A.F.R.

Neutral Citation No. - 2023:AHC:194323-DB

Court No. - 39

Case :- WRIT TAX No. - 433 of 2021

Petitioner :- M/S Vivo Mobile India Private Ltd.
Respondent :- Union Of India And 4 Others
Counsel for Petitioner :- Nishant Mishra,Alok Yadav
Counsel for Respondent :- A.S.G.I.,Ashok Singh,C.S.C.,Manu Ghildyal

Hon'ble Saumitra Dayal Singh,J.
Hon'ble Vinod Diwakar,J.

1. Heard Sri Tarun Gulati, learned Senior Counsel assisted by Sri Nishant Mishra, Sri Kishore Kunal, and Ms. Vedika Nath, learned counsel for the petitioner, Sri Gaurav Mahajan, learned counsel for Central Board of Indirect Taxes, Sri Manish Goyal, learned Additional Advocate General assisted by Sri Nimai Dass, learned Additional Chief Standing Counsel and Sri Ankur Agarwal, learned Standing Counsel for the State of Uttar Pradesh.

2. Present petition has been filed for various reliefs described in the prayer clause. At the same time, after exchange of affidavits and, upon the matter being heard, prayer nos. B, C and D alone have been pressed. Other prayers have not been pressed, at this stage. Thus, the challenge raised to the *vires* of Rule 36(4) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the 'CGST Rules, 2017'), has been specifically given up, at this stage.

3. Primary relief being sought by the petitioner is against the order dated 7.4.2021 passed by the Deputy Commissioner, Sector-2,

Commercial/State Tax, Gautam Buddh Nagar. By that order, passed under Section 74 (9) of the CGST Act, 2017 (hereinafter referred to as 'the Act'), the said authority has opined that the petitioner had availed/utilised excess Input Tax Credit (ITC in short), Rs. 110,06,90,100.31, for the months of February 2020 to August 2020. Construing the same to be a violation of Rule 36(4) of the CGST Rules, 2017, it has been directed to be reversed and added to the output tax liability of the petitioner, with consequent interest obligation. Also, an equal amount of penalty referable to Section 74 of the Central Goods and Service Tax Rules, 2017 has been imposed. Thus, total demand of Rs. 235.52 crores had been created - inclusive of interest @ Rs. 15,40,00,000/-. Against that demand, the petitioner had self-deposited Rs. 11,00,69,010/- (provisionally, pending this writ petition) being 10% of the disputed demand of tax. However, it has disputed the entire liability.

4. Upon the present petition being entertained, initially, affidavits were called. However, the stay application remained pending. Meanwhile, the respondents recovered the entire amount of tax, Rs. 110,06,90,100.31 and equal amount of penalty, excluding interest. Thus, notwithstanding the pre-deposit Rs. 11,00,69,010/- made (provisionally, pending this writ petition), further Rs. 220,13,80,200.60 were recovered. Later, by order dated 21.9.2022, interim protection was granted to the following effect:

> *"However, it is provided that till the next date of listing, no further coercive measure shall be taken against the petitioner pursuant to the order dated 07.04.2021, which is subject matter of challenge herein."*
>
> The balance amount of interest was thus stayed.

5. An application Civil Misc. Restitution Application No. 10 of 2022 has been filed. Thereby, the petitioner has sought a refund of the

entire amount of deposit made, being Rs. 220,13,80,200.60 and Rs. 11,00,69,010/- (deposited earlier on 14.06.2022, against the disputed demand). Interest claim has also been made on the above refundable amount.

6. Separate Counter Affidavit and Rejoinder Affidavit have been filed to the Restitution Application. Primarily, the defence being set up by the revenue authorities is - they had recovered the disputed amount of tax, penalty, and interest as there was no stay order operating in favour of the petitioner. At the same time, it remains admitted that an amount, Rs. 11,00,69,010/- had been recovered over and above the disputed demand.

7. The petitioner is a duly incorporated company engaged in the business of manufacture, assembly and wholesale trade in cellular phone devices, their spare parts, and accessories. It has a manufacturing facility at Greater Noida, Gautam Buddh Nagar, inside the State of U.P.

8. For the months of February 2020 to August 2020, the petitioner purchased various components of mobile phones etc. from different suppliers within the country. Those purchases were disclosed against the regular Tax Invoice, received by the petitioner. To that extent, there is no dispute between the parties. At the same time, against such purchases made, in the claim of ITC, there exists a dispute between the parties.

9. The petitioner claims there is no excess claim made by it, for the months (period) February 2020 to August 2020. The revenue claims otherwise. Arising from such difference of perception, a common tabular chart (for the period under dispute), reflecting the Tax Invoice figures as per GSTR-3B (filed by the petitioner) and

GSTR-2A (generated upon details furnished by the suppliers), as also the computation of ITC as per Rule 36(4) of CGST Rules, 2017, and the now disputed mismatch thereof, has been prepared by the revenue authorities. It is a part of the impugned order itself. It reads as below:

MONTH	As per GSTR-3B	As per GSTR-2A	As per GSTR-2A+10%	MISMATCH
Feb-2020	77,04,29,644.86	80,60,29,310.96	88,66,32,242.06	11,62,02,597.20
March-2020	83,20,71,671.18	78,87,34,471.17	86,76,07,918.29	3,55,36,247.11
April-2020	1,70,636.19	23,18,238.63	25,50,062.49	23,79,426.30
May-2020	94,57,01,388.49	1,05,48,33,578.57	1,16,03,16,936.43	21,46,15,547.94
June-2020	1,05,44,63,303.00	24,71,30,463.17	27,18,43,509.49	-78,26,19,793.51
July-2020	1,69,88,53,146.47	2,45,09,73,609.99	2,69,60,70,970.99	99,72,17,824.52
Augt-2020	1,48,73,31,355.54	1,49,12,18,613.52	1,64,03,40,474.87	15,30,09,119.33
Sept-2020	2,14,60,19,179.16	28,08,98,281.79	30,89,88,109.97	-1,83,70,31,069.19
TOTAL	**8,93,50,40,324.89**	**7,12,21,36,567.80**	**7,83,43,50,224.58**	**-1,10,06,90,100.31**

10. Briefly, learned Senior Counsel for the petitioner states, the revenue authorities have completely erred in looking at a month-to-month reconciliation of ITC available and utilised, as per GSTR-3B filed by the petitioner and GSTR-2A generated for the period February 2020 to August 2020, on a month-to-month basis. They ought to have looked at that period as a single tax period beginning for the month February 2020 and ending with the month August 2020 - all months taken cumulatively i.e., as a single tax period beginning 1.2.2020 and ending 31.8.2020. All Tax Invoices that were accounted for as per GSTR-2A (referable to the petitioner), at the time of filing the monthly return for September 2020, alone should have been considered. That final figure alone should have been considered as the

eligible ITC for the months/tax period February 2020 to August 2020. It is to that figure, 10% permissible addition (as was available at the relevant time), should have been allowed to arise [in terms of the proviso to Rule 36(4) of the CGST Rules, 2017]. Against that, the total ITC availed for those months/tax period should have been contrasted. In that, there was no excess utilisation of ITC.

11. Thus, in September 2020, the cumulative figure of ITC (earned for the period February 2020 to August 2020), stood verified at Rs. 88,63,460,752.04. Giving effect to sub-Rule 4 of Rule 36, the petitioner claims entitlement to an additional 10% of that value, leading to total eligible ITC Rs. 97,49,806,827.24. There being no dispute to the fact that the petitioner had utilised ITC of value Rs. 89,35,040,324.89, during that period, the petitioner had available, unutilized positive credit of ITC of about 81 crores, in September 2020. It was carried forward. Hence, the demand of tax, interest and penalty is wholly disputed.

12. Again briefly, the above error in the computation made by the revenue authorities is stated to have arisen upon misreading of the Circular issued by the Central Board of Indirect Taxes and Customs (CBIC in short). Thus, a serious challenge has been laid to Circular No. 123/42/219-GST dated 11.11.2019, specifically clause 3(3) thereof. That administrative instruction issued by the CBIC is described to be in the teeth of Rule 36(4) of the Rules read with its first proviso. Insofar as the Rule referred to above prescribed a cumulative period only, it was never made open to the administrative authorities to override that piece of delegated legislation to provide for a month-to-month reconciliation, by engaging and reading the words *"on the due date of filing of the returns"* (used in the impugned Circular), as the date when reconciliation was to be made.

Alternatively, it has been submitted, since the Circular was issued prior to introduction of the first proviso to Rule 36(4), it therefore lost its contrary intent and consequentially its enforceability-to the binding force of law created upon incorporation of the first proviso to Rule 36(4) w.e.f. 03.04.2020.

13. To bolster his submission, the learned Senior Counsel has laid emphasis on the provisions of the Act to establish that the ITC is the backbone of the GST regime. Entitlement thereto arises under Section 16 of the Act by way of a statutory right. The same cannot be defeated either by administrative instructions or by construing the law in any other manner. He has also referred to Circular No. 123/42/219-GST dated 11.11.2019 (paragraph-3), Circular No. 59/33/2018-GST dated 04.09.2018 (paragraph 2.3), Press Release dated 18.10.2018 (paragraph-4), Circular No. 125/44/2019-GST dated 18.11.2019 (paragraph-3, 36 and 61), Press release dated 04.05.2018 (paragraph-iv), Circular No. 07/07/2017-GST dated 01.09.2017 (paragraph-1, 8 and 9), Circular No. 26/26/2017-GST dated 29.12.2017 (paragraph-3), Minutes of the 28th GST Council Meeting dated 21.07.2018 (paragraph 18.3).

14. In support of his submission that a Circular can neither take away a statutory right or benefit nor it can impose a new condition, he has also placed reliance on the decisions of the Supreme Court in **Sandur Micro Circuits ltd. Vs. Commissioner of Central Excise, 2008(229) ELT 641 (SC), Tata Teleservices Vs. Commissioner of Customs, (2006) 194 ELT 11 (SC), Union of India Vs. Intercontinental (India), 2008 (226) ELT 16 (SC)** and **Alfa Laval (India) Ltd. Vs. Union of India, 2014 (309) ELT 17 (Bom).**

15. Further reliance has been placed on the decision of the Supreme Court in **CCE, Pune Vs. Dai Ichi Karkaria Ltd., 1999 (112) ELT**

353 (SC) and **Eicher Motors Ltd. Vs. Union of India, 1999 (106) ELT 3,** to submit that the restrictions being conjured on the strength of the impugned Circular would remain confiscatory in the scheme of the Act which is consistent to the provisions of the Article 300A of the Constitution of India.

16. Reliance has also been placed on a decision of the Supreme Court in **Union of India vs. Bharti Airtel Ltd. and Others (2022)4 SCC 328,** primarily, to emphasize that Form GSTR-2A does not create a substantive right but works as a facilitator to help the petitioner take an informed decision for the purpose of self-assessment. That principle is an integral part of the scheme of the GST regime. Therefore, even otherwise no over reliance may have been placed on GSTR-2A as it existed even at the time of furnishing of original returns – Form GSTR 3B by the petitioner, for the months of February 2020 to August 2020.

17. Further, reliance has been placed on a recent decision of the Calcutta High Court in **Suncraft Energy Private Limited and Another Vs. The Assistant Commissioner, State Tax, Ballygunge Charge and Others, MAT 1218 of 2023** decided on 02.8.2023 to submit, furnishing of details on GSTR-I by a supplier and the corresponding information that arises to the purchaser on GSTR-2A is nothing more than a facilitation that does not have any effect on the ability of the taxpayer to avail ITC on self-assessment. That would remain governed by the provisions of Section 16 of the Act.

18. Thus, both in view of the clear language of the law that must prevail over the Circular/Administrative Instruction dated 11.11.2019, as also on the test of general principle that arises under the GST regime, the construction made by the respondent-revenue authorities is wholly unfounded in law.

19. The fact that the revenue authorities chose to disregard that law and recovered the entire amount while the matter was being seriously contested before this Court, is described to have given rise to the entitlement of full restitution together with interest at the market rate, on such restitution.

20. In reply, the learned Additional Advocate General has passionately urged that there is no error in the impugned order and/or the Circular. In the first place, GSTR-3B is the monthly return prescribed to be filed by 20th March 2020. That requirement of the law was not waived or relaxed, to any extent. Also, the GSTR-2A pertaining to the present petitioner would have been auto populated on the strength of the details fed by the individual suppliers on GSTR-I. Therefore, the ITC available to the petitioner for each month including the months of February 2020 to August 2020, remained fixed and unaltered, being dependent solely on the figures disclosed by the individual suppliers on Form GSTR-I. Next, it has been urged, no dealer/supplier could file more than one return/Form GSTR-3B for any month. Only a revision of that return was permissible, in certain facts and circumstances. Therefore, the petitioner could, and it filed only original return on Form GSTR Form-3B, for each of the months from February 2020 to August 2020. Those returns not revised, it never became open to the petitioner to claim any amount by way of ITC, more than the amount already disclosed as per GSTR-2A and the monthly returns filed. That being the fundamental scheme of the Act read with Rules, the interpretation being offered by the petitioner that the ITC should have been computed as a single figure for the entire period February 2020 to August 2020, as it stood in September 2020 and violation of law/excess utilization of ITC, should have been seen in comparison to such single/cumulative figure, is against the scheme

and provisions of the Act. To that end, the Circular letter dated 11.11.2019 is wholly enforceable.

21. In support of his submission, the learned Additional Advocate General has referred to the provision of Section 37 of the Act that clearly requires filing of GSTR-1 before the 10th day of the following month. Next, reference has been made to Section 41(1) of the Act, as existed prior to its amendment, to submit, originally the credit of ITC arose on a provisional basis. To that, additional amounts @ 20% later reduced to 10%, still later reduced to 5% became available to registered persons, every month. Later, that was done away. In any case, such provisional credit remained subject to conditions and restrictions imposed by the Act and the Rules framed thereunder. Hence, the provisions of Rule 36 (4) of the Rules that have been heavily relied on by the learned Senior Counsel for the petitioner would have to take colour from the language of Section 41(1) of the Act. He has also referred to Section 41 (3) (as earlier existed) to submit, any discrepancy that may have arisen had to be communicated by the dealer availing the excess ITC. That excess claim was then required to be rectified under Section 42(5) of the Act. By way of a *pari materia* provision (under Section 43 as then existed), a similar addition was to be made at the hands of the supplier.

22. Referring to the impugned order, primarily the chart extracted above, it has been submitted, the revenue authorities have given an exact reconciliation to the petitioner as entitled - for each month i.e., February, March, April, May, June, July, August, and September 2020. The amounts found mentioned in the monthly returns on Form GSTR-3B and the amounts found recorded in the GSTR-2A for each of those months, have been exactly mentioned. There is no dispute raised by the petitioner as to the correctness of any of those amounts. To that,

10% additional benefit has been computed in the fourth column of that chart - being the ITC entitlement available at the relevant time. It is in accordance with Rule 36(4) of the Rules. Having computed those figures, the revenue authorities found, in certain months the petitioner had not committed any violation since it had availed ITC less than the amount of ITC available. However, for the months of June 2020 and September 2020, the petitioner had over utilized ITC to the extent of Rs. 78,26,19,793.51 and Rs. 1,83,70,31,069.19, respectively. Thus, the petitioner was found to have excess utilized ITC Rs. 110,06,90,100.31. Being the cumulative excess utilized figure for the months of June 2020 to September 2020, the Proper Officer has rightly directed its reversal. Since the explanation of the petitioner was found to be non-satisfactory, interest and penalties have also been demanded, in accordance with law.

23. In this regard, it has been strenuously urged, the petitioner never raised any objection before the assessing authority and in fact, the petitioner has not raised any objection before this Court to the effect that the figure of ITC available for the months of February 2020 to August 2020 should have been taken cumulatively and the ITC utilized for that period should also have been taken cumulatively as a single figure treating that period to be a single/cumulative period. Referring to the reply that had been submitted by the petitioner before the revenue authority it has been stated - the claim being now made was not raised by the petitioner, either before the authorities or this Court. Then, referring to the impugned order, it has been asserted, all the objections had been duly considered.

24. Since the due date for filing Form GSTR-3B was never extended, Shri Goyal would contend, the figure of ITC available to the petitioner remained fixed and relatable to the date of filing of that

Form. There being no dispute to the fact that the Form GSTR-3B had to be filed on the tenth of the following month, the claim being now made by the petitioner has no basis. To bolster his submission, heavy reliance has been placed on Circular No. 136 dated 03.04.2020.

25. Referring to paragraph no.3 of the said Circular in *extenso*, it has been urged, Clause 6 of paragraph 3 of the said Circular makes it plain that the due date of filing of return of form GSTR-I was not altered. Only the requirement to pay a late fee had been waived for the tax period March 2020 to April 2020 and May 2020 as also for the quarter ending 31 March 2020, subject to the same being furnished on or before 30.06.2020. Referring to Clause 7 of paragraph 3 of that Circular, again it has been submitted, no benefit of the kind claimed by the petitioner was ever conferred.

26. In support of his submission, the learned Additional Advocate General has also referred to the Notifications with respect to which the above Circular had been issued. According to him, Notification No. 30 of 2020 only sought to add proviso to Rule 36(4) with effect from 31.3.2020. Similarly, Notification No. 31 of 2020 only provided for variable interest in the event of late filing of returns. Notification no. 32 of 2020 only provided for waiver of the late fee. Similarly, Notification no.33 of 2020 only provided for a late fee on late filing of GSTR-I. In the same light, Notification no.35 of 2020 provided benefit of extension of time limits, to complete or comply any action by any authority etc., that may otherwise have been required to be completed or complied between 30.3.2020 to 29.6.2020. That timeline was extended up to 30.06.2020. However, while issuing such beneficial notifications and while clarifying that law, no provision was made to extend the date of filing of form GSTR-3B.

27. Based on that stand, it has been doggedly asserted that the ITC

credit remained frozen between the 11th and the 20th of the following month, for the transactions performed in the month immediately preceding that. Second, the situation is covered by Circular No. 136 dated 03.04.2020 and no challenge has been raised thereto. Therefore, the claim being made by the petitioner is wholly unfounded.

28. Having heard learned counsel for the parties and having perused the record, before we embark on any discussion as to the rival submissions advanced, it is useful to refer to the provisions of the Act and the Rules and the Circulars as have been extensively referred to by learned counsel for the parties. In the first place, Section 16 of the Act reads as below:

> ***"16. Eligibility and conditions for taking input tax credit***
>
> *(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*
>
> *(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,--*
>
> *(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*
>
> *[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]*
>
> *(b) he has received the goods or services or both.*
>
> *[Explanation : For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services –*
>
> *(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether*

acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under Section 38 has not been restricted;]

(c) subject to the provisions of Section 41, CGST (Amdt.) Act, 2018 (31 of 2018), dt. 30.8.2018, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

PROVIDED that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

PROVIDED FURTHER that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

PROVIDED ALSO that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961(43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relation to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]"

29. Next, relevant extract of Section 37 of the Act reads as below:

"37. Furnishing details of outward supplies.

(1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, 1[subject to such conditions and restrictions and] in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details 2[shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies:]

PROVIDED that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:

PROVIDED further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

PROVIDED also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(2) Every registered person who has been communicated the details under sub- section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in

such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

PROVIDED that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after 8[the thirtieth day of November] following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

PROVIDED FURTHER that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September, 2018 till the due date for furnishing the details under sub-section (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019.

Explanation : For the purposes of this Chapter, the expression "details of outward supplies" shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period”.

30. Then, Section 38 of the Act, as then existed, is quoted below:

“38. Furnishing details of inward supplies.─(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37.

(2) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, the details of inward supplies of taxable goods or services or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this Act and inward supplies of goods or services or both taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975 (51 of 1975), and credit or debit notes received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of the month succeeding the tax period in such form and manner as may be prescribed: Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein :

Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(3) The details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

(4) The details of supplies modified, deleted or included by the recipient in the return furnished under sub-section (2) or sub-section (4) of section 39 shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

(5) Any registered person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period :

Provided that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier."

31. Also, Section 41 of the Act, as then existed, is quoted below:

"41 Claim of input tax credit and provisional acceptance thereof.—(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis/to his electronic credit ledger.

(2) The credit referred to in sub-section (1) shall be utilised only for payment of self- assessed output tax as per the return referred to in the said sub-section."

32. Further, Section 42 of the Act provided a mechanism for matching, reversal and reclaim of ITC. At the relevant time, it read:

“42. Matching, reversal and reclaim of input tax credit.—(1) The details of every inward supply furnished by a registered person (hereafter in this section referred to as the “recipient”) for a tax period shall, in such manner and within such time as may be prescribed, be matched—

(a) with the corresponding details of outward supply furnished by

the corresponding registered person (hereafter in this section referred to as the "supplier") in his valid return for the same tax period or any preceding tax period;

(b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and

(c) for duplication of claims of input tax credit.

(2) The claim of input tax credit in respect of invoices or debit notes relating to inward supply that match with the details of corresponding outward supply or with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him shall be finally accepted and such acceptance shall be communicated, in such manner as may be prescribed, to the recipient.

(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

(4) The duplication of claims for reduction in output tax liability shall be communicated to the supplier in such manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under sub- section (3) and which is not rectified by the recipient in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the supplier, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount in respect of any reduction in output tax liability that is found to be on account of duplication of claims shall be added to the output tax ability of the supplier in his return for the month in which such duplication is communicated.

(7) The supplier shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the recipient declares the details of the credit not in his valid return within the time specified in sub-section (9) of section 39.

(8) A supplier in those output tax liability any amount has been added under sub- section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 in respect of the amount so added from the date of such claim for reduction in the output tax liability till the corresponding additions are made under the said sub-sections.

(9) Where any reduction in output tax liability is accepted under

sub-section (7), the interest paid under sub-section (8) shall be refunded to the supplier by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:

PROVIDED that the amount of interest to be credited in any case shall not exceed amount of interest paid by the recipient. the

(10) The amount reduced from output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the supplier in his return for the month in which such contravention takes place and such supplier shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50."

33. Then, Section 43A of the Act, before its omission in 2022 read as below:

"43A. Procedure for furnishing return and availing input tax credit.

(1) Notwithstanding anything contained in sub-section (2) of section 16, section 37 or section 38, every registered person shall in the returns furnished under sub-section (1) of section 39 verify, validate, modify or delete the details of supplies furnished by the suppliers.

(2) Notwithstanding anything contained in section 41, section 42 or section 43, the procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed.

(3) The procedure for furnishing the details of outward supplies by the supplier on the common portal, for the purposes of availing input tax credit by the recipient shall be such as may be prescribed.

(4) The procedure for availing input tax credit in respect of outward supplies not furnished under sub-section (3) shall be such as may be prescribed and such procedure may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty per cent of the input tax credit available, on the basis of details furnished by the suppliers under the said sub-section.

(5) The amount of tax specified in the outward supplies for which the details have been furnished by the supplier under sub-section (3) shall be deemed to be the tax payable by him under the provisions of the Act.

(6) The supplier and the recipient of a supply shall be jointly and severally liable to pay tax or to pay the input tax credit availed, as the case may be, in relation to outward supplies for which the

details have been furnished under sub-section (3) or sub- section (4) but return thereof has not been furnished.

(7) For the purposes of sub-section (6), the recovery shall be made in such manner as may be prescribed and such procedure may provide for non-recovery of an amount of lax or input tax credit wrongly availed not exceeding one thousand rupees.

(8) The procedure, safeguards and threshold of the tax amount in relation to outward supplies, the details of which can be furnished under sub-section (3) by a registered person,

(i) within six months of taking registration;

(ii) who has defaulted in payment of tax and where such default has continued for more than two months from the due date of payment of such defaulted amount, shall be such as may be prescribed."

34. Though section 43A never came to life, Rule 36 of the Rules together with sub-Rule (4), as existed at the relevant time, read as below:

*"**36. Documentary requirements and conditions for claiming input tax credit***

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax,

(c) debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports:

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person:

PROVIDED that if the said document does not contain all the

specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts.

(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility, shall not exceed 10 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility:

PROVIDED that the said condition shall apply cumulatively for the period February, March. April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above:

PROVIDED FURTHER that such condition shall apply cumulatively for the period April, May and June, 2021 and the return in FORM GSTR-3B for the tax period June, 2021 or quarter ending June, 2021, as the case may be, shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above."

(emphasis added)

35. Also, relevant to us, Rule 37 of Rules, read as below:

"37. Reversal of input tax credit in the case of non-payment of consideration.─(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice :

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be

deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16 :

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished."

36. Next, Rule 59 of the Rules read as below:

"59. Form and manner of furnishing details of outward supplies.—(1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017, required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in FORM GSTR-1 electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) The details of outward supplies of goods or services or both furnished in FORM GSTR-1 shall include the—

(a) invoice wise details of all—

(i) inter-State and intra-State supplies made to the registered persons; and

(ii) inter-State supplies with invoice value more than two and a half lakh rupees made to the unregistered persons;

(b) consolidated details of all—

(i) intra-State supplies made to unregistered persons for each rate of tax; and

(ii) State wise inter-State supplies with invoice value upto two and a half lakh rupees made to unregistered persons for each rate of tax;

(c) debit and credit notes, if any, issued during the month for invoices issued previously.

(3) The details of outward supplies furnished by the supplier shall be made available electronically to the concerned registered persons (recipients) in Part A of FORM GSTR-2A, in FORM GSTR-4A and in FORM GSTR-6A through the common portal after the due date of filing of FORM GSTR-1.

(4) The details of inward supplies added, corrected or deleted by

the recipient in his FORM GSTR-2 under section 38 or FORM GSTR-4 or FORM GSTR-6 under section 39 shall be made available to the supplier electronically in FORM GSTR-1A through the common portal and such supplier may either accept or reject the modifications made by the recipient and FORM GSTR-1 furnished earlier by the supplier shall stand amended to the extent of modifications accepted by him.

**(5) Notwithstanding anything contained in this rule,—*

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding two months;

(b) a registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;

(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period."

Sub-rule (5) inserted by G.S.R. 786(E), dated 22nd December, 2020 (w.e.f. 22-12-2020).

1. Ins. by G.S.R. 2(E), dated 1st January, 2021 (w.e.f. 1-1-2021).

2. Subs by G.S.R. 659(E), dated 24th September, 2021, for "for preceding two months" (w.e.f. 1-1-2022).

3. Clause (c) omitted by G.S.R. 659(E), dated 24th September, 2021 (w.e.f. 1-1-2022). Clause (c) before omission, stood as under :

"(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period."

37. Rule 60 relating to the form and manner to ascertain the details of inward supplies read as below:

"60. Form and manner of furnishing details of inward supplies.— (1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017, required to furnish the details of inward supplies of goods or services or both received during a tax period under sub-section (2) of section 38 shall, on the basis of details contained in Part A, Part B and Part C of FORM GSTR-2A, prepare such details as specific in sub-section (1) of the said section and furnish the same in FORM GSTR-2 electronically through the common portal, either directly or from a Facilitation Centre notified by the Commissioner, after including therein details of such other inward supplies, if any, required to be furnished under sub-section (2) of section 38.

(2) Every registered person shall furnish the details, if any, required under sub-section (5) of section 38 electronically in FORM GSTR-2.

(3) The registered person shall specify the inward supplies in respect of which he is not eligible, either fully or partially, for input tax credit in FORM GSTR-2 where such eligibility can be determined at the invoice level.

(4) The registered person shall declare the quantum of ineligible input tax credit on inward supplies which is relatable to non-taxable supplies or for purposes other than business and cannot be determined at the invoice level in FORM GSTR-2.

(4A) The details of invoices furnished by an non-resident taxable person in his return in FORM GSTR-5 under rule 63 shall be made available to the recipient of credit in Part A of FORM GSTR-2A electronically through the common portal and the said recipient may include the same in FORM GSTR-2.

(5) The details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 under rule 65 shall be made available to the recipient of credit in Part B of FORM GSTR-2A electronically through the common portal and the said recipient may include the same in FORM GSTR-2.

(6) The details of tax deducted at source furnished by the deductor under sub-section (3) of section 39 in FORM GSTR-7 shall be made available to the deductee in Part C of FORM GSTR-2A electronically through the common portal and the said deductee may include the same in FORM GSTR-2.

(7) The details of tax collected at source furnished by an e-commerce operator under section 52 in FORM GSTR-8 shall be made available to the concerned person in Part C of FORM GSTR-2A electronically through the common portal and such person may include the same in FORM GSTR-2.

(8) The details of inward supplies of goods or services or both furnished in FORM GSTR-2 shall include the —

(a) invoice wise details of all inter-State and intra-State supplies received from registered persons or unregistered persons;

(b) import of goods and services made; and

(c) debit and credit notes, if any, received from supplier."

38. Insofar as the impugned Circular dated 11.11.2019 is concerned, it speaks of restrictions to avail ITC in terms of sub-Rule (4) of Rule 36 of the CGST Rules, 2017. Relevant portion of the said Circular reads as below:

"*Sub-rule (4) to rule 36 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) has been inserted vide notification No. 49/2019- Central Tax, dated 09.10.2019. The said sub-rule provides restriction in availment of input tax credit (ITC) in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act).*

2. To ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies various issues in succeeding paragraphs.

3. The conditions and eligibility for the ITC that may be availed by the recipient shall continue to be governed as per the provisions of Chapter V of the CGST Act and the rules made thereunder. This being a new provision, the restriction is not imposed through the common portal and it is the responsibility of the taxpayer that credit is availed in terms of the said rule and therefore, the availment of restricted credit in terms of sub-rule (4) of rule 36 of CGST Rules shall be done on self-assessment basis by the tax payers. Various issues relating to implementation of the said sub-rule have been examined and the clarification on each of these points is as under: -

Sl No.	***Issue***	***Clarification***
..	*…*	*…*
3.	***FORM GSTR-2A** being a dynamic document, what would be the amount of input tax credit that is admissible to the taxpayers for a particular tax period in respect of*	*The amount of input tax credit in respect of the invoices / debit c notes whose details have not been uploaded by the suppliers at shall not exceed 20% of the eligible input tax credit available to at the recipient in respect of invoices or debit notes the details of at which*

	invoices/debit notes whose details have not been uploaded by the suppliers?	*have been uploaded by the suppliers under sub-section me (1) of section 37* ***as on the due date of filing of the returns in a FORM GSTR-1 of the suppliers for the said tax period.*** *The taxpayer may have to ascertain the same from his auto populated* ***FORM GSTR 2A as available on the due date of filing of se FORM GSTR-1 under sub-section (1) of section 37.***

39. Then, Circular No. 136 dated 03.04.2020 seeks to clarify various measures announced by the Government to provide relief to taxpayers in view of the spread of the Novel Corona Virus (COVID-19). Relevant extract of that Circular reads as below:

> "*The spread of Novel Corona Virus (COVID-19) across many countries of the world, including India, has caused immense loss to the lives of people and resultantly impacted the trade and industry. In view of the emergent situation and challenges faced by taxpayers in meeting the compliance requirements under various provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), Government has announced various relief measures relating to statutory and regulatory compliance matters across sectors.*
>
> *2. Government has issued following notifications in order to provide relief to the taxpayers:*

S. No.	***Notification***	***Remarks***
1.	*Notification No.30/2020-Central Tax, dated 03.04.2020*	*Amendment in the CGST Rules so as to allow taxpayers opting for the Composition Scheme for the financial year 2020-21 to file their option in FORM CMP-02 till 30th June, 2020 and to allow cumulative application of the condition in rule 36(4) for the months of February, 2020 to August, 2020 in the return for tax period of September, 2020.*
2.	*Notification No.31/2020-*	*A lower rate of interest of NIL for first 15 days after the due date of*

	Central Tax, dated 03.04.2020	*filing return in FORM GSTR-3B and @ 9% thereafter is notified for those registered persons having aggregate turnover above Rs. 5 Crore and NIL rate of interest is notified for those registered persons having aggregate turnover below Rs. 5 Crore in the preceding financial year, for the tax periods of February, 2020 to April, 2020. This lower rate of interest shall be subject to condition that due tax is paid by filing return in FORM GSTR-3B by the date(s) as specified in the Notification.*
3.	*Notification No. 32/2020-Central Tax, dated 03.04.2020*	*Notification under section 128 of CGST Act for waiver of late fee for delay in furnishing returns in FORM GSTR-3B for the tax periods of February, 2020 to April, 2020 provided the return in FORM GSTR-3B by the date as specified in the Notification.*
4.	*Notification No. 33/2020-Central Tax, dated 03.04.2020*	*Notification under section 128 of CGST Act for waiver of late fee for delay in furnishing the statement of outward supplies in FORM GSTR-1 for taxpayers for the tax periods March, 2020 to May, 2020 and for quarter ending 31st March 2020 if the same are furnished on or before 30th day of June, 2020.*
5.	*Notification No. 34/2020-Central Tax, dated 03.04.2020*	*Extension of due date of furnishing statement, containing the details of payment of self-assessed tax in FORM GST CMP-08 for the quarter ending 31st March, 2020 till the 7th day of July, 2020 and filing FORM GSTR-4 for the financial year ending 31st March, 2020 till the 15th day of July, 2020.*
6.	*Notification No. 35/2020-Central Tax, dated 03.04.2020*	*Notification under section 168A of CGST Act for extending due date of compliance which falls during the period from the 20th day of March, 2020 to the 29th day of June, to 30th day of June, 2020.*

3. Various issues relating to above mentioned notifications have

been examined. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies each of these issues as under:-

S No.	***Issue***	***Clarification***
1.	*….*	*…..*
2.	*Whether due date of furnishing FORM GSTR-3B for the months of February, March and April, 2020 has been extended ?*	*1. The due dates for furnishing FORM GSTR-3B for the months of February, March and April, 2020 has not been extended through any of the notifications referred in para 2 above.* *2. However, as per notification No. 31/2020-Central Tax, dated 03.04.2020, NIL rate of interest for first 15 days after the due date of filing return in FORM GSTR-3B and reduced rate of interest @ 9% thereafter has been notified for those registered persons whose aggregate turnover in the preceding financial year is above Rs. 5 Crore. For those registered persons having turnover up to Rs. 5 Crore in the preceding financial year, NIL rate of interest has also been notified.* *3. Further, vide notification as per the notification No. 32/2020- Central Tax, dated 03.04.2020, Government has waived the late fees for delay in furnishing the return in FORM GSTR-3B for the months of February, March and April, 2020.* *4. The lower rate of interest and waiver of late fee would be available only if due tax is paid by filing return in FORM GSTR-3B by the date(s) as specified in the Notification.*
3.	*What are the conditions attached for availing the reduced rate of interest for the months of February, March and*	*1. As clarified at sl.no. (2) above, the due date for furnishing the return remains unchanged; i.e. 20th day of the month succeeding such month. The rate of interest has been notified as Nil for first 15 days from the due date, and 9 per cent per annum thereafter, for the said months.* *2. The reduced rate of interest is subject to*

<table>
<tr><td></td><td>April, 2020, for a registered person whose aggregate turnover in the preceding financial year is above Rs. 5 Crore?</td><td>the condition that the registered person must furnish the returns in FORM GSTR-3B on or before 24th day of June, 2020.

3. In case the returns in FORM GSTR-3B for the said months are not furnished on or before 24th day of June, 2020 then interest at 18% per annum shall be payable from the due date of return, till the date on which the return is filed. In addition, regular late fee shall also be leviable for such delay along with liability for penalty.</td></tr>
<tr><td>4.</td><td>How to calculate the interest for late payment of tax for the months of February, March and April, 2020 for a registered person whose aggregate turnover in preceding financial year is above Rs. 5 Crore?</td><td>1. As explained above, the rate of interest has been notified as Nil for first 15 days from the due date, and 9 per cent per annum thereafter, for the said months. The same can be explained through an illustration.

Illustration:- Calculation of interest for delayed filing of return for the month of March, 2020 (due date of filing being 20.04.2020) may be illustrated as per the below Table:
<table>
<tr><td>S. No.</td><td>Date of Filing GSTR-3B</td><td>No. of days of delay</td><td>Whether condition for reduced interest is fulfilled?</td><td>Interest</td></tr>
<tr><td>1.</td><td>02.05.2020</td><td>11</td><td>Yes</td><td>Zero interest</td></tr>
<tr><td>2.</td><td>20.05.2020</td><td>30</td><td>Yes</td><td>Zero interest for 15 days+interest rate @ 9% p.a. for 15 days</td></tr>
<tr><td>3.</td><td>20.06.2020</td><td>61</td><td>Yes</td><td>Zero interest for 15 days+interest rate @ 9% p.a. for 46 days</td></tr>
<tr><td>4.</td><td>24.06.2020</td><td>65</td><td>Yes</td><td>Zero interest for 15 days+interest rate @ 9% p.a. for 50 days</td></tr>
</table></td></tr>
</table>

		5. | 30.06.2020 | 71 | No | **Interest rate @ 18% p.a. for 71 days (i.e. no benefit of reduced interest)**
5.	*...*	*...*
6.	*Whether the due date of furnishing the statement of outward supplies in FORM GSTR-1 under section 37 has been extended for the months of February, March and April 2020?*	*Under the provisions of section 128 of the CGST Act, in terms of notification No. 33/2020- Central Tax, dated 03.04.2020, late fee leviable under section 47 has been waived for delay in furnishing the statement of outward supplies in FORM GSTR-1 under Section 37, for the tax periods March, 2020, April 2020, May, 2020 and quarter ending 31st March 2020 if the same are furnished on or before the 30th day of June, 2020.*
7.	*Whether restriction under rule 36(4) of the CGST Rules would apply during the lockdown period?*	*Vide notification No. 30/2020- Central Tax, dated 03.04.2020, a proviso has been inserted in CGST Rules 2017 to provide that the said condition shall not apply to input tax credit availed by the registered persons in the returns in FORM GSTR-3B for the months of February, March, April, May, June, July and August, 2020, but that the said condition shall apply cumulatively for the said period and that the return in FORM GSTR-3B for the tax period of September, 2020 shall be furnished with cumulative adjustment of input tax credit for the said months in accordance with the condition under rule 36(4).*

40. First, by way of a general principle, it is safe to acknowledge that the GST regime of taxation is founded on the premise - ITC be provided on an assured basis, in every chain of transactions that any

good or service may become part of in its journey of value addition, from the beginning till its consumption, by the end consumer. The tax regime under the Act allows for taxation to arise at each link of the value addition. To that extent, the GST regime is akin to the old (and obsolete) multi-point tax regime. However, its uniqueness lies in its evolution over the past indirect taxation regimes. Thus, the GST (amongst others) has rationalised the multi-point taxation method, by assuredly and effectively seeking to charge tax on net basis only, at every link of the value addition chain. To achieve that, it guarantees adjustment of ITC at every link of value addition - to offset the total tax liability arising at any level of value addition experienced, with ITC commensurate/proportionate to the tax already suffered at the immediately previous link of that value addition chain. It further enables payment of any outward tax due from the available ITC, bringing it at par with cash payment of tax due. Thus, it does away with one-to-one reconciliation of transactions, in its day-to-day working.

41. At the same time, at the enforcement level, the entire scheme to avail the ITC is regulated and made subject to the conditions and restrictions as prescribed under the Act and the Rules. The language of section 16 (1) of the Act is clear, to that extent. Thus, the eligibility to Input Tax Credit is governed by sub-Section (2) of Section 16 of the Act. It begins with a non-obstante clause. It provides, no registered person would be entitled to take credit of ITC unless: he has in his possession the Tax Invoice or Debit Note or other tax paying document (as may be prescribed), issued by the supplier; the supplier has furnished details of such Tax Invoice etc., under Section 37 of the Act, with communication to the recipient; the recipient has received the goods or services or both; subject to provisions of Section 41 of

the Act, the liability of tax charged has actually been discharged to the Government and return has been filed under section 39 of the Act.

42. At the same time, the proviso to sub-section (2) of Section 16 of the Act itself provides, where the recipient fails to pay to the supplier the value for the supply made along with tax payable, within a period of 180 days from the date of issuance of the Tax-Invoice, an amount equal to the Input Tax Credit already availed would be added to the output tax liability of that person, together with interest thereon. Read conjointly with Sections 41, 49(2) and 2(46) of the Act, those provisions expressly create a provisional benefit or a conditional right to claim ITC, pending reconciliation of mismatch if any, in the ITC claimed. Section 42, sub-Sections (3) to (10) provide for the method for reconciliation of any mismatch in ITC claims.

43. By way of an absolute limitation, a registered person has been made dis-entitled to avail ITC after 30th day of November, with respect to any transaction performed in the previous Financial Year. Also, Section 37 of the Act requires any registered person to furnish his returns with respect to supplies made by him in any month, on or before the 10th day of the succeeding month. Any error or mistake may be corrected in terms of sub-section (3) so however such mistake may not be corrected after the 30th day of November of the following Financial Year. Thus, that would be the end of time to avail ITC, subject to other conditions.

44. Thus, unambiguously, the legislature has created a substantive right in favour of the recipient - to claim ITC. Further, it has enabled the recipient to avail ITC provisionally. It has been so held by the Supreme Court in **Union of India Vs Bharti Airtel Ltd., (2022) 4 SCC 328 (pr.49).** That is a substantive right created by the Act. It may be availed, even pending reconciliation and final payment of tax. By

virtue of sub-Section (2) to Section 41, that ITC claim remains subject to reversal together with interest, where the due tax remains from being paid by the supplier. By way of conditions of eligibility to ITC, Section 16 of the Act has made it necessary that the Tax Invoice or Debit Note must be issued by the supplier to the registered person to enable the latter to avail ITC. Also, he must have physically received the goods or services, on which ITC claim may arise. As to the requirement of payment of due tax to the Government, that stipulation has been made subject to the provisions of Section 41of the Act. Read together with Rule 36 of the Rules, the legislature first created a margin of time, obviously involving liability to interest for delays beyond the due date of filing of the monthly return by the supplier, in depositing the due tax with the Government.

45. That general discussion apart, the furnishing of details by the supplier on GSTR-1 as may be reflected on GSTR 2A to the recipient is what engages our attention, directly.

46. Considering the general prescription in law that any monthly return should normally be filed by the supplier (in terms of section 39 of the Act), on or before the 20th day of the following month, it cannot escape judicial recognition that the second proviso to Section 16(2) the Act itself creates a provisional right to the recipient to avail ITC (even after lapse of that shorter time period), up to the expiry of the larger period of 180 days. In case of non-payment within 180 days, provisions exist to reverse the ITC granted/availed. At the same time, there is no negative prescription under the Act or the Rules that ITC claim may never arise unless the tax is first paid by the recipient, and/or is deposited by the supplier with the State Government.

47. The provision and the stage of reversal may allow the revenue authorities to reverse the provisional benefit granted, upon default

arising and being proven. It is equally true that the event of late payment of due tax may be accompanied with a demand of interest and penalties. Yet, prior payment and deposit of tax is not a *sine qua non* for provisional grant of or utilization of ITC, by the recipient. Clearly therefore, the legislature is seen to have recognised a business practice to allow a six-month credit to the recipient, wherever the transacting parties may agree. However, the supplier would remain bound to deposit the due tax on a month-to-month basis. At the same time the chain of ITC may neither be broken, nor its continuous motion be stalled abruptly, for reason of non-deposit of tax with the Government by the supplier, along with his monthly return.

48. Consequentially, we opine, the scheme of the Act is to let ITC arise and be availed provisionally, in a continuously moving value addition chain, subject to other conditions including actual payment of tax being eventually proven and remaining undoubted. That provisional allowance would become absolute upon tax being paid not later than 180 days. There can be no *lis* as to the wisdom of the Parliament in incorporating that period of 180 days. If the law were to be read otherwise, i.e., that the ITC claim may never arise unless the tax is first paid then, the second proviso to section 16(2) itself would be rendered otiose.

49. Therefore, the stipulations regarding furnishing of returns (together with their timelines) though mandatory, run parallel to the stipulations for claim, grant, and availing ITC. Yet, those two sets of stipulations of the Act do not create a pair of inflexible parallel rails of a railroad. Though largely parallel to the other, they co-exist within the permissible limits of elasticity created by the grant of provisional ITC. That necessary elasticity prevents the carriage of taxation from stalling and allows it to continue in motion without disrupting the

journey of value addition being experienced by the goods and services.

50. In view of the above, though the date of filing of the details by the supplier would remain fixed as the 10th day of the following month, at the same time by way of principle it is difficult to acknowledge that ITC could be availed only with reference to that event. Here, it may be emphasized, again in **Bharti Airtel Ltd. (supra) (pr.66)** the nature of Form GSTR-2A has been recognized to be that of a facilitator. Similar view has also been taken by the Calcutta High Court in **Suncraft Energy Private Limited and Anr. Vs The Assistant Commissioner, State Tax, MAT 1218 of 2023 decided on 02.08.2023,** upon consideration of the Press Release dated 18.10.2018. We do not find any good reason to take any different view, both for the reasoning of the Calcutta High Court and for our reasoning given above. Therefore, by necessary implication details furnished on Form GSTR-1 are nothing more than a necessary step in that facilitation. Further restrictions and law would have to be seen to test the submission advanced by the learned Additional Advocate General.

51. As a fact consideration, it may also be noted, the impugned order is neither based on the reasoning of any collusion or misrepresentation, or fraud played by the petitioner in obtaining the Tax Invoices from its suppliers nor those Tax Invoices were alleged to be not genuine. On the contrary, the impugned order is based on the legal reasoning arising from the reading of the provisions of the Act and the Rules read with the Notifications and Circular.

52. First, it has been reasoned, Rule 36(4) of the Rules would apply cumulatively from February 2020 up to August 2020 and the return on Form GSTR-3B for the period September 2020 would have to be

furnished with the cumulative adjustment of Input Tax Credit for the said months. That reasoning is based on Notification No. 30 of 2020. The said Notification introduced the first proviso to Rule 36(4) of the Rules. The same has been extracted above.

53. Plainly, that proviso is not an independent provision of law, rather, it has been incorporated with reference to pre-existing sub-Rule 4 of the Rules. Sub-Rule 4 originally provided for a benefit to the taxpayers in addition to what was available otherwise. Thus, with respect to ITC available to a registered person against Tax Invoice or Debit Note, by virtue of the sub-Rule 4 of the Rules, the purchaser was provisionally made entitled to 20% additional ITC. For the period in dispute, the said percentage had been reduced to 10%. It is a fact, the same was later reduced to 5% and still later, that benefit was completely done away.

54. Here, for the purpose of clarity, it may be noted, the parties are not in dispute that at the relevant time, the petitioner was entitled to claim benefit up to 10% of the eligible credit available with respect to the Tax Invoices and Debit Notes, details of which may have been fed by the respective suppliers on their GSTR-1 and therefore may have stood reflected on the GSTR-2A of the petitioner, on the respective due dates for the months of February to August 2020. In fact, those figures (month wise) have been extracted in the impugned order in the table, quoted above. Therefore, there is no dispute about the eligible amounts of ITC for the months February 2020 to August 2020, as were available and visible, on the respective due dates.

55. Also, admittedly, the return filed by the petitioner on Form GSTR 3B, for the month of September 2020 referred to and included therein the figure of total ITC claimed at Rs. 8,93,50,40,324.89/- with the monthly figures broken down and specified in the second column.

It is also not in dispute that for the months of February to August 2020, the total of eligible credit as per GSTR-2A for the said months arising from GSTR-1 submitted by various suppliers as on the 10th of the following months was Rs. 7,12,21,36,567.80/-. The revenue has added 10% to each of those monthly figures to give effect to Rule 36(4) of the Rules. It has thus reached the figure of eligible ITC Rs. 7,83,43,50,224.58/-. The petitioner having availed higher ITC amount Rs. 8,93,50,40,324.89/- disclosed in GSTR-3B filed by the petitioner for the months of February to September 2020, excess ITC has been deduced at Rs. 1,10,06,90,100.31/-. On the other hand, according to the petitioner, the revenue ought to have looked at the figures of ITC available as per GSTR-2A as they stood in September 2020, being the month when the petitioner was bound to file its return for the tax period August 2020.

56. Therefore, the dispute falls into a very narrow compass - as to the meaning to be given to the first proviso to Rule 36(4) of the Rules. More precisely we must see if cumulative adjustment spoken of under the said proviso would refer to the figure of eligible ITC as it existed in the individual months - February 2020 to August 2020 or it would be the figure that would have existed on the date of filing of return for the period September 2020.

57. In that regard, the reply furnished by the petitioner is specific. Relevant to our discussion, paragraph nos. 6 and 8 of the said reply read as below:

> *"6. That there was no additional ITC claimed by the company as the company has only availed the eligible ITC which was duly reconciled with GSTR 2A extracted as on date of filing of GSTR 3B, along with Rule 36(4) of CGST Rules, 2017. While performing reconciliation we have considered lot of parameters such as invoice date, invoice number, GST number of the supplier, taxable value tax etc. One of the parameter was date when the ITC is booked in the books of account of the company. There are lot of cases where company receives the*

invoices from suppliers, one or two months after the invoice date. In all such cases, there will always be gap in the GSTR 2A i.e. in the month when supplier has shown his supplies in GSTR 1 vis-à-vis in books of accounts of the company i.e. when the said invoice is booked by the company;

7. That for all such reasons it is imperative to perform reconciliation between GSTR 2A and input tax register of the company in each month on year to date basis. Vivo has adopted the same procedure to derive the ITC amount for each month;

8. That, basis the above the company has rightfully claimed the ITC in the monthly GSTR 3B. The summary of ITC reconciled and availed at the time of monthly filing of GSTR 3B is provided below for your reference :-

Particulars	***Amount in Rs.***
ITC reconciled (Feb-20 to Sep-20) (A)	*8863460752.04*
Eligible ITC in terms of Rule 36(4) (Feb-20 to Sep-20) (B- 110% of A)	*9749806827.24*
ITC Availed (Feb-20 to Sep-20) (C)	*8935040325.05*

58. The impugned order does not doubt the computation of ITC utilized at Rs. 8,86,34,60,752.04/- as mentioned by the petitioner in its reply dated 17.02.2021. Since emphasis has been laid to the fact that the petitioner had not set up a plea before the revenue authorities and such a case has not been set up before us, it is relevant to deal with that issue first.

59. As noted above, though specific reference has not been made to the first proviso to Rule 36(4) of the Rules, in its reply, the petitioner clearly mentioned the figure of ITC reconciled for the period February 2020 to September 2020. That figure was mentioned cumulatively at Rs. 8,86,34,60,752.04/- To that it has further claimed entitlement of 10% additional ITC leading to the figure of eligible ITC Rs. 9,74,98,06,827.24/-. In paragraph no.2 of that reply, it had been submitted as below:

"That the above rule got further amended to reduce the additional ITC claim percentage to 10% and further to 5% which is currently applicable. Further, in terms of Notification no. 30/2020 Central Tax taxpayer had given option to defer the rule 36(4) provisions related to restrictions of 10% from February-20 to August-20 till August-2020 and can cumulatively make the adjustments related to the month of February-2020 to August-2020 at the time of filing monthly GSTR 3B of September-2020;"

60. Next, in paragraphs 47, 50, 51, 52, 53 of the writ petition, it has been stated as below:

"47. That the impugned order is erroneous as it denies the input tax credit on the basis of GSTR 2A generated on the date of filing of GSTR 3B i.e. 20th day of the month. While doing so, the impugned order relies upon Circular no. 123/42/219-GST dated 11.11.2019.

50. That as a result of the above extended credit period, an invoice issued by the suppliers in the month of May 2020 for which the supplier would have complied in the month of June 2020 would get booked in the books of accounts of the petitioner in the month of July 2020 only and the petitioner would have availed the credit of the said invoice while filing the GSTR-3B of the tax period of July 2020 which gets due in the month of August 2020. Thereby resulting in the Input tax credit of an invoice issued by the supplier in the month of May 2020 getting reflected in the GSTR- 3B of the petitioner in the month of August 2020 only.

51. That given the above, in case authorities try to match the GSTR- 2A generated for the petitioner for the month on July 2020 with the GSTR-3B filed by the petitioner for that tax period i.e. July 2020 filed in the month of August 2020, there would be mis-match to the tune of the said invoice/ ITC and the authorities would allege and hold that the petitioner has claimed excess credit as compared to GSTR-2A.

52. That the above logic of matching the invoices is also supported by the fact that the GST law allows the petitioner to avail input tax credit in relation to invoices issued in previous financial year in the current financial year till the month of September. In other words, there could be a possibility that the input tax credit so availed by the petitioner vide GSTR-3B for a particular period, before September month of the financial year, could have input tax credit in relation to invoices issued by the suppliers in previous financial years as well. The compliance in relation to such invoices by the supplier i.e. reporting in its periodic GSTR-1 return would have happened in previous financial year only. Thus, when compared, the GSTR-2A generated for the month in which the petitioner would have availed ITC in its

GSTR-3B return would not match.

53. That even the GSTR-9 i.e. the Annual Return under GST Law provides for reporting of Input tax credit pertaining to previous financial year in the current financial year under column 8C, there by concluding the fact that input tax credit availed by the petitioner in a particular month in its GSTR-3B cannot be matched with the GSTR-2A generated for that particular month itself, rather the same has to be matched on cumulative basis to arrive at any conclusion."

61. In view of such pleadings made, both at the stage of furnishing of reply as also in the context of the dispute brought before us, it may not be right and in any case it may remain hyper technical to accept or acknowledge the objection being raised by the learned Additional Advocate General that such a case was never set up before the revenue authorities nor it has not been set up before us. On facts, the only foundation for the claim made by the petitioner appears to be on the strength of the first proviso to Rule 36(4) of the Rules.

62. Besides the above, the issue being raised is purely legal. The revenue does not contend that Rule 36(4) is not applicable to the facts of the present case. Both parties agree that Rule 36(4) is clearly applicable to the facts of the present case. They differ widely on the interpretation of that Rule. Therefore, for that reason also, we cannot sustain the objection raised by the revenue that the plea being raised before us is a new plea as may not have been considered by the revenue authorities. On facts, that plea appears to have been raised. Otherwise also, it remains available to the petitioner to be raised in the present proceedings, being a purely legal plea raised in undisputed facts.

63. As to the merits, the language of the first proviso to Rule 36(4) is plain and clear. Read along with the main part of sub-Rule 4, it only provides an exception to the scheme contained in that sub-Rule. Thus, in the first place Rule 36(4) is complete and provides for a functional

rule to avail ITC. It contemplated (during the relevant period) that the eligible ITC for each month would not exceed 10% of the eligible ITC available in respect of the Tax Invoices or Debit Notes, details of which stood furnished by the suppliers under sub-Section 1 of Section 36 in Form GSTR-1 or using Invoice Furnishing Facility (IFF).

64. Therefore, if the first proviso to Rule 36(4) had not been introduced, the petitioner would stand non-suited. In fact, the dispute itself would not have arisen as neither party before us offers any different reading to the main part of Rule 36(4) of the Rules. To that extent, the learned Additional Advocate General is right in his submission that for the purpose of computation of eligible ITC in terms of Rule 36(4), the date of filing of GSTR-1 would remain relevant. No departure thereto may have been made so long as the first proviso to Rule 36(4) did not interject.

65. Insofar as the first proviso to Rule 36(4) of the Rules is concerned, the same was introduced by Notification No. 30 of 2020, with effect from 31.3.2020. As explained by means of Circular No. 136 dated 03.04.2020 relied by the learned Additional Advocate General, the CBIC itself remarked as below:

> *"Amendment in the CGST Rules so as to allow taxpayers opting for the Composition Scheme for the financial year 2020-21 to file their option in FORM CMP-02 till 30th June, 2020 and to allow cumulative application of the condition in rule 36(4) for the months of February, 2020 to August, 2020 in the return for tax period of September, 2020."*

It may be noted that the same came to be issued at the time when the pandemic COVID-19 had hit our shores and various difficulties had arisen both with the taxpayers as well as with the revenue authorities.

66. Coming to the core issue of the language used, the proviso first contemplates that the condition prescribed under Rule 36(4) shall

apply cumulatively. The word cumulative has not been defined under the Act or the Rules. However, plainly it conveys increase or addition to size (here quantum) with successive additions without corresponding losses (here deductions). It may be useful to refer to a few dictionary meanings given to the word ‘cumulative’.

In Oxford English Dictionary, Eleventh Edition, Revised, word 'cumulative' has been defined as under :

> cumulative ▪ adj. increasing or increased in quantity or degree by successive additions: *the cumulative effect of months of drought.*

The New Lexicon Webster's Dictionary of The English Language, Deluxe Encyclopedic Edition defines the word 'cumulate' as under :

> cu•mu•late (kjú:mjuleit) *press. part.* cu•mu•lating *past* and *past part.* cu•mu•lat•ed *v.t.* to accumulate, heap up, amass ‖ *v.i.* to become massed cu•mu•lá•tion *n.* cu•mu•la•tive (kjú:mjulətiv) *adj.* gradually increasing by successive additions, *cumulative effect* ‖ tending to accumulate [fr. L. *cumulare (cumulatus)* fr. *cumulus,* a heap]

67. Therefore, the condition contained in sub-Rule 4 of Rule 36 that the eligible ITC would not exceed 10% of the eligible credit as per Tax Invoice or Debit Note etc., filed on GSTR-1 would have to be seen cumulatively i.e., with all additions made, taken together. The period for which such cumulative effect was to be given has also been specified in that proviso, being for the months of February 2020 to August 2020. To that extent, there is no dispute between the parties.

68. The learned Additional Advocate General would also contend that the total amount of eligible credit for the months of February 2020 to August 2020 was to be seen in September 2020. According to him, the proviso contemplates that the return in Form GSTR-3B for the tax period September 2020 shall be furnished with cumulative

adjustment of ITC for the months of February 2020 to August 2020, as it stood on the date of filing of details by the suppliers, on GSTR-1, only. On the other hand, the petitioner has claimed that date to be 20th September 2020, being the date of filing of its return on GSTR-3B. That figure has been mentioned by the petitioner in its reply dated 17.1.2021 @ Rs. 97,49,806,827.24, being 110% of the eligible credit as it stood in October 2020. There is no dispute as to the correctness of that computation. The revenue only disputes the relevance and applicability of that figure.

69. Plainly, we find no reason to sustain that objection. If the effort and intent of the legislature had only been to delay the computation of eligible ITC in terms of Rule 36(4), all that was required to be done was to extend the date of filing of return for the months of February 2020 to August 2020, to September 2020. As rightly submitted by the learned Additional Advocate General, that date of filing of monthly returns was never extended. All that was done by means of subsequent Notifications was to waive/reduce late filing fee, interest, and penalty liabilities. On the contrary, the date of filing of monthly returns remained unchanged.

70. What the first proviso to Rule 36(4) of the Rules introduced was something different and new. Thus, for the tax period September 2020, the petitioner and all registered persons were permitted to file their monthly return on form GSTR-3B, with cumulative adjustment of ITC for the disputed period February 2020 to August 2020, by preserving to them the benefit arising under Rule 36(4) on the increased figure of eligible ITC, as it stood at the time of filing of return for the month of September 2020, on a cumulative basis.

71. Once the legislature introduced such a provision, no inherent logic exists or arises to restrict the application of the first proviso to

Rule 36(4) of the Rules to the principle contained in the pre-existing Rule. Therefore, while Rule 36(4) may have made a provision to necessarily apply the computation of eligible ITC on a month-to-month basis, at the same time, a conscious departure was caused by the first proviso thereto, for a fixed period February 2020 to August 2020. It would defeat the very purpose of that proviso if it were to be read to only allow a mathematical computation of the amounts of eligible ITC as they existed on the last date of filing of GSTR-1 for the months of February 2020 to August 2020, individually.

72. The words "in accordance with the condition above" only indicate the extent to which the registered person may claim ITC more than the eligible credit as per the form GSTR-I - as reconciled up to filing of the return for the month of September 2020 i.e., 110% of the figure obtaining at the relevant time. The mention of Form GSTR-I appearing in the sub-Rule 4 is not by way of a fresh or other stipulation of date on which eligible ITC is to be computed but by way of evidence that must exist as to eligible ITC. If that date would be read for the purpose of grant of cumulative adjustment of ITC under the first proviso to such Rule, it would negate the whole operation of the Rule itself.

73. Also, that interpretation would render redundant the language of the first proviso to the said Rule insofar as it stipulates that the condition of main sub-Rule (4) of Rule 16 of the Rules “shall apply cumulatively” and that the return for the period September 2020 shall be furnished with “cumulative adjustment” of ITC for the months of February 2020 to August 2020. If the intent of the legislature were to only defer the date when such computation was to be made, no requirement would exist to prescribe a cumulative adjustment while filing the return on Form GSTR-3B for the tax period of September

2020. Those details (as per Form GSTR-1 filed for the months of February 2020 to August 2020) being already available, from before, no requirement would ever exist to seek “cumulative adjustment”.

74. The only purpose for which the proviso to the Rule appears to have been incorporated is to grant benefit of ITC late accrued, to transactions completed in the past, by treating the entire period during which transactions may have been completed to be one i.e., beginning 01.02.2020 and ending 31.08.2020 against which all ITC that may have stood accumulated as on the date of filing of return for the period September 2020. It is that deeming fiction in law that the first proviso to Rule 36(4) of the Rules creates. It dissolves the preexisting monthly partitions of tax periods from February 2020 to August 2020 and deems the entire period as one tax period for the limited purpose of applicability of Rule 36(4) of the Rules.

75. There is something in the period February 2020 to August 2020 for which the legislature relaxed the rigour of the law arising under Rule 36(4). That appears to be the sole purpose to introduce the first proviso to Rule 36(4). Therefore, the legislature relaxed the condition of the month-to-month reconciliation of the eligible ITC availed to a much longer period such that it allowed that period of one month to be practically enlarged to eight months. Hence it used the word "cumulatively" - to create a deeming fiction in law.

76. Thereby, though the requirement and date of filing the monthly returns etc., remained unaltered yet, for the purposes of computation of the ITC for those specified months, that period became (fictionally), a single block. The monthly boundaries that otherwise existed within that period were erased to allow the entire period to be seen as one. It is only to effect intended that the words "apply cumulatively" and “cumulative adjustment” have been deliberately employed.

77. Second, to give effect to that intent the legislature allowed the registered persons to file their returns on form GSTR-3B for the tax period September 2020 "with the cumulative adjustment" of ITC for the said months. Read together, that cumulative adjustment is to be seen in the return for tax period of September 2020, only. With the internal monthly boundaries erased by the first push in the proviso, its later part delivers the relief contemplated by the legislature.

78. Once the petitioner was permitted to claim a “cumulative adjustment” for prior period while filing the return for the later period, clearly it is the date of filing a return for a later period on which the cumulative effect would arise and be given effect to. Any other construction would contradict the plain language used by the legislature.

79. The words "in accordance with the conditions above" appearing at the end of the first proviso of Rule 36(4) only state the fact that the details of the Tax Invoice and/or Debit Notes would have to give rise to the eligible ITC. It is not the case with the revenue that such details were not disclosed or were incorrect.

80. Therefore, the method adopted by the revenue authorities in giving effect to Rule 36(4) is found to be faulty. The reliance placed by them on the Circular letter no. 113 dated 11.11.2019 is plainly misplaced. That line of reasoning was never available to the revenue authorities to adopt. It is so because a Circular remains an administrative instruction issued to give effect to the statutory law. Jurisprudentially, it remains a document as may never seek to overreach a pre-existing statutory law whether enacted by the primary legislature or by its delegate. Only in a case where there is no enacted law, an administrative or executive instruction may enjoy a higher priority. That is not the case here.

81. Second, as noted above, Rule 36(4) was complete. An exception thereto was drawn by incorporating the first proviso thereto. That statutory intervention made on 03.04.2020 undid, by its own force, the contrary intent if any in the pre-existing Circular dated 11.11.2019. Therefore, the pre-existing administrative instruction was not issued considering the statutory law first introduced by way of the first proviso to Rule 36(4). On the contrary, that administrative instruction was issued only with respect to the pre-existing law i.e., Rule 36(4). It lost its enforceability in facts covered by the first proviso to Rule 36(4) of the Rules.

82. Seen in that light, the pre-existing Circular conflicts with the amended statutory law. Therefore, though the Circular letter no. 113 dated 11.11.2019 was valid, it cannot be enforced contrary to the first proviso to Rule 36(4). It lost its efficacy and force and to that extent its relevance, for a limited period of February 2020 to August 2020. For that period, the law intervened and ruled otherwise. That is the plain effect in law caused by the first proviso to Rule 36(4). For the period to which the said proviso applies, the administrative instruction dated 11.11.2019 must survive in complete hibernation. Else, it may lose life to the higher statutory law. The revenue authorities have erred in relying on the said Circular letter to read a condition - "as on date of filing the return in GSTR-I, all the suppliers for the said tax period". For that period, the said condition otherwise enforceable in law [by virtue of the language of Rule 36(4)], stood absolutely relaxed. To the extent the Circular dated 11.11.2019 is contrary to the first proviso to Rule 36(4) of the Rules, it would remain unenforceable in law. That principle is well settled. Reference may be made to the decision of the Supreme Court in **Tata Teleservices Ltd. V CCE, 2006 (194) ELT 11 (para 10)**.

83. There being no other objection including as to alternative remedy, we find, the writ petition deserves to be allowed.

84. At this stage (of the oral order), the learned Additional Advocate General pressed, in any case, the petitioner would be entitled to ITC as on 10.09.2020 and not to the date of filing form GSTR-3B for the month of September 2020 which would be October 2020. In view of the discussion made above, no further discussion is required in the present facts. Yet, the following reasoning given by the revenue authorities has also been referred to by Shri Goyal:

> *"It is explicitly clear from the above provisions that ITC shall be claimed in GSTR-3B on the basis of GSTR-2A generated on the due date of filing of Form GSTR-1 (i.e. 11th day of the month) not on the due date of filing of GSTR-3B (i.e. 20th day of the month)."*

85. The above reasoning is not to the effect that the petitioner was not entitled to any part of the “cumulative adjustment” sought for the months of February 2020 to August 2020 against the monthly return filed for the period September 2020. It is also, not the case of the revenue that on 10.10.2020 the petitioner was entitled to any lesser amount of ITC as compared to the figure as on 20.10.2020. That part of the reasoning is plainly missing from the impugned order. Therefore, the objection being now raised by the learned Additional Advocate General is purely academic and has been raised at the time of the order being pronounced. It may remain to be examined in an appropriate case, where deserving facts may exist.

86. Insofar as the present petitioner had offered amount of ITC reconciliation by way of its explanation furnished in its reply dated 17.01.2021 and such facts are also stated in the writ petition which again have not been contradicted or denied as may support the objection being now raised, we do not find it appropriate to remit the matter to the assessing authority, for that purpose.

87. Insofar as the conduct of the revenue authorities in recovering the amount during pendency of the writ petition is concerned, the established principle being there is no implied stay of recovery unless granted by the Court, principally, we see no error on part of the revenue in recovering the disputed amount during pendency of the writ petition. The fact that the assessee had pre-deposited 10% of the disputed amount during the pendency of the writ petition may not work in its favour. That principle being a statutory principle enacted in the context of the statutory appeal, it may never stand extended to a writ proceeding that arose under Article 226 of the Constitution of India. While it may have been open to the petitioner to rely on that provision and to bring to the knowledge of this Court that it had pre-deposited 10% of the disputed tax at the time of filing the writ petition, no automatic benefit accrued to the petitioner upon that deposit, in the absence of any interim order granted by this Court.

88. At the same time, it is wholly unacceptable that the revenue authorities chose to thereafter recover the entire disputed amount leading to recovery of 110% of the disputed amount. While effecting the recovery, the revenue authorities ought to have accounted for any amount that may have been pre-deposited by the petitioner against the disputed demand of tax and penalty.

89. Accordingly, the impugned order is quashed. The entire amount recovered may be returned to the petitioner within a period of six weeks from the date a copy of this order is served on the proper officer, by the petitioner. At the same time, the petitioner would remain entitled to interest that we provide @ 6% on the amount of excess recovery of Rs. 11,00,69,010/-, from the date of that excess recovery to the date of its actual refund. It is left open to the respondent State to recover up to 10% of that interest amount from the

erring field officers and all superior/supervisory officers (who may have allowed such grossly illegal excess recovery to be made and withheld), in proportion to their complicity or negligence in allowing that excess recovery to arise and be withheld.

90. The writ petition is **allowed**. No order as to costs.

Order Date: 5.9.2023
SA/Faraz/Prakhar/Abhilash

(Vinod Diwakar, J.) **(S.D. Singh, J.)**