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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.191 of 2022

Order reserved on: 20-10-2023

Order delivered on: 11-12-2023

M/s Jain Brothers, Thakur Road, Jagdalpur, Bastar, Chhattisgarh, Through its Proprietor Shri Amit Jain, Aged about 46 (Forty Six) years, S/o Shri Surendra Kumar Jain, R/o Thakur Road, Sardar Ward No.10, Jagdalpur, Chhattisgarh

---- Petitioner

Versus

1. Union of India, Through its Secretary, Department of Revenue, At North Block, New Delhi.

2. State of Chhattisgarh, Through its Secretary, Commercial Tax-GST Department, Mantralaya, Mahanadi Bhavan, Naya Raipur, Chhattisgarh.

3. Superintendent, Central GST & Central Excise, Range-IV, Division-IV, Swapnil Bhawan, Shanti Nagar, Near CMO, Jagdalpur, Chhattisgarh.

4. Assistant Commissioner, Central Goods and Services Tax, Division-IV, GST Bhawan, Tikrapara, Raipur, Chhattisgarh.

5. Principal Commissioner, Central Goods and Services Tax, GST Bhawan, Tikrapara, Raipur, Chhattisgarh.

---- Respondents

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For Petitioner: Mr. Palash Soni, Advocate, through Video Conferencing.
For Respondent No.1 / Union of India: -
Mr. Ramakant Mishra, Deputy Solicitor General of India and Ms. Anmol Sharma, Advocate.
For Respondent No.2 / State: -
Mr. Amrito Das, Additional Advocate General.
For Respondents No.3 to 5: -
Mr. Ashutosh Singh Kachhawaha and Ms. Shruti Pramar, Advocates.
Amicus Curiae: Mr. Neelabh Dubey, Advocate.

Hon'ble Mr. Sanjay K. Agrawal and
Hon'ble Mr. Radhakishan Agrawal, JJ.

C.A.V. Order

Sanjay K. Agrawal, J.

1. The petitioner herein, which is a proprietorship firm registered under the provisions of the Central Goods and Services Tax Act, 2017 (for short, 'the CGST Act'), seeks to challenge the constitutional validity of Section 16(4) of the CGST Act as violative of Articles 14, 19(1)(g) & 300A of the Constitution of India and further seeks a declaration that Section 16(4) is merely procedural in nature which cannot override substantive conditions as mandated under Sections 16(1) & 16(2) of the CGST Act, and eventually seeks to challenge the show cause notice dated 20-5-2022 (Annexure P-8) in light of Section 100 of the Finance Act, 2022 and to allow the ITC (Input Tax Credit) claimed in the month of March, 2019 and also to quash the proceedings initiated under Section 16(4) of the CGST Act by respondents No.3 to 5 herein.

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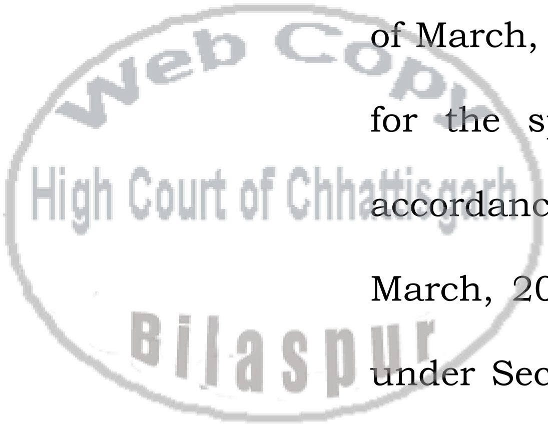
2. The constitutional validity of Section 16(4) of the CGST Act has been challenged on the following factual backdrop: -

Relevant Facts

3. The petitioner is a proprietorship firm engaged in the trading of Oils and allied products thereof, registered under the provisions of the CGST Act as well as the Chhattisgarh Goods and Services Tax Act, 2017 having GSTIN: 22ACJPJ0020A1ZR and certificate of GST registration has

been filed as Annexure P-1. It is further case of the petitioner that the petitioner being a trader, regularly purchases goods and avails certain services thereof in relation to the business. The petitioner being a registered firm under the specified GST Acts is required to furnish its monthly return under Section 39 of the CGST Act read with Rule 61 of the Central Goods and Services Tax Rules, 2017 (for short, 'the CGST Rules') in Form GSTR-3B. The petitioner for the financial year 2018-19 filed return under Section 39 of the CGST Act in Form GSTR-3B for the month of March, 2019 on 13-11-2019. Return was specifically filed for the specified period and late fees was also paid in accordance with Section 47 of the CGST Act for the period March, 2019 in Form GSTR-3B of April, 2019 and interest under Section 50 was also paid in the return for the period March, 2019. The ITC claimed in the return for the month of March, 2019 was eligible ITC for the specified period in terms of Section 16(2). Returns filed under Section 39 in Form GSTR-3B for the months of March, 2019 and April, 2019 have been annexed as Annexures P-2 & P-3. Thereafter, the petitioner was served with a demand letter dated 6-2-2020 (Annexure P-4) by respondent No.3 demanding an amount of ₹ 9,43,919/- to be paid alleging that Input Tax Credit (ITC), as specified above, is availed in contravention of Section 16(4) of the CGST Act along with interest under Section 50 of the said Act, which the petitioner replied vide Annexure P-5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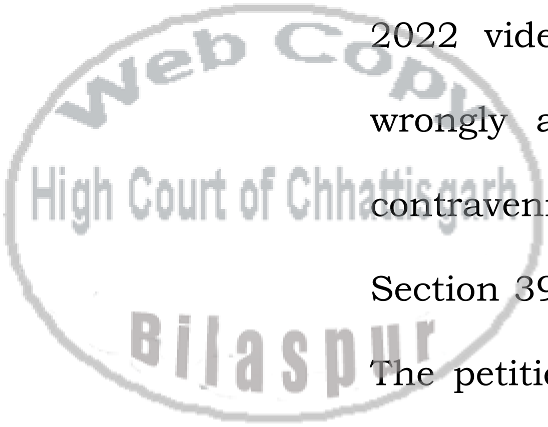
and prayed for quashment of the proceedings and not to issue any further notice, but respondent No.3 again issued a demand letter dated 28-1-2021 (Annexure P-6) rejecting the grounds raised by the petitioner stating that Section 16(4) provides for condition of availing ITC and accordingly demanded the payment of wrongly availed ITC along with appropriate interest, which the petitioner again replied by Annexure P-7 that he satisfies all the requirements of Section 16(2) of the CGST Act, but not satisfied with that, the petitioner was served with a show cause notice on 26-5-2022 vide Annexure P-8 alleging that the petitioner has wrongly availed ITC for the month of March, 2019 by contravening with the provisions of Section 16(4) read with Section 39 of the CGST Act and Rule 61 of the CGST Rules. The petitioner was required to show cause as to why total goods and services tax amounting to ₹ 9,43,920/- should not be demanded and recovered from him under Section 73(1) of the CGST Act, interest at applicable rate should not be demanded and recovered under Section 50 of the said Act and penalties should not be imposed under Section 73(9) of the said Act leading to filing of the instant writ petition questioning the constitutional validity of Section 16(4) of the CGST Act and eventually questioning the proceedings initiated for recovery of ₹ 9,43,920/- along with interest and penalties stating that the said recovery under Section 16(4) is violative of Articles 14, 19(1)(g) & 300A of the Constitution



of India and that Section 16(4) is merely procedural in nature which cannot override substantive conditions as mandated under Section 16(1) & 16(2) and further called in question the recovery proceedings initiated in shape of show cause notice dated 20-5-2022.

4. Union of India has filed its return opposing the averments made in the writ petition stating inter alia that the writ petition as framed and filed is not maintainable and liable to be dismissed as premature, as the petitioner has also challenged the show cause notice issued by respondent No.3 and same has till date not been adjudicated by the concerned authority and after adjudication of same by the competent authority, the petitioner has option to file appeal before the appellate authority as per the provisions of the CGST Act. It has further been pleaded that the provision of Section 16(4) of the CGST Act is a constitutionally valid provision and Section 16(4) is an integral part of the statute and therefore the conditions prescribed by Section 16(4) for availment of ITC are binding on the tax payer. The availability of ITC is subject to the conditions and restrictions and if a tax payer has not fulfilled the said conditions including the conditions provided in Section 16(4), it cannot be allowed to avail the benefit of input tax credit. It has also been submitted that the grant of input tax credit under Section 16 of the CGST Act is a concession or relaxation and nobody can claim it as a matter of vested

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right. It is entirely for the legislature to make a provision and restrict the benefit or concession or relaxation either to a class of persons or even if it extends to all, it can restrict the term or period or limit up to which the concession can be availed of. Similar provision has been given in the CENVAT Credit Rules, 2004. Any registered person is eligible for taking input tax credit, only if such availment is not restricted by conditions laid down in the law in this regard. It has been further submitted that Section 16(4) of the CGST Act is neither violative of Article 14 nor violative of Articles 19(1)(g) & 300A of the Constitution and the writ petition being premature is liable to be dismissed.

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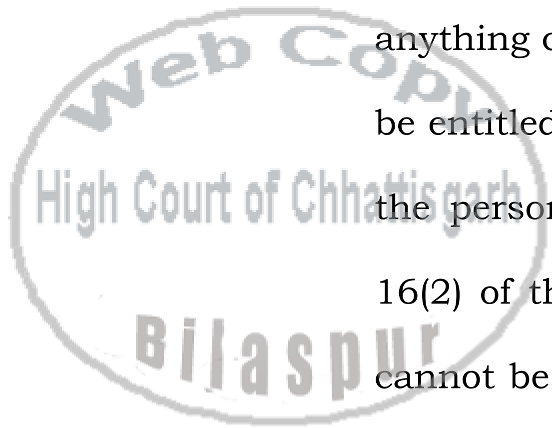
5. Respondents No.3 to 5 though have filed separate return, but in line with return filed by respondent No.1, they have stated inter alia that the petitioner is not entitled for the reliefs claimed in the writ petition and the writ petition deserves to be dismissed.

<u>Submission of the Petitioner</u>

6. Mr. Palash Soni, learned counsel appearing for the petitioner, would submit that the petitioner has filed return under Section 39 of the CGST Act for period March, 2019 on 13-11-2019 and has availed ITC of ₹ 9,43,920/-, thereafter, respondent No.3 has issued notices vide Annexures P-4 & P-6 seeking clarifications from the petitioner regarding late availment of ITC in the return for March, 2019, which the

petitioner has duly replied vide Annexures P-5 & P-7 and thereafter, show cause notice has been issued to the petitioner as to why the ITC availed in the return (Form GSTR-3B) should not be demanded and recovered along with applicable interest and penalty thereof. According to the learned counsel for the petitioner, ITC means the credit for input tax and Section 16(4) of the CGST Act provides a restriction on taking input tax credit based on time line as provided therewith. Whereas, Section 16(2) of the CGST Act is a non obstante clause starting with “Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax ...”. Therefore, once the person claiming ITC satisfies the conditions of Section 16(2) of the CGST Act, the ITC becomes a vested right and cannot be taken away by virtue of time lines provided by the other provision, specifically Section 16(4), as Section 16(2) has an overriding effect over the other sub-sections of Section 16 including Section 16(4) and once all the conditions specified in Section 16(2) have been satisfied, the person claiming ITC vests upon him and cannot be taken away merely based on time lines. It is further submitted by learned counsel for the petitioner that it is the established principle of law that in construing the provisions of a non obstante clause, it is necessary to determine the purpose and object for which it was enacted, as the purpose and object for enacting GST law was majorly to avoid the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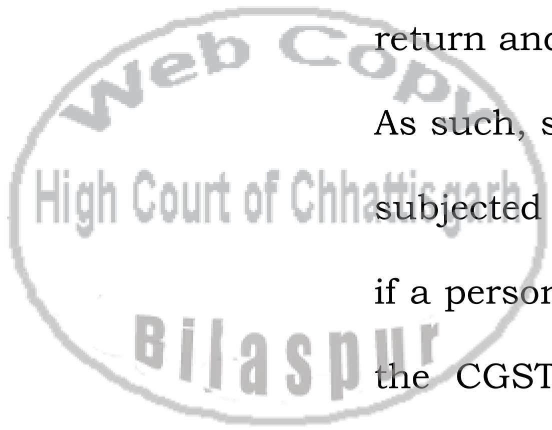
cascading effect and to have seamless flow of ITC for each point of taxation till the end consumer. But, restricting the ITC based on the time lines will be against the basic purpose and object as specified. Section 16(4) of the CGST Act was enacted to only disallow the ITC where the ITC has been claimed after filing the return in Form GSTR-3B for September following the financial year to which such ITC pertains and not to disallow the ITC for a particular period if return for the period has been filed belatedly, this interpretation of disallowing the ITC for delay in filing of return and claiming ITC thereof, frustrates the object of GST. As such, sub-section (2) of Section 16 of the CGST Act is not subjected to sub-section (4). Therefore, in case of a conflict, if a person has satisfied all the conditions of Section 16(2) of the CGST Act but not within the time line provided by Section 16(4), Section 16(4) will be of no use and ITC has to be allowed. Mr. Soni, learned counsel for the petitioner, would also submit that Section 16(4) violates Article 14 of the Constitution in the sense that it is far beyond the scope and object of the Act, as one of the key features of the CGST Act is to have uninterrupted and seamless chain of ITC. It is an established principle of law that where a relation cannot be established to the object sought to be achieved by the statute, the same is in violation of Article 14 of the Constitution. According to Mr. Soni, learned counsel for the petitioner, Section 16(4) of the CGST Act is not an aid to ITC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but is an obstruction by disallowing the ITC claimed by the petitioner for a particular period but the returns were filed after the due date. Section 16(4) disallows the ITC merely based on time lines for those taxes which are already paid for purchase of goods and/or services as the case may be. Mr. Soni would also contend that Section 16(4) also violates Article 19(1)(g) of the Constitution because the said provision nowhere is covered under the 'reasonable restrictions' under Article 19(6) of the Constitution. The restriction provided therein is bad in law and is an unreasonable restriction. The provision does not bar the filing of returns after the due date of filing of return for September following the financial year to which ITC pertains. Returns under Section 39 of the CGST Act are allowed to be filed even after the due date September following the end of financial year and therefore the intention of law is not to bar the ITC by time lines by any means and therefore is bad in law. Finally, it is submitted that Section 16(4) of the CGST Act is also violative of Article 300A of the Constitution. Mr. Soni would rely upon the decision of the Calcutta High Court in the matter of **Howrah Tax Payers' Association v. The Government of West Bengal and another**[1], that of the Gujarat High Court in the matter of **M/s Siddharth Enterprises through Partner Mahesh Liladhar Tibdewal v. The Nodal Officer**[2] and that

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1 2010 SCC OnLine Cal 2520
2 AIR OnLine 2019 Gujarat 355

of the Supreme Court in the matter of **Chandavarkar Sita Ratna Rao v. Ashalata S. Guram**[3] to bolster his submission.

Submission on behalf of the Union of India: -

7. Mr. Ramakant Mishra, learned Deputy Solicitor General of India appearing for the Union of India / respondent No.1, would submit that the petition as framed and filed against show cause notice would not be maintainable, as the same has not been adjudicated by the concerned authority and after adjudication of the same by the competent authority, the petitioner has option to file appeal before the appellate authority as per the provisions of the CGST Act. It is further submitted that the grant of input tax credit under Section 16 of the CGST Act is a concession or relaxation and nobody can claim it as a matter of vested right. It is entirely for the legislature to make a provision and restrict the benefit or concession or relaxation either to a class of persons or even if it extends to all, it can restrict the term or period or limit up to which the concession can be availed of. It has also been submitted by Mr. Mishra that the petitioner has misinterpreted Sections 16(1) & 16(2) of the CGST Act, as Section 16(4) lays down due date for claiming ITC which provides due date to avail ITC based on the date of invoice or debit note and not based on the return period. Since the petitioner has contravened the provision laid under Section 16(4), ITC is not available to it. Mr. Mishra would rely upon

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3 (1986) 4 SCC 447

the decision of the Supreme Court in the matter of **Kerala Hotel and Restaurant Association and others v. State of Kerala and others**[4] to buttress his submission. He would further submit that the State enjoys the widest latitude where measures of economic regulation are concerned and it is for the State to decide what economic and social policy it should pursue. In view of the larger discretion of the legislature in matter of its preferences of economic and social policies, it has been held by the Supreme Court that the legislative preference in favour of a particular class cannot be questioned on the ground of lack of legislative wisdom or the method adopted is not the best or that there were better ways of abusing the competing interests and claims. He would also submit that Article 19(1) of the Constitution gives certain freedoms to every citizen. The petitioner being a proprietorship firm is not a citizen for the purpose of Article 19 of the Constitution and therefore the benefit of Article 19(1)(g) would not be available to the petitioner and even there is no violation of Section 16(4) of the CGST Act in the present case, therefore, the writ petition is liable to be dismissed.

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Submission on behalf of Respondents No.3 to 5

8. Mr. Ashutosh Singh Kachhawaha, learned counsel appearing for respondents No.3 to 5, would submit that the grant of input tax credit under Section 16 of the CGST Act is a

4 (1990) 2 SCC 502

concession or relaxation and nobody can claim it as a matter of vested right. The petitioner has no vested right to claim ITC except in accordance with Section 16(4) read with Section 44 of the CGST Act and Rule 61 of the CGST Rules. In that view of the matter, Mr. Kachhawaha would further submit that the show cause notice issued to the petitioner is strictly in accordance with the scheme of the CGST Act and therefore the writ petition deserves to be dismissed.

Submission on behalf of *Amicus Curiae*

9. Mr. Neelabh Dubey, learned *amicus curiae*, would submit that Section 16 of the CGST Act lays down eligibility and certain conditions of taking input tax credit. A plain reading of the Section makes it abundantly clear that Section 16(1) is an enabling provision and Sections 16(2), (3) & (4) are restrictive provisions which list out certain mandatory conditions which are required to be followed to take credit of input tax credit as provided under Section 16(1). Section 16(4) imposes a condition that ITC cannot be claimed on the basis of invoice or debit note for supply of goods or services or both after 30th of November, as Section 16(4) imposes a limitation on availing the credit. He would rely upon the decision of the Supreme Court in the matter of **The Twyford Tea Co. Ltd. and another v. The State of Kerala and another**[5] to demonstrate that the law in this regard is absolutely clear regarding immense leeway available with the

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5 1970(1) SCC 189

Parliament. He would further rely upon a recent decision of the Supreme Court in the matter of **Union of India and others v. VKC Footsteps India Private Limited**[6] which deals with refund of unutilised ITC to input goods alone. He would also submit that ground under Article 19(1)(g) of the Constitution would not be available to the petitioner, as it is available only to citizens and not to juristic persons like the petitioner in the instant case. Finally, the learned *amicus curiae* would contend that challenge on ground of Article 300A of the Constitution is also equally not available to the petitioner against an act of legislature as it can only be challenged on two counts; being it lacks legislative competence and that it infringes on Part XIII of the Constitution of India.

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10. We have heard learned counsel for the parties as also the learned *amicus curiae* and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

11. The question that arises for determination is, whether Section 16(4) of the CGST Act is violative of Articles 14, 19(1)(g) & 300A of the Constitution of India, as by Section 16(4) time limit for claiming ITC has been provided?

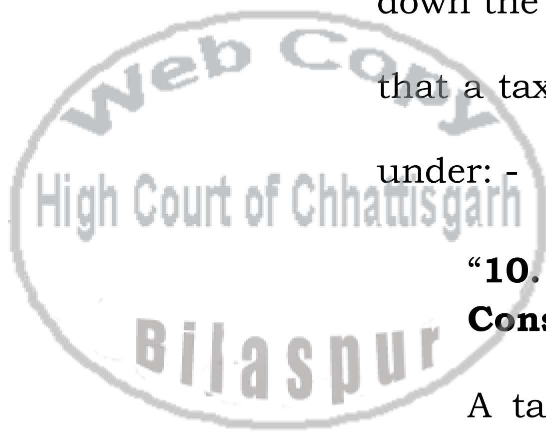
6 (2022) 2 SCC 603

Principles governing Construction of Taxing Statutes

12. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. Similarly, Article 366(28) of the Constitution, which defines Taxation and Tax, states as under: -

> "Taxation includes the imposition of any tax or impost, whether general or local or special, and 'tax' shall be construed accordingly."

13. Justice G.P. Singh in **Principles of Statutory Interpretation**, 15th Edition, in Chapter 10 at page 616 laid down the general principles for construction of taxing statute that a taxing statute is to be construed strictly, and held as under: -



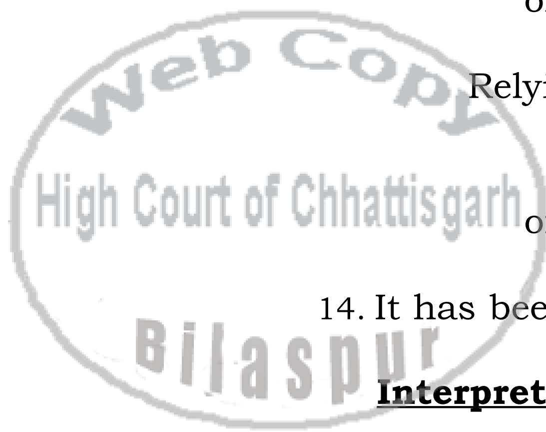
> "**10.1.2 General Principles of Strict Construction**
>
> A taxing statute is to be strictly construed. The well-established rule in the familiar words of Lord Wensleydale, reaffirmed by Lord Halsbury and Lord Simonds, means:
>
> > The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words.[7]
>
> In a classic passage Lord Cairns stated the principle thus:
>
> > If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject

7 Re, Micklethwait, (1885) 11 Ex 452, p. 456

is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute.[8]

Viscount Simon quote with approval a passage from Rowlatt J expressing the principle in the following words:

In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.[9]



Relying upon this passage Lord Upjohn said:

Fiscal measures are not built upon any theory of taxation.[10]"

14. It has been further held as under in **Principles of Statutory Interpretation** at page 619: -

"The Supreme Court has enunciated in similar words the principle of interpretation of taxing laws.

Bhagwati J stated the principle as follows:

"In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law. If the revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by

8 Partington v AG, (1869) LR 4 HL 100 p 122 : 21 LT 370
9 Cape Brandy Syndicate v IRC, (1921) 1 KB 64, p 71 (Rowlatt, J)
10 Commr of Customs v Top Ten Promotions, (1969) 3 All ER 39, p 90 (HL)

> considering what was the substance of the matter.[11]"

Shah J, has formulated the principle thus:

> "In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency.[12]"

And K. Iyer, J, observed:

> "Taxation consideration may stem from administrative experience and other factors of life and not artistic visualisation or neat logic and so the literal, though pedestrian interpretation must prevail.[13]"

Before taxing any person it must be shown that he falls within the ambit of the charging section by clear words used in the section.[14]

15. The Constitution Bench of the Supreme Court in the matter of **R.K. Garg v. Union of India**[15], has enumerated established principles for interpreting law dealing with economic activities and held in paragraph 8 as under: -

> "8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J., that

11 AV Fernandez v State of Kerala, AIR 1957 SC 657, p 661
12 Sales Tax Commr v Modi Sugar Mills, AIR 1961 SC 1047, p 1051
13 Martand Dairy and Farm v UOI, AIR 1975 SC 1492, p 1494
14 Commr of Wealth Tax, Gujarat v Ellis Bridge Gymkhana, AIR 1998 SC 120, pp 125, 126 : (1998) 1 SCC 384
15 (1981) 4 SCC 675

the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislature judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey v. Doud*[16] where Frankfurter, J., said in his inimitable style:

> "In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events – self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.""

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16. Similarly, in the matter of **<u>Kailash Chandra v. Mukundi Lal</u>**[17], the Supreme Court has held that a provision in the statute is not to be read in isolation, it has to be read with other related provisions in the Act itself and observed in paragraph 11 as under: -

> "11. A provision in the statute is not to be read in isolation. It has to be read with other related provisions in the Act itself, more particularly, when the subject-matter dealt with in different sections

16 1957 SCC OnLine US SC 105
17 (2002) 2 SCC 678

or parts of the same statute is the same or similar in nature."

17. Similarly, in **The Twyford Tea Co. Ltd.** (supra), the Supreme Court has held that in taxation even more than in other fields, Legislatures possess the greatest freedom in classification. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it. The Supreme Court has further held that if a State can validly pick and choose one commodity for taxation and that is not open to attack under Article 14, the same result must follow when the State picks out one category of goods and subjects it to taxation.

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18. In the matter of **State of M.P. v. Rakesh Kohli**[18], the Supreme Court while dealing with constitutional validity of a taxation law enacted by Parliament or State Legislature has laid down the principles in paragraph 32 of its report as under: -

> "32. While dealing with constitutional validity of a taxation law enacted by Parliament or State Legislature, the court must have regard to the following principles: (i), there is always presumption in favour of constitutionality of a law made by Parliament or a State Legislature (ii), no enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational but some constitutional infirmity has to be found (iii), the court is not concerned with the wisdom or unwisdom, the justice or injustice of the law as the Parliament and State Legislatures are supposed to be alive to the needs of the people whom they represent and they are the best judge of the

18 (2012) 6 SCC 312

community by whose suffrage they come into existence (iv), hardship is not relevant in pronouncing on the constitutional validity of a fiscal statute or economic law and (v), in the field of taxation, the Legislature enjoys greater latitude for classification."

19. From the principles laid down by their Lordships of the Supreme Court in the aforesaid cases, it is quite vivid that that the power of the legislature especially in fiscal statute is very wide and can only be challenged on two counts being it lacks legislative competence and that it infringes or takes away any of the fundamental rights or any of the constitutional provisions. However, in the instant case, the petitioner has challenged the constitutional validity of Section 16(4) of the CGST Act on the ground that it is violative of Articles 14, 19(1)(g) & 300A of the Constitution.

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20. At this stage, it would be appropriate to notice Section 16 of the CGST Act which states as under: -

> **"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—

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(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, 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 paid by him along with interest payable under section 50, 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 to the supplier 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 thirtieth day of November following the end of financial year to which such invoice or 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.

21. Sub-section (62) of Section 2 of the CGST Act defines "input tax", which states as under: -

> "(62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—
>
> (a) the integrated goods and services tax charged on import of goods;
>
> (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
>
> (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
>
> (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
>
> (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,
>
> but does not include the tax paid under the composition levy;"

22. Sub-section (63) of Section 2 of the CGST Act defines, "input tax credit" means the credit of input tax. Input Tax Credit is provided under Chapter V of the CGST Act. Section 16, which is under Chapter V, provides for eligibility and conditions for taking input tax credit.

23. A careful perusal of Section 16(1) of the CGST Act would show that it provides for input tax credit to every registered person 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 subject to two conditions; (a) such conditions and restrictions as may be prescribed and (b) in the manner specified in Section 49. Sub-section (2) of Section 16 is a non obstante clause and states that 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 the conditions mentioned in clauses (a) to (d) are fulfilled. Sub-section (3) of Section 16 contemplates when the input tax credit on the tax component cannot be allowed i.e. 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. Sub-section (4) of Section 16, which has been called in question by the petitioner herein, clearly states that a registered person shall not be entitled to take input tax credit as defined under Section 2(63) 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 relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier. As such, the grant of

ITC has been made subject to conditions and restrictions put thereunder. Thus, the registered person is entitled for ITC in respect of any invoice or debit note for supply of goods if the requisite conditions stipulated therein are fulfilled. The right of a registered person to take ITC under sub-section (1) of Section 16 would become the vested right only if the conditions to take it are fulfilled.

Nature of Input Tax Credit: -

24. The Input Tax Credit is a nature of benefit or concession extended to the dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the statute.

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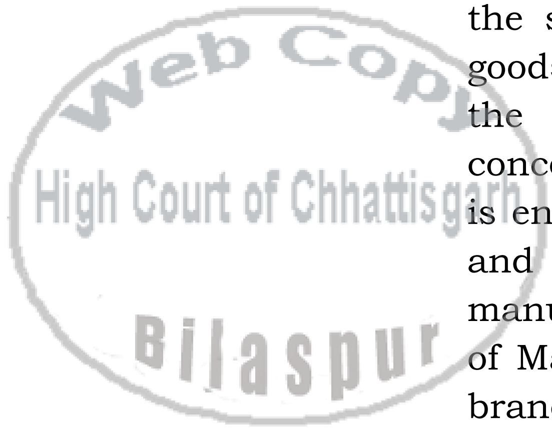
25. In the matter of **Godrej & Boyce Mfg. Co. Pvt. Ltd. and others v. Commissioner of Sales Tax and others**[19], their Lordships of the Supreme Court dealing with Rules 41 & 41-A of the Bombay Sales Tax Rules, 1959 held that the rule-making authority can provide for a small abridgement or curtailment while extending a concession, and observed as under: -

> "9. Sri Bobde appearing for the appellants reiterated the contentions urged before the High Court. He submitted that the deduction of one per cent, in effect, amounts to taxing the raw material purchased outside the State or to taxing the sale of finished goods effected outside the State of Maharashtra. We cannot agree. Indeed, the whole issue can be put in simpler terms. The appellant (manufacturing dealer) purchases his raw material

19 (1992) 3 SCC 624

both within the State of Maharashtra and outside the State. Insofar as the purchases made outside the State of Maharashtra are concerned, the tax thereon is paid to other States. The State of Maharashtra gets the tax only in respect of purchases made by the appellant within the State. So far as the sales tax leviable on the sale of the goods manufactured by the appellant is concerned, the State of Maharashtra can levy and collect such tax only in respect of sales effected within the State of Maharashtra. It cannot levy or collect tax in respect of goods which are despatched by the appellant to his branches and agents outside the State of Maharashtra and sold there. In law (apart from Rules 41 and 41-A) the appellant has no legal right to claim set-off of the purchase tax paid by him on his purchases within the State from out of the sales tax payable by him on the sale of the goods manufactured by him. It is only by virtue of the said Rules – which, as stated above, are conceived mainly in the interest of public – that he is entitled to such set-off. It is really a concession and an indulgence. More particularly, where the manufactured goods are not sold within the State of Maharashtra but are despatched to out – State branches and agents and sold there, no sales tax can be or is levied by the State of Maharashtra. The State of Maharashtra gets nothing in respect of such sales effected outside the State. In respect of such sales, the rule-making authority could well have denied the benefit of set-off. But it chose to be generous and has extended the said benefit to such out-State sales as well, subject, however to deduction of one per cent of the sale price of such goods sent out of the State and sold there. We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of set-off is itself a boon or a concession. It was open to the rule-making authority to provide for a small abridgement or curtailment while extending a concession. Viewed from this angle, the argument that providing for such deduction amounts to levy of tax either on purchases of raw material effected outside the State or on sale of manufactured goods effected



> outside the State of Maharashtra appears to be beside the point and is unacceptable. So is the argument about apportioning the sale-price with reference to the proportion in which raw material was purchased within and outside the State."

26. Similarly, in the matter of **India Agencies (Regd.), Bangalore v. Additional Commissioner of Commercial Taxes, Bangalore**[20], the Supreme Court while dealing with Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957, which requires a provision for furnishing original Form C to claim concessional rate of tax under Section 8(1) of the Central Sales Tax Act, 1956, held that the said requirement under the rule is mandatory and without producing specific documents, dealer cannot claim the benefits, and their Lordships observed as under: -

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> "13. Under the Central Sales Tax (Karnataka) Rules, 1957, the dealer is required to submit along with his return the original of the *prescribed forms*. As could be seen from the rule extracted above, a registered dealer who claims that he has made a sale to another registered dealer is required to attach the original of the declaration forms on the certificate in the prescribed form received by him from the prescribed dealer along with his return filed by him. We have already extracted Section 13 of the Central Sales Tax Act, which deals with the power of the Central Government to make rules, the form and the manner for furnishing declaration under sub-section (8) of Section 8. Sub-section (3) of Section 13 provides that the State Government may make rules not inconsistent with the provisions of the Central Sales Tax Act, 1956 and the rules made under sub-section (1) to carry out the purposes of the Act. In exercise of the powers conferred by sub-sections (3), (4) and (5) of Section

20 (2005) 2 SCC 129

13 of the Central Sales Tax, 1956, the Government of Karnataka made the Central Sales Tax (Karnataka) Rules, 1957. Under Rule 6*(b)(ii)* of the Karnataka Rules, the State Government has prescribed the procedures to be followed and the documents to be produced for claiming concessional rate of tax under Section 8(4) of the Central Sales Tax Act. Thus, the dealer has to strictly follow the procedure and Rule 6*(b)(ii)* and produce the relevant materials required under the said rule. Without producing the specified documents as prescribed thereunder a dealer cannot claim the benefits provided under Section 8 of the Act. Therefore, we are of the opinion that the requirements contained in Rule 6*(b)(ii)* of the Central Sales Tax (Karnataka) Rules, 1957 are mandatory. Sections 12(1), (2) and (3) of the Central Sales Tax (R&T) Rules, 1957 provide that the registered dealer is required to file the declaration and the certificate referred to in Section 8(4) in Form C and D respectively. Form C is a declaration divided into three parts. All the three parts are identical, the first part of the form being the counter foil and the second part being the duplicate and the third part being the original. The counter foil is to be retained by the purchasing dealer. The original is to be filed before the Assessing Officer by the selling dealer to claim the concessional rate. The duplicate is to be retained by the selling dealer. If the C Form or the original part of it is lost whilst in the custody of the purchasing dealer or in transit, the purchasing dealer shall have to furnish an indemnity bond for the same as fixed by the authority concerned. If the original part of C Form is lost by the selling dealer whilst it is in his custody or in transit, the selling dealer shall furnish an indemnity bond as fixed by the authority concerned and follow the procedure prescribed under Rule 12(3)."

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27. Similarly, in the matter of **State of Karnataka v. M.K. Agro Tech. Private Limited**[21], the Supreme Court has held that

21 (2017) 16 SCC 210

taxing statutes are to be interpreted literally and further it is the domain of the legislature as to how the tax credit is to be given and under what circumstances, and pertinently observed as under: -

> "32. Fourthly, the entire scheme of the KVAT Act is to be kept in mind and Section 17 is to be applied in that context. Sunflower oil cake is subject to input tax. The legislature, however, has incorporated the provision, in the form of Section 10, to give tax credit in respect of such goods which are used as inputs/raw material for manufacturing other goods. Rationale behind the same is simple. When the finished product, after manufacture, is sold, VAT would be again payable thereon. This VAT is payable on the price at which such goods are sold, costing whereof is done keeping in view the expenses involved in the manufacture of such goods *plus* the profits which the manufacturer intends to earn. Insofar as costing is concerned, element of expenses incurred on raw material would be included. In this manner, when the final product is sold and the VAT paid, component of raw material would be included again. Keeping in view this objective, the legislature has intended to give tax credit to some extent. However, how much tax credit is to be given and under what circumstances, is the domain of the legislature and the courts are not to tinker with the same."

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28. In the matter of **Jayam & Co. v. Commr.**[22], while interpreting the provisions of Sections 19(20), 3(2) & 3(3) of the Tamil Nadu Value Added Tax Act, 2006, it has been held by the Supreme Court that ITC is a form of concession provided by the legislature, it is not admissible to all kinds of sales and certain specified sales are specifically excluded;

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22 (2016) 15 SCC 125

and concession of ITC is available on certain conditions, and observed as under: -

> "11. From the aforesaid scheme of Section 19 the following significant aspects emerge:
>
> (a) ITC is a form of concession provided by the legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.
>
> (b) Concession of ITC is available on certain conditions mentioned in this section.
>
> (c) One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect, evidencing the amount of input tax."

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Their Lordships further held that it is a trite law that whenever concession is given by a statute the conditions thereof are to be strictly complied with in order to avail such concession, and observed in paragraph 12 as under: -

> "12. It is trite law that whenever concession is given by statute or notification, etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the "dealers" to get the benefit of ITC but it is a concession granted by virtue of Section 19. As a fortiori, conditions specified in Section 10 must be fulfilled. In that hue, we find that Section 10 makes original tax invoice relevant for the purpose of claiming tax. Therefore, under the scheme of the VAT Act, it is not permissible for the dealers to argue that the price as indicated in the tax invoice should not have been taken into consideration but the net purchase price after discount is to be the basis. If we were dealing with any other aspect dehors the issue of ITC as per Section 19 of the VAT Act, possibly the arguments of Mr Bagaria would have assumed some relevance. But, keeping

> in view the scope of the issue, such a plea is not admissible having regard to the plain language of sections of the VAT Act, read along with other provisions of the said Act as referred to above."

29. Furthermore, recently, in the matter of **ALD Automotive Private Limited v. Commercial Tax Officer now upgraded as Assistant Commissioner (CT) and others**[23], considering the earlier decisions, their Lordships of the Supreme Court held that input tax credit is admissible only as per the conditions of the T.N. Value Added Tax Act, 2006, and observed in paragraph 43 as under: -

> "43. Section 19(11) thus allowed an extended period for input credit which if not claimed in any month can be claimed before the end of the financial year or before the 90 days from the date of purchase whichever is later. The provision of Section 19(11) is thus an additional benefit given to dealer for claiming input credit in extended period. The use of the word "shall make the claim" needs no other interpretation."

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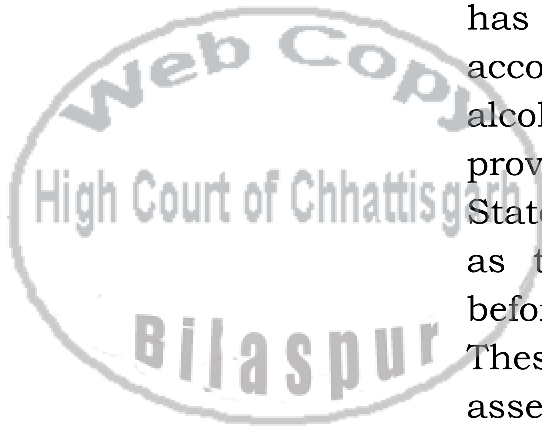
30. In **VKC Footsteps India Private Limited's** case (supra), similar issue was considered with respect to refund of additional ITC as that rule limited the refund of unutilised ITC to input goods alone upholding the aforesaid rule. Their Lordships observed in paragraphs 88 & 90 as under: -

> "88. The jurisprudential basis furnishes a depiction of an ideal state of existence of GST legislation within the purview of a modern economy, as a destination-based tax. But there can be no gain saying the fact that fiscal legislation around the world, India being no exception, makes complex balances founded upon socio-economic

23 (2019) 13 SCC 225

complexities and diversities which permeate each society. The form which a GST legislation in a unitary State may take will vary considerably from its avatar in a nation such as India where a dual system of GST law operates within the context of a federal structure. The ideal of a GST framework which Article 279-A(6) embodies has to be progressively realised. The doctrines which have been emphasized by the counsel during the course of the arguments furnish the underlying rationale for the enactment of the law but cannot furnish either a valid basis for judicial review of the legislation or make out a ground for invalidating a validly enacted law unless it infringes constitutional parameters. While adopting the constitutional framework of a GST regime, Parliament in the exercise of its constituent power has had to make and draw balances to accommodate the interests of the States. Taxes on alcohol for human consumption and stamp duties provide a significant part of the revenues of the States. Complex balances have had to be drawn so as to accommodate the concerns of the States before bringing them within the umbrella of GST. These aspects must be borne in mind while assessing the jurisprudential vision and the economic rationale for GST legislation. But abstract doctrine cannot be a ground for the Court to undertake the task of redrawing the text or context of a statutory provision. This is clearly an area of law where judicial interpretation cannot be ahead of policy making. Fiscal policy ought not be dictated through the judgments of the High Courts or this Court. For it is not the function of the Court in the fiscal arena to compel Parliament to go further and to do more by, for instance, expanding the coverage of the legislation (to liquor, stamp duty and petroleum) or to bring in uniformity of rates. This would constitute an impermissible judicial encroachment on legislative power. Likewise, when the first proviso to Section 54(3) has provided for a restriction on the entitlement to refund it would be impermissible for the Court to redraw the boundaries or to expand the provision for refund beyond what the legislature has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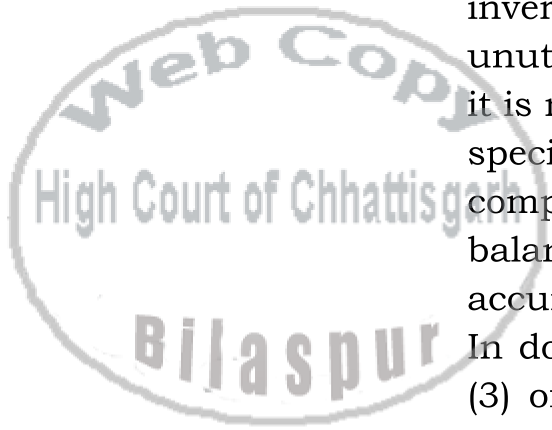
provided. If the legislature has intended that the equivalence between goods and services should be progressively realised and that for the purpose of determining whether refund should be provided, a restriction of the kind which has been imposed in clause (ii) of the proviso should be enacted, it lies within the realm of policy.

90. GST legislation in India is the product of hard constitutional and legislative work which stretched over several decades. Our fiscal regime is yet to arrive at an ideological position of one bundle for goods and services based on a single rate structure. Broadly speaking, goods and services are taxed at 5%, 12%, 18% and 40%. As on date, there is an absence of uniformity in rates and it is the multiplicity of rates which has given rise to an inverted duty structure. Registered persons with unutilised ITC may conceivably form one class but it is not possible to ignore that this class consists of species of different hues. Given these intrinsic complexities, the legislature has to draw the balance when it decides upon granting a refund of accumulated ITC which has remained unutilised. In doing so, Parliament while enacting sub-section (3) of Section 54 has stipulated that no refund of unutilised ITC shall be allowed other than in the two specific situations envisaged in clauses (i) and (ii) of the first proviso. Whereas clause (i) has dealt with zero-rated supplies made without the payment of tax, clause (ii), which governs domestic supplies, has envisaged a more restricted ambit where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies. While the CGST Act defines the expression "input" in Section 2(59) by bracketing it with goods other than capital goods, it is true that the plural expression "inputs" has not been specifically defined. But there is no reason why the ordinary principle of construing the plural in the same plane as the singular should not be applied. To construe "inputs" so as to include both input goods and input services would do violence to the provisions of Section 54(3) and would run contrary to the terms of Explanation I which have been



> noted earlier. Consequently, it is not open to the Court to accept the argument of the assessee that in the process of construing Section 54(3) contextually, the Court should broaden the expression "inputs" to cover both goods and services."

31. As such, ITC is a nature of benefit or concession extended to the dealer and it can be availed by the beneficiary as per the scheme of the statute subject to fulfillment of the conditions laid down in Section 16(4) of the CGST Act. In that view of the matter, Section 16(4) cannot be held to be violative of Article 14 of the Constitution.

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32. Now, the next question for consideration is, whether the petitioner, which is a proprietorship firm, can claim protection of Article 19(1)(g) of the Constitution?

33. Article 19(1)(g) of the Constitution states as under: -

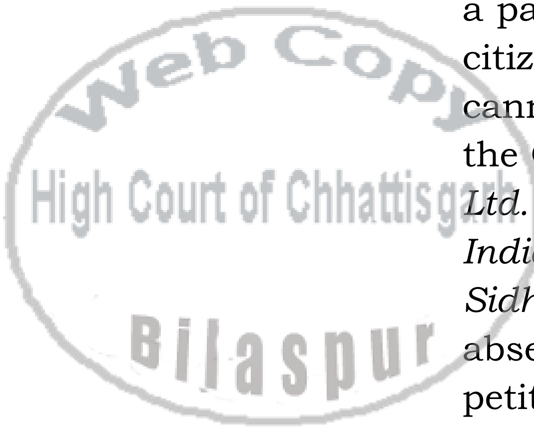
> "**<u>19. Protection of certain rights regarding freedom of speech, etc.</u>**—(1) All citizens shall have the right—
>
> (a) to (e) xxx xxx xxx
>
> (g) to practise any profession, or to carry on any occupation, trade or business."

34. A careful perusal of the scheme of Article 19 of the Constitution would show that a group of rights are listed as clauses (a) to (g) and are recognized as fundamental rights conferred on citizens. Similarly, the petitioner, which is a proprietorship firm, has filed this writ petition under Article 226 / 227 of the Constitution of India, it has not been filed by any citizen in individual capacity, rather it has been filed

by a proprietorship firm namely, M/s Jain Brothers through its Proprietor Mr. Amit Jain.

35. The Supreme Court in the matter of **<u>Indian Social Action Forum (INSAF) v. Union of India</u>**[24] has categorically held that a Company being a juristic person cannot be a citizen for the purpose of Article 19 of the Constitution. It has been observed by their Lordships as under: -

> "18. We find force in the objection taken on behalf of the Union of India that the appellant organisation is not entitled to invoke Article 19. No member of the appellant organisation is arrayed as a party. Article 19 guarantees certain rights to "all citizens". The appellant, being an organisation, cannot be a citizen for the purpose of Article 19 of the Constitution. (See *State Trading Corpn. of India Ltd. v. CTO*[25]; *Bennett Coleman & Co. v. Union of India*[26]; *TELCO Ltd. v. State of Bihar*[27] and *Shree Sidhbali Steels Ltd. v. State of U.P.*[28]). In the absence of any member of the association as a petitioner in the writ petition, the appellant organisation cannot enforce the rights guaranteed under Article 19 of the Constitution."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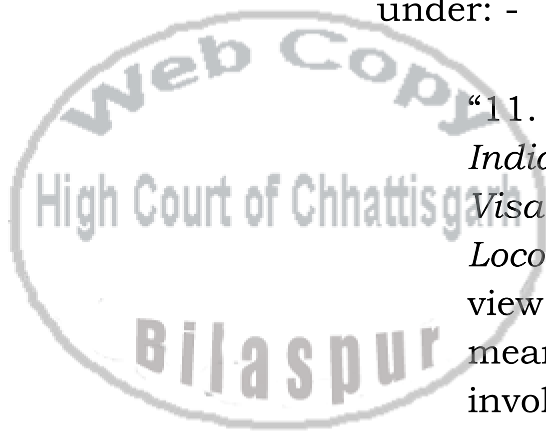
36. In **<u>Shree Sidhbali Steels Limited</u>** (supra), their Lordships of the Supreme Court have held that a Company not being a citizen has no fundamental right under Article 19 of the Constitution of India, and observed as under: -

> "25. A company not being a citizen has no fundamental right under Article 19. ... It is well settled that a company cannot maintain a petition under Article 32 of the Constitution for enforcement of fundamental rights guaranteed

24 (2021) 15 SCC 60
25 (1964) 4 SCR 99 : AIR 1963 SC 1811
26 (1972) 2 SCC 788
27 (1964) 6 SCR 885 : AIR 1965 SC 40
28 (2011) 3 SCC 193

> under Article 19 of the Constitution. A company, being not a citizen, has no fundamental rights under Article 19 of the Constitution. Nonetheless, the companies would be entitled to claim right under Article 14 of the Constitution and, therefore, it would be relevant to examine whether the respondents have committed breach of Article 14 by withdrawing the concession in electricity rates given/granted earlier."

37. Similarly, in ***Bennett Coleman & Co.*** (supra) also, the Supreme Court has held that a company does not have a fundamental right under Article 19 of the Constitution since it is not a citizen. It has been observed by their Lordships as under: -



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> "11. This Court in *State Trading Corporation of India Ltd. v. The Commercial Tax Officer, Visakhapatnam,*[25] and *Tata Engineering and Locomotive Co. v. State of Bihar,*[27] expressed the view that a corporation was not a citizen within the meaning of Article 19, and, therefore, could not invoke that Article. The majority held that nationality and citizenship were distinct and separate concepts. The view of this Court was that the word "citizen" in Part II and in Article 19 of the Constitution meant the same thing. The result was that an incorporated company could not be a citizen so as to invoke fundamental rights. In the *State Trading Corporation case* (supra) the Court was not invited to "tear the corporate veil". In the *Tata Engineering and Locomotive Co. case* (supra) this Court said that a company was distinct and separate entity from shareholders. ..."

38. Thus, in view of the provision contained in Article 19(1)(g) of the Constitution and the principles of law laid down by their Lordships of the Supreme Court, it would appear that protection under Article 19(1)(g) of the Constitution is

available to a citizen and in order to claim protection under Article 19(1)(g), the person coming to the court must be a citizen, however, in the instant case, proprietorship firm has filed writ petition claiming protection of Article 19(1)(g).

39. The distinction between partnership firm and a proprietary concern has been considered by the Supreme Court stating the law in following terms in the matter of **Ashok Transport Agency v. Awadhesh Kumar**[29] in which it has been held that a proprietary concern is only the business name in which the proprietor of the business carries on the business, and it has been observed as under: -

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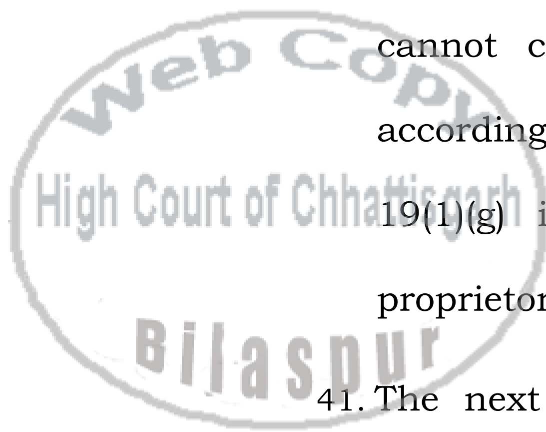
> "6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Partnership Act, 1932. Though a partnership is not a juristic person but Order 30 Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 of Order 30 which make applicable the provisions of Order 30 to a proprietary concern, enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 of Order 30 have no

29 (1998) 5 SCC 567

> application to such a suit as by virtue of Order 30 Rule 10 the other provisions of Order 30 are applicable to a suit against the proprietor of proprietary business 'insofar as the nature of such case permits'. This means that only those provisions of Order 30 can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."

40. As such, in view of the aforesaid legal provision flowing from Article 19(1)(g) of the Constitution and the principles of law laid down by their Lordships of the Supreme Court, the petitioner herein, which has filed the present writ petition, is only a proprietorship firm and not a citizen and therefore cannot claim protection of Article 19(1)(g). It is held accordingly and this ground claiming protection of Article 19(1)(g) is not available to the petitioner, which is a proprietorship firm.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41. The next ground that has been raised on behalf of the petitioner that Section 16(4) of the CGST Act is violative of Article 300A of the Constitution of India, is also not at all made out, as Article 300A is 'right to property' which is the constitutional right and clearly provides that it cannot be taken away except in accordance with law.

42. The decision of the Supreme Court and that of the Calcutta High Court and the Gujarat High Court in **Chandavarkar Sita Ratna Rao** (supra), **Howrah Tax Payers' Association** (supra) and **M/s Siddharth Enterprises** (supra),

respectively, relied upon by the petitioner, are clearly distinguishable to the facts of the present case.

<u>Conclusion</u>

43. In view of the aforesaid discussion, in conclusion, we are of the considered opinion that the provision contained in Section 16(4) of the CGST Act is violative of neither Article 14 of the Constitution nor Articles 19(1)(g) & 300A of the Constitution, however, the ground under Article 19(1)(g) is not available to the petitioner, as the petitioner, in the instant case, is not a citizen and therefore Article 19(1)(g) is not available to the petitioner herein. Concludingly, the petitioner has failed to make out a case to question the constitutional validity of Section 16(4) of the CGST Act as it is a constitutionally valid piece of legislation. We hereby decline to entertain the writ petition. However, the petitioner is free to pursue the show cause notice issued to him on 20-5-2022. We have not commented upon the correctness of the said notice and the competent authority would consider the objection of the petitioner, if filed in accordance with law, expeditiously.

44. With the aforesaid observation and direction, the writ petition stands dismissed leaving the parties to bear their own cost(s).

Sd/-	Sd/-
(Sanjay K. Agrawal)	(Radhakishan Agrawal)
Judge	Judge

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