved to be out-rightly rejected. The notice undoubtedly contains the very same allegations namely carry forward of excess ITC for the next assessment year. The quantum is also the same. The notice impugned before the tribunal as well as in the writ petition is of the same date namely 16.08.2017. The notice issued under Section 46 read with Section 66 of the WBVAT Act was impugned before the tribunal. The notice which was impugned in the writ petition was issued under Section 9 of the CST Act read with Section 46 of the WBVAT Act. It cannot be disputed by the assessee that the machinery provisions as contained in the WBVAT Act are required to be applied while completing an assessment under the CST Act. Therefore, the decision rendered by the Learned Writ Court validating the notice issued under Section 9 of the CST Act read with Section 46 of the WBVAT Act binds the assessee and it will also bind the tribunal on account of the fact that the notice impugned before the tribunal was issued under Section 46 of the WBVAT Act. However, we do not wish to comment upon as to whether who

was at fault in not placing the order passed in the writ petition before the tribunal as the legal position is clear that the order passed in the writ petition would bind the tribunal. In fact, the tribunal in its order would state that the order passed in the writ petition has persuasive value, however to our mind the order binds the tribunal more particularly when the assessee is the same person and the transaction based on which the assessment proceedings were proposed to be initiated is the same transaction. Hence, the tribunal was fully justified in reviewing its decision.

13. The Constitution Bench of the Hon'ble Supreme Court in reference by President of India to Supreme Court Manu/SC/1311/2001 has pointed out that the Court in exercising of power of review may entertain the review under the acceptable and settled parameters. We note that the tribunal has rightly entertained the review on acceptable and settled parameters and no error can be attributed to the tribunal for entertaining the review.

14. The next aspect is whether there was a mistake apparent on the face of the order. If an order which was passed in the assessee's own case which was decided against the assessee and such order having being passed before the tribunal took a decision and upon failure of the assessee in not placing the order and the tribunal having subsequently coming to know of it by way of a review application, taking note of the binding effect of the decision of the High Court is entitled to review its decision and it would fall within the scope of mistake apparent on the face of the order. One more aspect which we note is that the order passed by the tribunal dated 13.09.2017 quashing the notice dated 16.08.2017 was devoid of reasons. Though the revenue pointed out that certain provisions of Section 47 would apply, the tribunal in a single line

stated that they are not satisfied with the explanation offered by the revenue. It appears that the tribunal allowed the application at the admission stage without calling for the records or affidavits. The least that can be expected of the tribunal when a show cause notice is challenged is to first examine whether an application is maintainable challenging the show cause notice. More particularly, when Section 46 (3) provides an opportunity of being heard to the assessee before the decision is taken. Thus, this important aspect was not addressed by the tribunal, probably for the reason that the state did not canvass the same. Yet we are entitled to take note of the same as it is a jurisdictional issue. It has been consistently held that courts will be very slow in interfering with show cause notices issued under a taxing statute. The assessee's case was that none of the circumstances mentioned in Section 46 (1) (b) have been made out. This undoubtedly is not a pure question of law as it also involves adjudication into facts. Therefore, the tribunal ought to have first addressed itself as to whether the application was maintainable or not thereby counting an error by allowing the application by a non-speaking order. Therefore, this is also one more ground which can be taken into consideration to recall the order passed by the tribunal dated 13.09.2017.

15. Having been held so, we examine the arguments of Mr Vinay Kumar Shraff, with regard to the applicability of the principles of "*noscitur a sociis*". In *Kartos International* it was pointed out that "*noscitur a sociis*" means that when two words are capable of being analogously defined then they take colour from each of them. The term "*ejusdem generis*" is the facet of "*noscitur a sociis*" and the principles means that the general words follow certain specific words who take colour from the specific words. To consider whether

this principle of interpretation of statute could be applied to the case on hand we need to take note of the language employed in Section 46 (1) of the Act.

16. Assessment after giving notice to the registered dealer:-

(1) *The Commission may, after giving a notice to a registered dealer in such manner as may be prescribed, assess to the best of his judgment the amount of net tax or any other tax payable or net tax credit of such dealer in respect of a year or part thereof, where-*

(a) No return has been furnished by the registered dealer for all or any of the return periods of such year or part thereof; or

(b) The Commission deems it fit and proper to assess the registered dealer, as he is prima facie satisfied that there has been short payment of net tax or excess claim of net tax credit by such dealer, or that the State Government has suffered loss of revenue on account of such dealer, or for any other reason to be recorded in writing, including for the purpose of refund of tax:

Provided that-

(a)

17. On a reading of the provision, it is seen that the Commissioner after giving notice to the dealer assess to the best of his judgment an amount of net tax or any other tax payable or net tax credit of such dealer in respect of a year or a part there of when circumstances enumerated in Clause (a) and (b) are attracted. Clause (a) of Section 46 (1) is not applicable to the case on hand. The revenue seeks to sustain the notices by seeking to bring the same within the ambit clause (b) of Section 46(1). The argument on behalf of the assessee is that the words “or for any other reasons to be recorded in

writing” shall have reference to cases where there is short payment of net tax or excess claim of net tax credit or when the Government has suffered loss of revenue and the said provisions cannot be unbridled to empower the assessing officer to make an assessment for any other reason which may weigh in his mind other than the three contingencies which have been pointed out above.

18. The manner in which the provision is to be interpreted was explained by the Hon’ble Supreme Court in *Kerala State Cooperative Marketing Federation Limited Vs. Commissioner of Income Tax 1998 231 ITR 814 (SC)*, wherein the Hon’ble Supreme Court pointed out that it is clear rule of statutory construction that in trying to interpret a statutory provision attention should be given to the setting in which the provision occurs and regards must be had to the language of the entire group of connected provisions which may form an integral whole. Bearing in mind this principle, if we examine the provisions, it is seen that the provisions does not stop with the words “or for any other reasons” but also includes “for the purpose of refund of tax”. Thus, the Learned Government Pleader is right in his submission to state that the provision is an inclusive provision. That apart the words or “for any other reasons” has to be held to be very wide and comprehensive not only because of the presence of the words “including for the purpose of refund” but because of the scheme of the WBVAT. The grounds which have been mentioned in clause (b) of Section 46 (1) of the Act cannot be stated to be categories of species of any generic sense to justify a restricted meaning to the said words. We also have to take note that when a notice is issued under Section 46 (1) (b) the Commissioner should be prima

facie satisfied and if the words prima facie satisfied read in conjunction with or for any other reasons to be recorded in writing, including for the purpose of refund of tax, a restricted meaning cannot be given to the said provision. That apart, entitlement to ITC is not a vested right but a statutory right or a concession granted to the dealer with a view to prevent cascading tax effect which may affect the ultimate consumer. The quantum of ITC which the dealer is entitled to is subject to compliances of the various provisions of the WBVAT Act. Section 22 of the Act deals with input tax credit or input tax rebate by registered dealer. Subsection (1) of Section 22 states that every registered dealer other than those specified elsewhere in the Act shall be entitled to claim an input tax credit or input tax rebate as defined in clause (19) of Section 2 and in such manner and subject to such conditions and restrictions as may be prescribed. Subsection (4) of Section 22 states that input tax credit or input tax rebate shall be allowed to the extent of the amount of tax paid or payable by the purchasing dealer on his purchase of taxable goods, other than such taxable goods as specified in the negative list, made in the state from a dealer when such goods are purchased for the sale or resale or uses as specified in clauses (a) (i) of Section 22 (4) of the Act. Subsection (5) of Section 22 places an embargo on to the assessee not to make a claim for input tax credit until he fulfills the conditions in clauses (a) of Subsection (5) of Section 22. Subsection (6) of Section 22 states if the input tax credit available to a register dealer for a year exceeds the output tax for that year, the excess input tax credit or input tax rebate shall be carried forward to the next year in the manner as may be prescribed. Thus, firstly, the correctness of the entitlement of the ITC availed by the assessee

has to be examined. If the entitlement has been done in a proper manner and the quantum of ITC availed is not in dispute, then and then only the assessee can rely on subsection (6) of Section 22 to carry forward the ITC to the next year. Therefore, subsection (6) of Section 22 is not a stand-alone provision but it forms part of Section 22 which prescribes the manner in which input tax credit can be claimed subject to conditions and restrictions. Therefore, the contention of the assessee before us that as a matter of right they are entitled to carry forward the excess ITC is an incorrect interpretation of subsection (6) of Section 22. This conclusion of ours is fortified on account of the dealer being liable for penalty under Section 22A for any false claim of ITC. Thus, the proper manner of interpreting the provision is to have regard to the language of entire group of connected provisions which undoubtedly form an integral whole. To be noted that the allegations in the show cause notice is that excess ITC over Rs. 5,00,000/- has been carried forward to the next financial year. Therefore, what the revenue seeks to do is to initiate assessment proceedings on the allegation that excess ITC has been carried forward and not the ITC which has been carried forward. The allegation is that the assessee has carried forward excess ITC than what he is entitled to. If such being the allegation in the notice then it would be well within jurisdiction of the assessing officer to initiate assessment proceedings under Section 46 of the Act. The notice has been faulted on the ground that satisfaction of the authority has not been recorded. The Hon'ble Supreme Court in *Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Private Limited* (2007) 291 ITR 500 (SC), held that at the stage of issuance of a notice the only question to be

considered was whether there were relevant materials on which the reasonable person could have formed the requisite believe. Clause (b) of Section 46 (1) of the Act requires the Commissioner to be prima facie satisfy before he proceeds to assess the dealer by issuing a notice under Section 46(1). Prima facie satisfaction or reasons to believe take the same colour. If there are, some reasonable grounds for the assessing authority to believe that the whole or any part of the turnover of the dealer has escaped assessment, it would be entitled to initiate action and if the ground mentioned are relevant and have nexus with the formation of the believe regarding the escaped assessment or excess availment, the assessing officer would have jurisdiction to take action. The show cause notice clearly states the allegation against the assessee namely excess carry forward of ITC over Rs. 5,00,000/- and the notice cannot be faulty as the assessing officer was prima facie satisfied that there were relevant material based on which he proposes to initiate assessment proceedings under Section 46 (1) of the Act.

19. One of the arguments of the Learned Counsel for the assessee was that the legislation does not waste words or say anything in vain or for no purposes. This submission is to support the contention that the theory of “*ejusdem generis*” could be applicable. This contention has been negated by us for the reasons set out above. Further we have held that Section 46(1) (b) cannot be read in isolation and bearing in mind the scheme of the Act the words or “for any other reasons to be recorded in writing, including for the purpose of refund of tax” makes the provisions an inclusive provision and widest interpretation is required to be given. Thus, we hold that the notices which were impugned before the tribunal as well as before the

Learned Writ Court are valid and the assessing officer is entitled to exercise the jurisdiction and proceed further in accordance with the law after affording reasonable opportunity to the assessee. That apart subsection 46 (3) would come to aid and assistance of the assessee as it states that the Commissioner shall in making the assessment under subsection (1) of Section 46 give the dealer a reasonable opportunity of being heard. Thus, we are of the clear view that no prejudice would be caused to the assessee as he has an opportunity to put forth his contention as to how they were justified in carrying forward the ITC to the next year.

20. The *ejusdem generis* rule is not a rule of law but is merely a rule of construction to aid the Courts to find out the true intention of the legislature.

21. In *Siddeshwari Cotton Mills Private Ltd. Vs. Union of India (1989) 2 SCC 458*, the Hon'ble Supreme Court examined the rationale underlying *ejusdem generis* as a rule of construction and observed that the principle underlying this approach to statutory construction is that the subsequent general words were only intended to guard against some accidental omission in the objects of the kind mentioned and were not intended to extend to objects of a wholly different kind, as this being a presumption and operates unless there is some contrary indication.

22. A plain reading of Section 46(1) (b) WBVAT would vividly show that the contrary indication is writ large in the statute, the provision being inclusive requires to be of widest amplitude. Hence the principle of *ejusdem generis* cannot be applied, while interpreting Section 46(1) (b) of the Act. That apart the rule of *ejusdem generis* cannot contradict legislative intent of

the WBVAT but must give way to purposive interpretation of the statute. There is no room, for application of the principle of *ejusdem generis* in the absence of any genus in clause (b) of Section 46 (1) of WBVAT as we are required to give a broader construction to give effect to the intention of the statute.

In *Church Vs. Munday (1808) 15 Ves 396*, Lord Eldon said:

“The best rule of construction is that which takes the words to comprehend a subject that falls within their usual sense unless there is something like a declaration plain to the contrary. That is, as I understand, prima facie you are to give the words their larger meaning, unless you find something which plainly shows that they were intended to be read in a more restricted sense.”

23. It is settled legal principle that the rule of *ejusdem generis* has to be applied with care and caution. It is not an inviolable rule of law, but it is only permissible inference in the absence of an indication to the contrary and where context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import, it becomes the duty of the Courts to give those words their plain and ordinary meaning. [*Bhel Vs. Globe H. Fabs Ltd. (2015) 5 SCC 718*].

24. Thus, we hold that the rule of *ejusdem generis* is inapplicable to the case on hand as Section 46 (1) (b) does not contain enumeration of specific words; the circumstance enumerated in clause (b) does not constitute a class or category; contingencies mentioned therein is not exhausted by

enumeration; the general terms do not follow the enumeration and there is clear indication of a different legislative intent.

25. In *State of West Bengal Vs. Jindal India Limited*, (2000) 9SCC 369, was a case where the assessee challenged by way of a writ petition, a demand issued under the taxation on entry of goods into Calcutta Metropolitan Area Act 1972. The writ petition stood transferred to the tribunal and the demand was quashed, on the ground that Section 14(3) of the said Act could not have been invoked. The Hon'ble Supreme Court while considering the correctness of the order took note of Section 17 of the said Act which dealt with short-levied tax and in the said provision the words "or for any other reasons" finds place. It was held that the provisions of Section 17(1) of the said Act is wide and gives authority to the department to reopen the assessment that was made upon the assessee and the fact that reopening was said to be under Section 14(3) and not Section 17 of the said Act can make no difference.
26. Therefore, the words or "for any other reasons" should be given the widest meaning bearing in mind the scheme of the provisions of WBVAT. Thus, for all the above reasons we hold that the notice was issued by respondent on the assessee are valid in law.
27. In the result, WPTT No. 02 of 2018 and MAT No. 1911 of 2017 are dismissed.

(T.S. SIVAGNANAM, J)

I agree.

(HIRANMAY BHATTACHARYYA, J)

(P.A- SACHIN)