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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.11618 of 2024

In the matter of an Application under Articles 226 and 227 of the Constitution of India, 1950

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M/s. Paradeep Phosphates Limited,
a Company registered under the
Companies Act, 1956
Represented by
Joint General Manager (F & A)
M/s. Sibasis Samantara,
aged about 49 years,
Son of T Padmanabha Samantara
At: Plot No.1976/13,
Ratha Road, Old Town,
Lingaraj, Old Town, Khordha,
Odisha–751002. ... Petitioner

-VERSUS-

1. Additional Commissioner
Goods and Services Tax (Appeals)
Central Revenue Building, Rajaswa Vihar,
Bhubaneswar–751 007
District: Khordha, Odisha.

2. Assistant Commissioner,
Central Goods and Services Tax
Cuttack-II Division, Cuttack
At: Plot No. C-12, Sector-6
CDA, Abhinav Bidanasi
Cuttack–753014, Odisha.

3. Commissioner
Central Goods and Services Tax and
Central Excise,
Central Revenue Building, Rajaswa Vihar
Bhubaneswar–751 007
District: Khordha, Odisha. ... Opposite parties

Counsel appeared for the parties:

For the Petitioner : Mr. Jagabandhu Sahoo
Senior Advocate
Assisted by
M/s. Kajal Sahoo,
Ronit Ghosh,
Subhajeet Sahu, Urmila Sahoo and Romeet Panigrahi,
Advocates

For the Opposite parties : Mr. Sujan Kumar Roy Choudhury,
Senior Standing Counsel,
Goods and Services Tax,
Central Excise and Customs

P R E S E N T:

HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON

AND

HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN

Date of Hearing : 07.01.2026 :: Date of Judgment : 22.01.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

1. Non-consideration of claim for interest on the amount refunded to the petitioner from the date of deposit till

date of payment is the subject matter in the present writ petition.

1.1. The petitioner by filing this writ petition craves to invoke extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India for grant of following relief(s):

"Under the aforesaid circumstances it is prayed therefore that this Hon'ble Court may be graciously pleased to:

(a) Admit the writ application;

(b) Issue rule nisi calling upon the opposite parties as to why the Order dated 15.01.2024 vide Annexure-10 rejecting the appeal shall not be quashed being illegal, arbitrary and in violation of principle of natural justice and contrary to judgment of Hon'ble Apex Court as well as various High Courts and contrary to Order dated 01.12.2022 passed by this Hon'ble Court in W.P.(C) No.31896 of 2022;

(c) Issue writ in the nature of mandamus or any other appropriate writ directing the opposite parties to make payment of interest @ 6% on the amount refunded to the petitioner from the date of deposit till the date of payment of retained amount in the interest of justice;

(d) If the opposite parties do not show cause or shows insufficient cause make the rule absolute;

(e) To pass such order/orders, direction/directions, writ/writs as may be deemed fit and proper in the circumstances of the case;

(f) To allow the writ petition;

And for this act of kindness, the petitioner shall as in duty bound and ever pray."

Case of the petitioner:

2. The petitioner, a company registered under the Companies Act, 1956, being manufacturer of Fertilizer, imports raw materials like Anhydrous Ammonia, Phosphoric Acid, Sulphur, Sulphuric Acid, Rock Phosphates, Murriate of Potash *etc*. from the foreign suppliers. During the period April, 2018 to May, 2018, the petitioner imported raw materials on Cost, Insurance Freight ("CIF", abbreviated) basis and paid the Customs Duty on the assessable value of such raw materials as required under the Customs Act, 1962 and the Customs Tariff Act, 1975. Being a registered taxable person under the provisions of the Central Goods and Services Tax Act, 2017/the Odisha Goods and Services Tax Act, 2017 (collectively, "GST Act") it paid the Integrated Goods and Services Tax under the Integrated Goods and Services Tax Act, 2017 (for short, "the IGST Act") on such value which included therein the "ocean freight" incurred for such import on the basis of reverse charge mechanism at the rate of 5% in terms of Entry 9(ii) under Heading 9965 (Goods Transport Services) of Notification No.8/2017-Integrated Tax (Rate) dated 28.06.2017[1] and

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[1] The relevant portion of the Notification No.8/2017-Integrated Tax (Rate), dated 28.06.2017, reads thus:
"In exercise of the powers conferred by sub-section (1) of Section 5, sub-section (1) of Section 6 and clause (iii) and clause (iv) of Section 20 of the Integrated Goods

Entry 10 of Notification No.10/2017-Integrated Tax (Rate) dated 28.06.2017[2]. The petitioner, being recipient

and Services Tax Act, 2017 (13 of 2017) read with sub-section (5) of Section 15 and sub-section (1) of Section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that ***the integrated tax, on the inter-State supply of services of description as specified in column (3) of the Table below****, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:*

Table

Sl. No.	*Chapter, Section or Heading*	*Description of Service*	*Rate (per cent.)*	*Condition*
9	*Heading 9965 (Goods Transport Services)*	*(ii) Transport of goods in a vessel including services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.*	*5*	*Provided that credit of input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) used in supplying the service has not been taken Explanation: This condition will not apply where the supplier of service is located in nontaxable territory. [Please refer to Explanation No. (iv)]**

**[4. Explanation.—*
For the purposes of this notification,
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(iv) Wherever a rate has been prescribed in this notification subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken, it shall mean that,—

(a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and

(b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of clause (iv) of Section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (2) of Section 17 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.]"

2 The relevant portion of the Notification No.10/2017-Integrated Tax (Rate), dated 28.06.2017, reads thus:

"In exercise of the powers conferred by sub-section (3) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) of the Table below,

of services, claimed to have discharged its liability in terms of aforesaid notifications on the amount representing "ocean freight".

2.1. Upon deposit of the IGST on the entire assessable value including "ocean freight" on reverse charge basis, it reflected the fact and figure in the periodical returns in Form GSTR-3B and filed the same as obligated under the statute, nonetheless, *vide* Letter dated 21.08.2018 and subsequent letters, it intimated the authorities concerned that the IGST so paid on "ocean freight" on reverse charge basis was "under protest" and the petitioner has been objecting to levy of IGST on the ocean freight.

2.2. The petitioner filed a writ petition, bearing W.P.(C) No.1684 of 2019, questioning the exigibility of IGST on such services as received, and thereby challenged the validity of Notification No.8/2017-Integrated Tax (Rate) and Notification No.10/2017-(Tax Rate), both dated 28.06.2017, and pleaded to declare these notifications

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supplied by a person as specified in column (3) of the said Table, ***the whole of integrated tax leviable under Section 5 of the said Integrated Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services*** *as specified in column (4) of the said Table*

Table

Sl. No.	*Category of Supply of Services*	*Supplier of Service*	*Recipient of Service*
10	*Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.*	*A person located in nontaxable territory*	*Importer, as defined in clause (26) of section 2 of the Customs Act, 1962 (52 of 1962), located in the taxable territory.*

"

imposing IGST on "ocean freight" as unconstitutional. This Court, while entertaining the said writ petition as well as Interlocutory Application bearing No.1424 of 2019 (arising out of said writ petition), passed the following Order on 20.02.2019:

*"Heard ***.*
Admit.
***
As an interim measure, it is directed that any payment made by the petitioner, pursuant to the impugned Notification, ***will be subject to result of the writ petition****."*

2.3. It may be pertinent to discuss that an identical challenge to aforesaid Notification(s) was made before the Hon'ble High Court of Gujarat in the case of *Mohit Minerals Private Limited Vrs. Union of India and others, R/Special Civil Application No.726 of 2018 and batch,* which came to be disposed of *vide* Judgment dated 23.01.2020 *[reported at (2020) 74 GSTR 134 (Guj) = 2020 SCC OnLine Guj 49],* wherein it has been observed as follows:

"253.In our opinion, such observations, on the contrary, supports the case of the writ applicants that in a case of CIF (Cost, Insurance and Freight) contract, the contract for transportation is entered into by the seller, i.e., the foreign exporter, and not the buyer, i.e., the importer, and the importer is not the recipient of the service of transportation of the goods.

254. In view of the aforesaid discussion, we have reached to the conclusion that no tax is leviable under the Integrated Goods and Services Tax Act, 2017 on Ocean Freight for services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India and levy and collection of tax on such ocean freight under the impugned notifications is not permissible under the law.

255. In the result, this writ application along with all other connected writ applications is allowed. The impugned Notification No.8/2017-Integrated Tax (Rate), dated June 28, 2017 and the Entry 10 of the Notification No.10/2017-Integrated Tax (Rate), dated June 28, 2017, are declared ultra vires the Integrated Goods and Services Tax Act, 2017, as they lack legislative competency. Both the notifications are hereby declared to be unconstitutional. Civil Application, if any, stands disposed of."

2.4. Said matter was carried to the Hon'ble Supreme Court of India, which was disposed of *vide Judgment dated 19th May, 2022 in Civil Appeal No.1390 of 2022*, titled, *Union of India Vrs. Mohit Minerals Pvt. Ltd., (2022) 9 SCR 300* with the following observations:

"145. This Court is bound by the confines of the IGST and CGST Act to determine if this is a composite supply. It would not be permissible to ignore the text of Section 8 of the CGST Act and treat the two transactions as standalone agreements. In a CIF contract, the supply of goods is accompanied by the

supply of services of transportation and insurance, the responsibility for which lies on the seller (the foreign exporter in this case). The supply of service of transportation by the foreign shipper forms a part of the bundle of supplies between the foreign exporter and the Indian importer, on which the IGST is payable under Section 5(1) of the IGST Act read with Section 20 of the IGST Act, Section 8 and Section 2(30) of the CGST Act. To levy the IGST on the supply of the service component of the transaction would contradict the principle enshrined in Section 8 and be in violation of the scheme of the GST legislation. Based on this reason, we are of the opinion that while the impugned notifications are validly issued under Sections 5(3) and 5(4) of the IGST Act, it would be in violation of Section 8 of the CGST Act and the overall scheme of the GST legislation. As noted earlier, under Section 7(3) of the CGST Act, the Central Government has the power to notify an import of goods as an import of services and vice versa:

'7. Scope of supply—

[…]

(3) Subject to the provisions of [sub-sections (1), (1A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.'

No such power can be noticed with respect to interpreting a composite supply of goods and services as two segregable supply of goods and supply of services.

146. *The High Court in the impugned judgment has observed that:*

'What has led to the present day problems in the implementation of the GST:

132. *The GST is implemented by subsuming various indirect taxes. The difficulty which is being experienced today in proper implementation of the GST is because of the erroneous misconception of law, or rather, erroneous assumption on the part of the delegated legislation that service tax is an independent levy as it was prior to the GST and it go vivisect the transaction of supply to levy more taxes on certain components completely overlooking or forgetting the basic concept of composite supply introduced in the GST legislation and the very idea of levying the GST. Prima facie, it appears that while issuing the impugned notification, the delegated legislature had in mind the provision of the Finance Act, 1994, rather than keeping in mind the object of bringing the GST by making the Constitutional (101st) Amendment Act, 2016 to merge all taxes levied on the goods and services to one tax known as the GST.*

133. *It appears that despite having levied and collected the integrated tax under the IGST Act, 2017, on import of goods on the entire value*

which includes the Ocean Freight through the impugned notifications, once again the integrated tax is being levied under an erroneous misconception of law that separate tax can be levied on the services components (freight), which is otherwise impermissible under the scheme of the GST legislation made under the CA Act, 2016.

134. All the learned senior counsel are right in their submission that if such an erroneous impression is not corrected and if such a trend continues, then in future even the other components of supply of goods, such as, insurance, packaging, loading/unloading, labour, etc. may also be artificially vivisected by the delegated legislation to once again levy the GST on the supply on which the tax is already collected.

[…]

215. Thus, having paid the IGST on the amount of freight which is included in the value of the imported goods, the impugned notifications levying tax again as a supply of service, without any express sanction by the statute, are illegal and liable to be struck down.'

147. We are in agreement with the High Court to the extent that a tax on the supply of a service, which has already been included by the legislation as a tax on the composite supply of goods, cannot be allowed.

148. Based on the above discussion, we have reached the following conclusion:

(i) *The recommendations of the GST Council are not binding on the Union and States for the following reasons:*

(a) *The deletion of Article 279B and the inclusion of Article 279(1) by the Constitution Amendment Act 2016 indicates that the Parliament intended for the recommendations of the GST Council to only have a persuasive value, particularly when interpreted along with the objective of the GST regime to foster cooperative federalism and harmony between the constituent units;*

(b) *Neither does Article 279A begin with a non-obstante clause nor does Article 246A state that it is subject to the provisions of Article 279A. The Parliament and the State legislatures possess simultaneous power to legislate on GST. Article 246A does not envisage a repugnancy provision to resolve the inconsistencies between the Central and the State laws on GST. The 'recommendations' of the GST Council are the product of a collaborative dialogue involving the Union and States. They are recommendatory in nature. To regard them as binding edicts would disrupt fiscal federalism, where both the Union and the States are conferred equal power to legislate on GST. It is not imperative that one of the federal units must always possess a higher share in the power for the federal units to make decisions. Indian federalism is a dialogue between cooperative and uncooperative federalism where the federal units are at*

liberty to use different means of persuasion ranging from collaboration to contestation; and

(c) The Government while exercising its rule-making power under the provisions of the CGST Act and IGST Act is bound by the recommendations of the GST Council. However, that does not mean that all the recommendations of the GST Council made by virtue of the power Article 279A(4) are binding on the legislature's power to enact primary legislations;

(ii) On a conjoint reading of Sections 2(11) and 13(9) of the IGST Act, read with Section 2(93) of the CGST Act, the import of goods by a CIF contract constitutes an "inter-State" supply which can be subject to IGST where the importer of such goods would be the recipient of shipping service;

(iii) The IGST Act and the CGST Act define reverse charge and prescribe the entity that is to be taxed for these purposes. The specification of the recipient— in this case the importer— by Notification 10/2017 is only clarificatory. The Government by notification did not specify a taxable person different from the recipient prescribed in Section 5(3) of the IGST Act for the purposes of reverse charge;

(iv) Section 5(4) of the IGST Act enables the Central Government to specify a class of registered persons as the recipients, thereby conferring the power of creating a deeming fiction on the delegated legislation;

(v) The impugned levy imposed on the 'service' aspect of the transaction is in violation of the principle of

'composite supply' enshrined under Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act."

2.5. When the challenge against the very Notifications referred to above by the instant petitioner-company was *sub judice* before this Court in W.P.(C) No.1684 of 2019, the decision of the Hon'ble Supreme Court was passed affirming the judgment of the Hon'ble Gujarat High Court. This Court disposed of said writ petition *vide* Order dated 01.08.2022 with the following observations:

> *"8. In view of authoritative pronouncement of the Hon'ble Supreme Court confirming the decision of the Hon'ble Gujarat High Court rendered in the case of Mohit Minerals Pvt. Ltd. Vrs. Union of India, (2020) 74 GSTR 134 (Guj) = (2020) 33 GSTL 321 (Guj) = 2020 SCC OnLine Guj 49 as culled out above, there remains nothing for adjudication in the instant writ petition and, therefore, the writ petition is bound to be allowed in terms of Union of India Vrs. Mohit Minerals Pvt. Ltd., 2022 SCC OnLine 657."*

2.6. Pursuant to said order, an application for refund of IGST paid on "ocean freight" in Form GST RFD-01 was made before the authority concerned on 24.08.2022; in consideration of which, the Assistant Commissioner,

Central GST and Central Excise, Cuttack-II Division, Cuttack passed the following Order in GST RFD-06 on 29.09.2022:

"*I, hereby, sanction refund of ₹8,37,88,501/- (IGST), filed vide ARN AA2108220199871 dated 24.08.2022 to M/s. Paradeep Phosphates Limited, Navaratna Bhawan, PPL Township, Paradeep, Jagatsinghpur-754145.*"

2.7. Since no interest was awarded, the petitioner approached this Court by way of filing a writ application bearing W.P.(C) No.31896 of 2022, which came to be disposed of on 01.12.2022 with the following order:

"In view of the judgment of this Court dated 1st August, 2022 in W.P.(C) No.1684 of 2019 (M/s. Paradeep Phosphates Ltd. Vrs. Union of India), liberty is granted to the Petitioner to make an appropriate application for statutory interest. The Proper Officer will quantify the amount in accordance with law taking into account the judgment of the Supreme Court of India in Union of India Vrs. Mohit Minerals Pvt. Ltd., 2022 SCC OnLine 657. The Proper Officer will examine the records of the petitioner and take appropriate decision within a period of three months from the date of production of the certified copy of this order."

2.8. As a sequel to above, the petitioner filed application for grant of interest on refund before the authority concerned. In response to a notice in Form GST RFD-08, dated 17.01.2023 contemplating rejection of said application, the petitioner filed a reply in Form GST RFD-09, dated 31.01.2023. The Assistant

Commissioner, Central GST and Central Excise, Cuttack-II Division, Cuttack refused to grant interest *vide* Order in RFD-06 dated 06.02.2023 with the following observation(s):

"3.0. Discuss and Findings:

3.1. I have carefully gone through the refund application of the claimant in light of the provisions of Section 54 of the CGST Act, 2017, read with Section 56 of the CGST Act, 2017 and Hon'ble High Court of Orissa order dated 01.12.2022 against the Writ Petition No.W.P.(C) No.31896 of 2022 along with the supporting documents submitted by the claimant in this context.

3.2. I find that the refund has been claimed for an amount of Rs.19,04,84,217/- on ground of Assessment/Provisional Assessment/Appeal/Any other Order.

3.3. Ongoing through the relevant portion of Rule 89(1) of the CGST Rules, 2017 and sub-clause 49(c) of Circular 125/44/2019-GST dated 18th November, 2019 in light of sub-rule (2) of Rule 90 of the CGST Rules, which are discussed above in para 2.3 and 2.4 above, I find that the refund application is held to be filed from the date of electronically filing of Refund application and generation of the ARN, as per the Rule and Circular mentioned above.

3.4. Further, the term "statutory interest" contained in the Order 01.12.2022 of the Hon'ble High Court of Orissa in W.P.(C) No.31896 of 2022 is referred to interest on delayed payment of refund to a refund claimant as provided in Section 56 of the CGST Act,

2017. I also find that, consequent to judgment and order dated 01.02.2022 of the Hon'ble High Court of Orissa against the writ petition No.1684 of 2019, in all the cases pertaining to Ocean freight, the refunds were sanctioned within the stipulated time of 60 (Sixty) days from the date of refund applications as per statutory provision of Section 54 read with Section 56 of CGST Act, 2017. Therefore, no interest is payable on the refunded amounts which have been credited to the applicant's account within the stipulated period from the dates of refund applications.

3.5. On going through the SCN reply submitted by the claimant, I find that different periods for calculation of interest have been mentioned in 'Para A', 'Para B2' and 'Para C4' of the claimant's reply and actual calculation has been made from another date i.e. from the date of filing of GSTR-3B return. As found from the above mentioned paras of their reply, the relevant dates have been quoted differently viz.,

(i) date on which "letters filed by the notices stating that they are challenging the taxability of ocean freight under reverse charge before the Hon'ble Odisha High Court and paying IGST under protest",

(ii) "Hence, the date of refund claim should be the date of filing the petition before the High Court." and

*(iii) "*** Refund becomes due from the date when the amount was paid under protest".*

The abovementioned different dates/calculations have been done by the refund claimant since there is

no such rules/ authority available to corroborate their claim. Thus, the refund application and the interest calculation done therein is found to be ambiguous and lacks any statutory support.

3.6. I find that the RFD-01 does not merit sanction of the refund claim amount and I pass the following order, accordingly."

2.9. The petitioner preferred an appeal against the Order of rejection of said application for grant of interest under Section 107 before the Assistant Commissioner (Appeals). Said appeal came to be dismissed *vide* Order dated 15.01.2024 by the Additional Commissioner, GST (Appeals) referring to provisions of Section 54 and Section 56 of the CGST Act[3]. Assailing legality of said

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[3] The provisions of Section 54 and Section 56 of the CGST Act as relied on by the Appellate Authority at paragraph 10 of his order are extracted hereunder:

"10.1 The relevant portion of Section 54 of the CGST Act, 2017 is reproduced as under:

Section 54.

Refund of tax.—

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

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(4) The application shall be accompanied by:

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in Section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the

incidence of such tax and interest had not been passed on to any other person.

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in Section 57.

10.2 As per Section 54(1) of the CGST Act, 2017, the refund claim is to be filed within two years from the relevant date. The relevant date is defined under Explanation (2) to Section 54 of the CGST Act. The relevant portion of the said is provided as under.

'(2) 'relevant date' means—

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

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(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;'

10.3 Section 56 of the CGST Act is reproduced as under:

Section 56.

Interest on delayed refunds.—

If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation.—

For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any Court against an order of the Proper Officer under sub-section section (5) of Section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the Court shall be deemed to be an order passed under the said sub-section (5)."

Order-in-Appeal confirming the decision of the Assistant Commissioner refusing grant of interest on refund, the petitioner has preferred the instant writ petition.

Hearing:

3. Since a short point is involved in this matter whether Appellate Authority is justified in confirming the order of Assistant Commissioner, Central Goods and Services Tax and Central Excise, Cuttack-II Division, Cuttack in refusing to grant of interest on the refunded amount of IGST, which was paid "under protest", on "ocean freight" in terms of Notification No.8/2017-Integrated Tax (Rate), dated 28.06.2017 and Notification No.10/2017-Integrated Tax (Rate), dated 28.06.2017, being declared unconstitutional hit by Article 265 of the Constitution of India[4], from the date of deposit till date of actual refund, on the consent of the learned counsel for the parties, this matter is taken up for final hearing.

3.1. Heard Sri Jagabandhu Sahoo, learned Senior Advocate assisted by Smt. Kajal Sahoo, learned Advocate for the petitioner and Sri Sujan Kumar Roy Choudhury, learned Senior Standing Counsel for the opposite parties.

3.2. Hearing being concluded, the matter stood reserved for preparation and pronouncement of Judgment.

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[4] Article 265 of the Constitution of India lays down that *"Taxes not to be imposed save by authority of law.— No tax shall be levied or collected except by authority of law."*

Arguments:

4. Sri Jagabandhu Sahoo, learned Senior Advocate appearing for the petitioner submitted that the Appellate Authority in confirming the Order rejecting the application for grant of interest on the amount refunded with respect to the unauthorized levy of IGST on "ocean freight" is outcome of non-application of mind, injudicious and bereft of application of law. The case law referred to by the Appellate Authority is misplaced inasmuch as the refund in the instant case does not emanate from any statutory proceedings or decision rendered by the statutory authority in connection with statutory remedy provided for in the GST Act and the Rules framed thereunder. Nevertheless, the refund flows in the present case is on account of levy of IGST on "ocean freight" being declared unconstitutional, illegal and without authority of law. Since the levy of tax is without authority of law, in view of provision enshrined under Article 265 of the Constitution of India, there is no scope to deny interest on refund of IGST from the date of its collection till the date of actual refund.

4.1. The case law relied on by the statutory authority is in the context of interest on refund of tax paid whenever an amount, which is returned by the tax authorities in exercise of statutory power becomes refundable as a result of any subsequent proceedings. He, thus, urged

that while discharging its obligation under the statute, the returns were filed disclosing the fact and figures and the deposit of the IGST on account of "ocean freight" was made "under protest". The very exigibility of IGST on "ocean freight" was under challenge. Ultimately the objection of the petitioner found favour with and the Hon'ble Supreme Court of India affirmed the view of the Hon'ble High Court of Gujarat expressed in *Mohit Minerals Pvt. Ltd. (supra)*. Thus being the position, the levy of IGST on "ocean freight" becomes unauthorized in view of Article 265 of the Constitution of India.

4.2. In the instant case, the authorities concerned committed error of law in refusing to grant interest on the quantum of refund from the date of deposit bearing in mind as if such refund had flown from exhaustion of statutory remedy. Unauthorised collection of tax, as is submitted by the learned Senior Counsel, on the declaration by the Court becomes vulnerable and the amount is due to be returned to the depositor/taxpayer with interest.

5. Sri Sujan Kumar Roy Choudhury, learned Senior Standing Counsel appearing for the opposite parties did not dispute that there is distinction between interest on withholding of refund and unauthorised collection of tax on its being declared *ultra vires*, even though he was given opportunity to address argument in this regard *vide* Order dated 05.08.2024 passed in the present

matter. Merely supporting the reasons assigned by the authorities concerned, he would argue that since the refund was granted to the petitioner within the statutory period specified from the date of making application, there is no justification to claim for interest on the amount of refund. He sought to countenance the contents and stand taken by the opposite parties in the counter affidavit.

Analysis and discussions:

6. Having diligently considered the arguments of the Senior Counsel for the petitioner and learned Senior Standing Counsel appearing for opposite parties and perused the record, it remains undisputed that the petitioner has been paying IGST on the entire value including therein the amount of "ocean freight" incurred with respect to CIF contract. Such payment was made "under protest". The levy of IGST on "ocean freight" in terms of Notifications dated 28.06.2017 is held to be without authority of law as "the impugned levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under Section 2(30) read with Section 8 of the CGST Act" and "since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, *etc*. in a CIF contract, a separate levy on the Indian importer for

the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act".

6.1. This Court while entertaining the instant writ petition passed the following Order on 05.08.2024:

> *"4. We find two reasons that straightway appear from paragraph-3 in the adjudication order. First is, as submitted by Mr. Satapathy, the refund was made within time provided by the provision.* ***Second reason is no rule or authority is available to corroborate claim of petitioner. Section 54 provides contingency of withholding refund for purpose of revenue. However, ultimately if the refund is to be made then the payment of statutory interest at 6% is also provided. This case is not a case of withholding refund. The tax was duly collected on strength of notifications, ultimately set aside by the Supreme Court. Therefore, there was no authority to collect the tax. Hence, the claim for interest. Rate of interest may be inspired by the provision in providing 6%.*** *Revenue will be heard."*

6.2. A counter affidavit has come to be filed by the opposite parties on 24.12.2024 sworn to by the Chief Commissioner (in-situ), GST and Central Excise, Bhubaneswar Commissionerate, Bhubaneswar. It is manifest from the counter affidavit that since the refund has been sanctioned within sixty days of receipt of application in terms of Section 54 read with Section 56 of the GST Act, no interest is payable to the petitioner. It

is not denied or disputed that the petitioners deposited IGST on the component of "ocean freight" as per the notifications in question. Said collection was made upon levy of IGST by virtue of notifications. The levy under the Notifications has been declared not competent in *Mohit Minerals Pvt. Ltd. (supra).* However, the opposite parties have not addressed the query posed as reflected under paragraph-4 of Order dated 05.08.2024 passed in the present case.

6.3. Therefore, it is construed that the opposite parties have no answer to such query. It is not argued by the learned Senior Standing Counsel with respect to distinction on withholding the refund by the statutory authority during the pendency of statutory remedies *vis-a-vis* the refund of tax levied and collected held to be unauthorised in view of the notifications being declared infirm in law.

6.4. Culling out distinction and arguing inapplicability of Section 56 to the fact-situation of the present case, Sri Jagabandhu Sahoo, learned Senior Advocate for the petitioner referring to paragraph-12 of the rejoinder affidavit, submitted that sanction of refund within sixty days from the date of filing of application in Form GST RFD-01 in terms of Section 56 of the GST Act read with Rule 89 of the GST Rules, 2017, would not clothe the Authority to discharge his obligation to pay interest by way of restitution on the quantum of IGST levied on

"ocean freight" in terms of Notification No.8/2017-Integrated Tax (Rate) and Notification No.10/2017-Integrated Tax (Rate), both dated 28.06.2017.

6.5. In *South Eastern Coalfields Ltd. Vrs. State of M.P., (2003) 8 SCC 648* it is observed thus:

> *"26. In our opinion, the principle of restitution takes care of this submission. The word "restitution" in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see Zafar Khan Vrs. Board of Revenue, U.P., 1984 Supp SCC 505). In law, the term "restitution" is used in three senses:*
>
> *(i) return or restoration of some specific thing to its rightful owner or status;*
>
> *(ii) compensation for benefits derived from a wrong done to another; and*
>
> *(iii) compensation or reparation for the loss caused to another. (See Black's Law Dictionary, 7th Edn., p. 1315).*
>
> *The Law of Contracts by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that "restitution" is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for the injury done:*
>
> *'Often, the result under either meaning of the term would be the same. … Unjust impoverishment, as*

well as unjust enrichment, is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed-upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed.'

The principle of restitution has been statutorily recognised in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order."

6.6. Pleading in the counter affidavit is silent as to the case of present nature could be comprehended within any of the contingencies specified under Section 56 read with Rule 89. Nothing is argued by the learned Senior Standing Counsel to assert that the refund granted to the petitioner fell within the scope of provisions for interest on refund that flows from exhaustion of the statutory remedy. Rather this Court finds force in the argument advanced by the learned Senior Advocate for the petitioner that the deposits made towards IGST on the component of "ocean freight" turned out to be on

account of illegal "levy"[5]. When it is found that the compulsory exaction of IGST in pursuance of Notifications dated 28.06.2017 and said notifications are held to be invalid, the State cannot retain such amount. There is no option left open but to refund the retained amount of IGST to the depositor.

6.7. It may be apposite to have regard to the following observation of the Hon'ble Punjab and Haryana High Court in the case of *Sandhu Overseas Vrs. State of Haryana, (2011) 45 VST 244 (P&H)* rendered in the context of exercise of power to withhold the refund during the pendency of appeal or further proceedings within the purview of the statutory provisions:

> *"7. It is clear from bare perusal of the above provision that Section 44(2) providing for exclusion of period during which refund was withheld for calculation of interest applies* ***only if withholding of refund***

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[5] In *Union of India Vrs. Rajeev Bansal, (2024) 10 SCR 1633* referring to many earlier judgments with respect to distinction between "levy" and "collection" *vis-à-vis* Article 265 of the Constitution of India, it has been observed as follows:

> *"21. The power to levy tax is an essential and inherent attribute of sovereignty. It is an inherent attribute because the government requires funds to discharge its governmental functions. Taxation is also a recognised fiscal tool to achieve fiscal and social objectives. Although the power to levy taxes is plenary, it is subject to certain well-defined limitations. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. A taxing statute must be valid and conform to other provisions of the Constitution.*
>
> *22. Article 265 makes a distinction between "levy" and "collection." The expression "levy" has a wider connotation. It includes both the imposition of a tax as well as assessment. The quantum of tax levied by a taxing statute, the conditions subject to which it is levied, and how it is sought to be recovered are all matters within the competence of the legislature. In a taxing statute, the charging provisions are generally accompanied by a set of provisions for computing or assessing the levy. The character of assessment provisions bears a relationship to the nature of the charge."*

was valid. *Once withholding of refund is held to be illegal, Section 44(2) of the Act cannot be held to be applicable. In the present case, withholding of refund is not shown to be for a valid reason. Once it is so, Section 44(2) of the Act*[6] *had no application."*

6.8. Glance at provisions of Section 56 of the GST Act dealing with "Interest on delayed refunds" is silent about grant of interest on refund when it emanates from declaration of the statutory notifications as illegal or *ultra vires* or the levy and collection of tax being rendered constitutionally invalid. In this connection, this Court seeks to take note of the following discussion rendered by the Hon'ble Supreme Court of India in the case of *Dr. Poornima Advani Vrs. Government of NCT, (2025) 2 SCR 1178*:

> *"8. Thus, in paragraph 19, the learned Single Judge posed a question for his consideration whether the circumstances in which the refund was prayed for by the appellants herein, would be a relevant consideration for ordering refund of the said amount. In other words, the learned Single Judge asked a question to himself whether the court, in such circumstances, should fold its hands and deny relief*

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[6] Section 44 of the Haryana General Sales Tax Act, 1973 stood thus:
"44.Power to withhold refund.—
(1) Where an order giving rise to a refund is the subject-matter of an appeal or further proceedings or where any other proceedings under this Act are pending, and the assessing authority or a person appointed to assist the Commissioner under sub-section (1) of Section 3, as the case may be, is of the opinion that the grant of the refund is likely to be adversely affect the recovery, he may withhold the refund and refer the case to the Commissioner for order. The orders passed by the Commissioner shall be final.
(2) The period during which the refund remains so withheld shall be excluded for the purpose of calculation of interest under Section 43."

to a person, who has lost the e-stamp paper, only because the draftsman has omitted the use of such expression explicitly in the Statute.

9. *After an exhaustive discussion on various aspects of the matter, the learned Single Judge thereafter proceeded to draw a fine distinction between the 'doctrine of unjust enrichment' as opposed to 'doctrine of retention'. Ultimately, the learned Single Judge allowed the writ petition in part.*

***

14. *The short point that falls for our consideration is whether in the facts and circumstances of the case, the appellants herein are entitled to claim interest on the refunded amount of Rs.28,10,000/- referred to above.*

***

16. *The concept of awarding interest on delayed payment has been explained by this Court in the case of Authorised Officer, Karnataka Bank Vrs. M/s. R.M.S. Granites Pvt. Ltd. & Ors. in Civil Appeal No.12294 of 2024, we quote the following observations:*

'It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say ten years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B ten years ago, B would have invested that amount somewhere and earned interest

thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B. [See: Alok Shanker Pandey Vrs. Union of India, AIR 2007 SC 1198.]'

17. ***Thus, when a person is deprived of the use of his money to which he is legitimately entitled, he has a right to be compensated for the deprivation which may be called interest or compensation.*** *Interest is paid for the deprivation of the use of money in general terms which has returned or compensation for the use or retention by a person of a sum of money belonging to other.*

18. *As per Black's Law Dictionary (7th Edn.): "interest" is the compensation fixed by agreement or allowed by law for use or detention of money or for the loss of money of one who is entitled to its use, especially, the amount owned to a lender in return for the use of the borrowed money.*

19. *As per Stroud's Judicial Dictionary of Words and Phrases (5th edn.): interest means, inter alia, compensation paid by the borrower to the lender for deprivation of the use of his money.*

20. *In the case of Secretary, Irrigation Department, Government of Orissa Vrs. G.C. Roy, (1992) 1 SCC 508, a Constitution Bench of this Court opined that a person deprived of use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This is*

also the principle of Section 34 of the Civil Procedure Code.

21. *The essence of interest as held in the case of Lord Wright in Riches Vrs. Westminister Bank Ltd., 1947 (1) ALL ER 469, at page 472, is that it is a payment, which becomes due because the creditor has not had his money at the due date. It may be recorded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use.*

22. *In the case of Commissioner of Income Tax Vrs. Dr. Sham Lal Narula, AIR 1963 Punjab 411, a Division Bench of the High Court of Punjab articulated the concept of interest as under:*

> *'The words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. "Interest" in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, 'interest' is understood to mean the amount which one has contracted to pay for use of borrowed money. *** In whatever category "interest" in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money belonging to another, or for the delay in paying money after it has become payable.'*

23. *The appeal filed against aforesaid decision was dismissed by this Court in Sham Lal Narula Dr. Vrs. CIT, AIR 1964 SC 1878.*

24. *In the case of Hello Minerals Water (P) Ltd. Vrs. Union of India, (2004) 174 ELT 422, (paras 15 and 16), a Division Bench of the Allahabad High Court explained the concept of interest as under:*

> *'15. We may mention that we are passing the direction for interest since interest is the normal accretion on capital. Often there is misconception about interest. Interest is not a penalty or punishment at all.*
>
> *16. For instance, if A had to pay a certain sum of money to B at a particular time, but he pays it after a delay of several years, the result will be that the money remained with A and he would have earned interest thereon by investing it somewhere. Had he paid that amount at the time when it was payable then B would have invested it somewhere, and earned interest thereon.* ***Hence, if a person has illegally retained some amount of money then he should ordinarily be directed to pay not only the principal amount but also the interest earned thereon****. Money doubles every six years (because of compound interest). Rs. hundred in the year 1990 would become Rs. two hundred in the year 1996 and it will become Rs.400 in the year 2002. Hence, if A had to pay B a sum of rupees 100 in the year 1990 and he pays that amount only in the year 2002, the result will be that A has pocketed Rs.300 with himself. This clearly cannot be*

justified because had he paid that amount to B in the year 1990, B would be having Rs.400 in the year 2002 instead of having only Rs.100/-. Hence, ordinarily interest should always be awarded whenever any amount is detained or realized by someone, otherwise the person receiving the amount after considerable delay would be losing the entire interest thereon which will be pocketed by the person who managed the delay, it is for this reason that we have ordered for payment of interest alongwith the amount realized as export pass fee.'

25. *If on facts of a case, the doctrine of restitution is attracted, interest should follow. Restitution in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order what has been lost to him in execution of decree or order of the Court or in direct consequence of a decree or order. The term "restitution" is used in three senses, firstly, return or restoration of some specific thing to its rightful owner or status, secondly, the compensation for benefits derived from wrong done to another and, thirdly, compensation or reparation for the loss caused to another.*

26. *In Hari Chand Vrs. State of U.P., 2012 (1) AWC 316, the Allahabad High Court dealing with similar controversy in a stamp matter held that the payment of interest is a necessary corollary to the retention of the money to be returned under order of the appellate or revisional authority. The High Court directed the State to pay interest @ 8% for the period, the money was so retained i.e. from the date of deposit till the date of actual repayment/refund.*

27. *In the case of O.N.G.C. Ltd. Vrs. Commissioner of Customs Mumbai, JT 2007 (10) SC 76, (para 6), the facts were that the assessment orders passed in the Customs Act creating huge demands were ultimately set aside by this Court. However, during pendency of appeals, a sum of Rs.54,72,87,536/- was realized by way of custom duties and interest thereon. In such circumstances, an application was filed before this Court to direct the respondent to pay interest on the aforesaid amount w.e.f. the date of recovery till the date of payment. The appellants relied upon the judgment in the case of South Eastern Coal Field Ltd. Vrs. State of M.P., (2003) 8 SCC 648. This Court explained the principles of restitution in the case of O.N.G.C. Ltd. (supra) as under:*

'Appellant is a public sector undertaking. Respondent is the Central Government. ***We agree that in principle as also in equity the appellant is entitled to interest on the amount deposited on application of principle of restitution.*** *In the facts and circumstances of this case and particularly having regard to the fact that the amount paid by the appellant has already been refunded, we direct that the amount deposited by the appellant shall carry interest at the rate of 6% per annum. Reference in this connection may be made to Pure Helium Indian (P) Ltd. Vrs. Oil & Natural Gas Commission, JT 2003 (Suppl. 2) SC 596 and Mcdermott International Inc. Vrs. Burn Standard Co. Ltd. JT 2006 (11) SC 376.'*

Compensation:

28. *The word 'Compensation' has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edition 2005, page 918 as follows:*

'An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased something given or obtained as an equivalent the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value a recompense given for a thing received recompense for the whole injury suffered remuneration or satisfaction for injury or damage of every description remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly, and proximately caused by at breach of contract or duty; remuneration or wages given to an employee or officer.'

29. *In the case of Union of India through Director of Income Tax Vrs. Tata Chemicals Ltd., (2014) 6 SCC 335, this Court held that* ***when the collection is illegal, the Revenue is obliged to refund such amount with interest as money so deposited was retained and enjoyed by it.*** *No discrimination can be shown between the assessee and Revenue in paying interest on the refund of tax. Money received and retained without right, carries with it the right to*

interest. There being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, the Government cannot shrug off its apparent obligation to reimburse the deductors lawful monies with accrued interest for the period of undue retention of such monies. Obligation to refund money received and retained without right implies and carries with in the right to interest. The relevant observations are as under:

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

6.9. On the conspectus of above legal position, examining the present matter, it is evident from interim Order dated 20.02.2019 passed in I.A. No.1424 of 2019 arising out of W.P.(C) No.1684 of 2019 passed by this Court in exercise of writ jurisdiction in the case of instant petitioner in the present context on the earlier round of litigation, that *"any payment made by the petitioner, pursuant to impugned Notifications will be subject to result of the writ petition"*. Since the Notifications have been declared illegal and levy has been stated to be unauthorized in *Mohit Minerals Pvt. Ltd. (supra),* said case [W.P.(C) No.1684 of 2019] finally came to be disposed of *vide* Order dated 01.08.2022 with the following observations:

> *"8. In view of authoritative pronouncement of the Hon'ble Supreme Court confirming the decision of the Hon'ble Gujarat High Court rendered in the case of Mohit Minerals Pvt. Ltd. Vrs. Union of India, (2020) 74 GSTR 134 (Guj) = (2020) 33 GSTL 321 (Guj) = 2020 SCC OnLine Guj 49 as culled out above, there remains nothing for adjudication in the instant writ petition and, therefore, the writ petition is bound to be allowed in terms of Union of India Vrs. Mohit Minerals Pvt. Ltd., 2022 SCC OnLine 657.*
>
> *9. In consequence, the petitioner is at liberty to make appropriate application before the competent Proper Officer in order to raise claim for refund in terms of Order dated 20.02.2019 to the effect that "any payment made by the petitioner, pursuant to the impugned notification, will be subject to result of the writ petition" as directed by this Court in the instant*

writ petition. The Proper Officer shall quantify the amount in accordance with law particularly taking into account the legal proposition as propounded in Union of India Vrs. Mohit Minerals Pvt. Ltd., 2022 SCC OnLine 657. The Proper Officer may examine the records of the petitioner and take appropriate decision within a period of three months from the date of production of the certified copy of this order."

6.10. It may be relevant to have reference to *Commissioner, Commercial and Sales Taxes Vrs. Orient Paper Mills Ltd., (2004) 2 SCR 451,* wherein it has been held as follows:

"It is a well-known maxim in law that no person should be affected or allowed to suffer by an order passed by a Court of law. Even if it is accepted that the direction of the Court of law appears to be at variance with the statutory provision while exercising writ jurisdiction, as an equitable measure the Court can pass such order as it may deem proper, but in no way going beyond the permissible extent of exercising the jurisdiction. As was observed by this Court in Tata Refractories Ltd and Anr. Vrs. Sales Tax Officer and Ors., (2003) 1 SCC 65 while dealing with an identical dispute it was held as follows:

'It is to be noted that the order of the High Court in the earlier writ petition namely, OJC No. 1200 of 1995 was made by the High Court in the exercise of its power under Articles 226 and 227 of the Constitution of India wherein while directing the appellants to deposit the amount quantified therein, the High Court also issued a direction to the respondent State that it should refund the amount with interest at the rate of 18% per annum in the event of the appellants succeeding in the second appeal. This order is definitely not one made under the provisions of

the Act. The respondent State which took benefit of the said order and retained the amount deposited by the appellant, cannot now be permitted to say when it comes to refund the direction issued by the High Court in its order dated 15.03.1995 will not be binding on it and it is only the provisions of the statute that will bind. ***As noted above, it is not by invoking the provisions of the Act, the deposit was directed to be made by the High Court, hence, any direction made while making an order under Articles 226 and 227, to deposit any sum of money will be governed by the conditions imposed in the order directing such deposit.*** *On the contrary, if any such condition as to the interest had not been made by the High court while directing the deposit of the amount then it could be said that the refund which may become payable will be governed by the provisions of the State Act. In the instant case, since the very order which directed the deposit itself has directed the refund with 18% interest, we have not doubt in holding the said order as to mean that the refund should be made with interest at the rate of 18% from the date on which the amount was deposited pursuant to the order of the High Court dated 15.03.1995.'*

The High Court erroneously applied the import of Section 14-C to the facts of the present case."

6.11. In the present case this Court at the time of consideration of *prima facie* merit of the matter *vide* Order dated 05.08.2024 made a clear observation that the tax was duly collected on the strength of notifications, ultimately set aside by the Supreme Court of India; as such there was no authority to collect the tax. Therefore, it directed for hearing from the side of the

Revenue on the question of scope to allow interest on the amount refunded. Neither any specific averment is made in the counter affidavit nor was it argued by the learned Senior Standing Counsel with respect to levy of interest on refund where the IGST levied and collected by the Department with respect to "ocean freight" was held to be illegal and invalid in the eye of law; thereby retaining the amount representing IGST on ocean freight would be contrary to what is envisioned in Article 265 of the Constitution of India. Rather entire pleading by the Revenue rested on the application made under Section 54 read with Section 56 of the GST Act, which in the opinion of this Court is incorrect approach.

6.12. Be it stated with reference to *Ujjam Bai Vrs. State of Uttar Pradesh, (1963) 1 SCR 778* that a tax cannot be levied by the State, unless a law to that effect exists, and that law must follow and obey all the directions in the Constitution about the making of laws. In other words, the law must be one validly made. But where a tax is levied by a competent legislature, after due compliance with all the requirements relating to the making of laws and when it is subordinate legislation, the requirements of other relevant laws, and is also not in violation of any provision of the Constitution it will operate as a reasonable restriction upon the right of a person to carry on his trade, business *etc.* Though a person's right to

carry on a trade or business is a fundamental right it is thus subject to the aforesaid limitations. With benefit of understanding the nuance of Article 265, the following observation of the Hon'ble Court in *Ujjam Bai (supra)* may be quoted:

"A similar but not exactly the same position arose in the Bengal Immunity Company Limited Vrs. The State of Bihar, (1955) 2 SCR 603. The facts of the case were that the appellant company filed a petition under Article 226 in the High Court of Patna for a writ of prohibition restraining the Sales Tax Officer from making an assessment of sales tax pursuant to a notice issued by him. The appellant claimed that the sales sought to be assessed were made in the course of inter-State trade, that the provisions of the Bihar Sales Tax Act, 1947 (Bihar Act 19 of 1947) which authorised the imposition of tax on such sales were repugnant to Article 286(2) and void, and that, therefore, the proceedings taken by the Sales Tax Officer should be quashed. The application was dimissed by the High Court on the ground that if the Sales Tax Officer made an assessment which was erroneous, the assessee could·challenge it by way of appeal or revision under Sections 24 and 25 of that Act, and that as the matter was within the jurisdiction of the Sales Tax Officer, no writ of prohibition or certiorari could be issued. There was an appeal against this order to this Court and therein a preliminary objection was taken that a writ under Article 226 was not the appropriate remedy open to an assessee for challenging the legality of the proceedings before a Sales Tax Officer. In rejecting the contention, this Court observed:

'It is, however, clear from Article 265 that no tax can be levied or collected except by authority of law which must mean a good and valid law. The contention of the appellant company is that the Act which authorises the assessment, levying and collection of Sales tax on inter-State trade contravenes and constitutes an infringement of Article 286 and is, therefore, ultra vires, void and unenforceable. If, however, this contention by well founded, the remedy by way of a writ must, on principle and authority, be available to the party aggrieved.'

And dealing with the contention that the petitioner should proceed by way of appeal or revision under the Act, this Court observed:

'The answer to this plea is short and simple. The remedy under the Act cannot be said to lie adequate and is, indeed, nugatory or useless if the Act which provides for such remedy is itself ultra vires and void and the principle relied upon can, therefore, have no application where a party comes to Court with an allegation that his right has been or is being threatened to be infringed by a law which is ultra vires the powers of the legislature which enacted it and as such void and prays for appropriate relief under Article 226.'

It will be seen that the question which arose in that case was with reference to a provision in the taxing statute which was ultra vires and the decision was that any action taken under such a provision was without the authority of law and was, therefore, an unconstitutional interference with the right to carry on business under Article 19(1)(f). In circumstances somewhat similar in nature there have been other decision of this Court which the violation of a fundamental right taken to have been established when the assessing authority sought to tax a

transaction the taxation of which came within a constitutional prohibition. Such cases were treated as on a par with those cases where the provision itself was ultra vires."

6.13. In the case at hand the case of the petitioner does not arise out of misinterpretation of notification by a *quasi* judicial authority; rather the notifications were challenged based on constitutionality. The petitioner questioned the validity of notifications under which the levy of IGST on "ocean freight" was sought to be achieved. The Hon'ble Supreme Court of India affirmed the view of the Hon'ble High Court of Gujarat in *Mohit Minerals Pvt. Ltd. (supra).* Under such precinct the normal course adopted in exercise of powers under Section 54 read with Section 56 of the GST Act by the authorities whose orders are under challenge in the present writ petition cannot withstand judicial scrutiny.

6.14. In the aforesaid perspicuous position of fact matrix and constitutionality of levy, this Court is called upon to adjudicate whether the petitioner is entitled to interest on the IGST paid on ocean freight declared to be unconstitutional and invalid.

6.15. In an identical set of context, that has arisen in the instant case, by rendering a *Judgment dated 17.10.2025* the Hon'ble Bombay High Court in *West India Continental Oils Fats Pvt. Ltd. Vrs. Union of India and*

others, *W.P.(C) No.3000 of 2023* (Neutral Citation: *2025:BHC-OS:19595-DB*), having taken note of *Mohit Minerals Pvt. Ltd. (supra),* held as follows:

"35. Mr. Mishra, learned counsel for the revenue has strongly supported the impugned order to submit that there is no illegality, much less irregularity therein so as to warrant any interference. He would in support of his submissions refer to paragraph (iii) of the Impugned Order. This is to contend that as the refund claim of IGST Rs.2,62,37,558/- was sanctioned/paid by the respondents within the statutory period of 60 days, the issue of payment of interest on such amount does not arise. In this context such submission of Mr. Mr. Mishra does not assist the case of the Revenue. Such is for the reason that as noted above, the said amount of IGST collected from the petitioner by the respondents, which is now refunded, is not payable at all in law. ***This is because such tax based on the said Notifications were struck down by the Supreme Court in Mohit Minerals Pvt. Ltd. Followed by the decision in the petitioner's own case (supra) which declared the same to be unconstitutional.*** *Given such situation, the liability to pay tax imposed on the Petitioner, on reverse charge mechanism, by the respondents has no legs in law to stand on. At this juncture, it is pertinent to refer to the observation of the Supreme Court in the case of Mohit Minerals Pvt. Ltd. (supra) as noted above, that a tax on supply of service, which has already been included by the legislation as a tax on composite supply of goods, cannot be permitted. This*

would completely be applicable in the given factual complexion to the case of the petitioner.

36. *At this juncture, it may be apposite to refer to the decision of the Supreme Court in the case of Ranbaxy Laboratories Ltd. Vrs. Union of India, 2011 (273) ELT 3 (SC) and the following decision in Union of India Vrs. Hamdard (WAQF) Laboratories, 2016 (333) ELT 193 (SC).* ***The Supreme Court was considering the interpretation of Section 11BB of the erstwhile Central Excise Act, 1994 which is in pari materia to Section 54 and 56 of the CGST Act. In this context, the Supreme Court recognized the obligation of the Revenue to pay the statutory interest within a period of 3 months from the date of receipt of the application in this regard. Thus, juxtaposing this with Section 54 and 56 of the CGST Act, we agree with Mr. Sanghavi that the respondents cannot shirk the statutory obligation to pay interest within the time line of 60 days as stipulated under Section 54 read with Section 56 of the CGST Act.*** *It would be apposite to also refer to a recent decision of this Court in Altisource Business Solutions India Pvt. Ltd. Vrs. Union of India, Order dated 30th September, 2025 passed in Writ Petition No.5312 of 2024, where, in similar factual matrix and in the context of interpreting Section 54 and 56 of the CGST Act where we have gainfully relied on the decision of the Supreme Court in the case of Ranbaxy Laboratories Ltd. (supra). Thus, a conjoint reading of these decisions would militate against the stand of the respondents in support of the Impugned Order, in denying the interest to the Petitioner.*

37. ***Adverting to the above, we are not in agreement with the submission of Mr. Mishra that the claim of the petitioner towards grant of interest is justified under Section 54 and 56 of the CGST Act. This is because Section 54 of the Act can only be applicable for claiming refund of any tax which is paid in accordance with and under the framework of the CGST Act and its extent provisions. The said Section would not apply in a situation where revenue or the respondents have no authority to collect the IGST paid by the petitioner on reverse charge mechanism on the ocean freight, from the date of payment to the date of refund.*** *This would further be in the teeth of the order of this Court dated 10th August, 2022 in Writ Petition No.8318 of 2019 (West India Continental Oils Fats Pvt. Ltd. Vrs. Union of India) where a coordinate Bench of this Court has in terms struck down Notification No.8 of 2017 read with the corrigendum dated 30 June 2017 to the extent they seek to impose IGST, to be unconstitutional. This Court directed that wherever the refund is payable, the same shall be paid within 8 weeks with applicable interest, in accordance with law. Thus, it is incumbent on the respondents to pay interest to the petitioner on the IGST of Rs.2,62,37,558/- paid under reverse charge mechanism on ocean freight, in the given facts and circumstances."*

6.16. The learned Senior Counsel referred to and relied on certain other decisions rendered in *Adi Enterprises Vrs. Union of India, Misc. Civil Application (For Direction) No.1 of 2020 in R/Special Civil Application No.10479 of 2019,*

vide Order dated 08.06.2022 [2022 (64) GSTL 392 (Guj)]; ETC Agro Processing (India) Pvt. Ltd. Vrs. Union of India, R/Special Civil Application No.1204 of 2021, vide Order dated 26.04.2023 [(2023) 6 Centax 143 (Guj)].

6.17. In *Jupiter Comtex Pvt. Ltd. Vrs. Union of India, R/Special Civil Application No.1280 of 2024, vide Order 14.02.2024 [2024 (86) GSTL 95 (Guj)]* in consideration of challenge as to the rejection of refund application on the ground that refund as a result of levy being held to be unconstitutional, the Hon'ble High Court of Gujarat held that,

> *"5. Learned Advocate for the petitioner submitted that Notification No.8/2017 and No.10 of 2017 both dated 28th June, 2017 read with Corrigendum dated 30th June, 2017 came up for consideration for their validity before this Court. This Court in Mohit Minerals Pvt. Ltd. Vrs. Union of India, down Entry No.10 of 2017-IGST Rate dated 28th June, 2017 as being ultra vires the provisions of the IGST Act as well as being unconstitutional.*
>
> *5.1. The Supreme Court upheld the decision of this Court in Mohit Minerals Pvt. Ltd. [reported at (2020) 74 GSTR 134 (Guj) = 2020 SCC OnLine Guj 49] in Union of India Vrs. Mohit Minerals Pvt. Ltd., (2022) 9 SCR 300.*
>
> *5.2. The petitioner, therefore, after pronouncement of the decision of the Apex Court, claimed refund of amount of tax, interest and penalty paid on ocean freight under protest along with necessary documents*

including certificate of Chartered Accountant regarding non-passing of the tax burden annexed with the refund application.

5.3. *The respondent No.2, i.e., jurisdictional authority however issued show-cause notice to the petitioner proposing to reject such refund on the ground that it could not be granted by the authority under the GST Act in respect of levy which was held to be unconstitutional. The petitioner filed reply requesting for refund since the amount had been paid under protest.*

5.4. *The second respondent, however, rejected the refund by impugned order on the ground that refund as a result of levy being held unconstitutional can be claimed only by way of suit or writ petition and that the same cannot be granted under Section 54 of the GST Act.*

6. *It is trite law that once the Apex Court declares a Notification being ultra vires and unconstitutional, such law becomes the law of land and is liable to be followed by the respondent authorities without raising any objection. The respondent No.2 could not have rejected the claim of the petitioner for refund of ocean freight. The reasons given by the respondent No.2 in the impugned order for rejection of the refund claim of the petitioner on the ground that the claim has been filed based upon the judgment of the Apex Court in the matter of ocean freight declaring levy of GST on ocean freight as unconstitutional would not fall under any category of refund prescribed under Section 54 of the CGST Act, 2017 and such claim would be outside the scope of and purview of such Section and petitioner can claim refund by way of*

suit or by way of a writ petition, would not sustain. Such a stand of the respondent is deprecated as the respondent is bound by the law declared by the Supreme Court and the same is required to be implemented in letter and spirit. The respondent No.2, therefore, could not have rejected the refundi claim of the petitioner on the ground that the same is outside the scope of Section 54 of the CGST Act, 2017 inasmuch as when the Notification for levy of IGST on ocean freight is held to be unconstitutional, the petitioner is entitled to the refund of such IGST on ocean freight paid under protest.

6.1. *It is also pertinent to note that the petitioner has placed on record certificate of Chartered Accountant that the petitioner has not passed on the tax burden and therefore, refund also cannot be denied to the petitioner on the principle o unjust enrichment as per the decision of the Apex Court in case of Mafatlal Industries Ltd. Vrs. Union of India, (1998) 5 SCC 536.*

6.2. *In support of such submission, petitioner also placed reliance on the following decisions:*

(a) *Bharat Oman Refineries Ltd. Vrs. Union of India, (2020) 120 taxmann.com 301 (Specia Civil Application No. 8881 of 2020, dated 18.08.2020);*

(b) *Torrent Power Ltd. Vrs. Union of India, (2022) 142 taxmann.com 314 (Special Civil Application No. 2603 of 2021, dated 04.08.2022);*

(c) *Sandesh Ltd. Vrs. Union of India, (2022) 41 taxmann.com 529 (Special Civil Application No. 12757 of 2021, dated 04.08.2022).*

7. Considering the above legal position, the petitioner is entitled to the refund of ocean freight paid under protest in vie of the decision of the Apex Court in case of Mohit Minerals Pvt. Ltd. (supra) since the impugned Notification has already be declared as ultra vires and accordingly, the present petition deserves to be allowed.

8. In view of the foregoing reasons, the claim for refund of the petitioner towards ocean freight is required to favourably considered and respondent No.2 is directed to verify the amount of refund and grant such refund of the amount IGST paid on ocean freight by the petitioner pursuant to the Entry No.10 of the above notification within eight weeks from date of receipt of copy of this order along with the statutory rate of interest."

6.18. It can be culled out from the above that consistent view has been expressed to the effect that interest is to be awarded in favour of the taxpayer who has paid the IGST on ocean freight. It is, thus, settled that when the levy of tax is found to be illegal and unconstitutional by quashment of statutory notifications, interest is liable to be paid on the amount of refund, even as the statute is silent regarding award of interest with respect to such eventuality.

6.19. It transpires from paragraph 9 of the Appellate Order (Annexure-10), before the Appellate Authority a clear stance was taken by the petitioner that "Once any provision is struck down by the Hon'ble Supreme Court

of India, the same is deemed to have never existed. Hence, interest is to be granted from the date of payment of tax. The Government is not entitled to withhold the tax without authority of law. Hence, Department is liable to pay interest to the taxpayer from the date of actual payment." As is well-established that the law declared by the Hon'ble Supreme Court of India is the law from the inception. On the notifications based on which the IGST on "ocean freight" was levied and collected by the opposite parties being struck down as invalid, there is no doubt in mind that the petitioner is entitled to compensation by way of award of interest on the amount retained for the period from the date of deposit till the date of its actual refund.

6.20. In *Vijaya Vasava Motors Vrs. Assistant Commissioner, (2009) 19 VST 322 (AP)* it has been held as follows:

> *"16. The decision of the Supreme Court, enunciating a principle of law, is applicable to all cases irrespective of the stage of its pendency.* ***The law laid down by the Supreme Court must be held to be the law from the inception, unless the Supreme Court itself indicates that its decision will operate prospectively.*** *It is not open for Courts/Tribunals to apply the law laid down by the Supreme Court only from the date on which the judgment came to be passed. (M.A. Murthy Vrs. State of Karnataka, (2007) 4 ALD 105, G. Raja Babu Vrs. The Government of Andhra Pradesh, (2007) 4 ALD 105).*

17. *The Supreme Court has not held that its judgment, in Mohd. Ekram Khan & Sons, (2004) 136 STC 515 (SC), is prospective in its application. Prospective overruling is resorted to by the Supreme Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. It is for the Supreme Court to indicate whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. (M.A. Murthy, (2007) 4 ALD 105). The doctrine of prospective overruling can be invoked only in matters arising under the Constitution and can be applied only by the Supreme Court as it has the Constitutional jurisdiction to declare law binding on all the courts in India. (I.C. Golak Nath Vrs. State of Punjab, AIR 1967 SC 1643, State of H. P. Vrs. Nurpur Private Bus Operators' Union, (1999) 9 SCC 559, G. Raja Babu, (2007) 4 ALD 105).* ***In the absence of any direction by the Supreme Court that the rule laid down by it would be prospective in operation, any finding recorded that the rule laid down by the Supreme Court would be applicable only to cases arising from the date of the judgment of the Court cannot be accepted.*** *(Sarwan Kumar Vrs. Madan Lal Aggarwal, (2003) 4 SCC 147, G. Raja Babu, (2007) 4 ALD 105).*

18. *Since the power to hold that a judgment of the Supreme Court will apply prospectively does not enure even in the High Courts, the Government could not have held that the said judgment would only*

have prospective operation. The action of the Government, in doing so, in its order in G. O. Ms. No. 144 dated February 11, 2008, in effect, amounts to declaring that the judgment of the Supreme Court in Mohd. Ekram Khan & Sons, (2004) 136 STC 515 (SC) would not apply to matters which are either pending before statutory authorities or the STAT or even the High Court merely because they relate to assessment years prior to the date of the judgment of the Supreme Court, i.e., prior to July 21, 2004. A declaration that an order made by a court of law is void is normally a part of the judicial function. Even the Legislature, let alone the executive, can neither declare that the decision rendered by the court is not binding or is of no effect, (People's Union for Civil Liberties (PUCL) Vrs. Union of India (2003) 4 SCC 399), nor has it the power to ask that decisions given by courts be disobeyed or disregarded. [Municipal Corporation of the City of Ahmedabad Vrs. New Shrock Spg. and Wvg. Co. Ltd., (1970) 2 SCC 280]. Exercise of power by the executive must be in accordance with law. If exercise of the power of judicial review by the Supreme Court can be set at naught by the State Government, overriding the decision, it would sound the death knell of the rule of law. [P. Sambamurthy Vrs. State of Andhra Pradesh (1987) 1 SCC 362]."

6.21. It may be relevant to notice what was observed in *Himmatlal Harilal Metha Vrs. The State of Madhya Pradesh, (1954) 1 SCC 405*:

"10. In Mohd. Yasin Vrs. Town Area Committee, (1952) 1 SCC 205 = 1952 SCR 572, it was held by this Court that a licence fee on a business not only takes away

the property of the licensee but also operates as a restriction on his fundamental right to carry on his business and therefore if the imposition of a licence fee is without authority of law it can be challenged by way of an application under Article 32, a fortiori also, under Article 226. These observations have apposite application to the circumstances of the present case. ***Explanation II to Section 2(g) of the Act having been declared ultra vires, any imposition of sales tax on the appellant in Madhya Pradesh is without the authority of law, and that being so a threat by the State by using the coercive machinery of the impugned Act to realise it from the appellant is a sufficient infringement of his fundamental right under Article 19(1)(g) and it was clearly entitled to relief under Article 226 of the Constitution.*** *The contention that because a remedy under the impugned Act was available to the appellant it was disentitled to relief under Article 226 stands negatived by the decision of this Court in State of Bombay Vrs. United Motors (India) Ltd., (1953) 1 SCC 514 = 1953 SCR 1069, above referred to. There it was held that the principle that a court will not issue a prerogative writ when an adequate alternative remedy was available could not apply where a party came to the Court with an allegation that his fundamental right had been infringed and sought relief under Article 226. Moreover, the remedy provided by the Act is of an onerous and burdensome character. Before the appellant can avail of it he has to deposit the whole amount of the tax. Such a provision can hardly be described as an adequate alternative remedy."*

6.22. It is not gainsaid that the petitioner-Company has deposited the IGST on the value of goods imported by including therein the amount of "ocean freight", which was disclosed in the returns and the said amount stands refunded in its favour after the decision was rendered in *Mohit Minerals Pvt. Ltd. (supra)* and in pursuance of Order dated 01.08.2022 passed in WP(C) No.1684 of 2019 in its own case. This Court is, therefore, inclined to hold that it is entitled to interest at the rate of 6% per annum from the date of such deposit shown to have been made by the petitioner.

6.23. Therefore, the opposite parties cannot resile from their obligation to pay interest on the amount refunded as the very levy/exigibility of IGST on "ocean freight" in CIF contract are held to be unconstitutional.

Conclusion:

7. With the factual and legal position as discussed above, it is manifest that the IGST collected on the quantum of "ocean freight" on the basis of Notifications dated 28.06.2017 is found to be illegal and in pursuance of Order dated 01.08.2022 of this Court in the petitioner's own case the Revenue has refunded the amount. It is in dispute whether the petitioner is entitled to interest on said refunded amount from the date of its deposit as the levy itself was declared not in consonance with the

constitutional provisions. There is nothing in *Mohit Minerals Pvt. Ltd. (supra)* to comprehend that the interpretation and declaration of the Hon'ble Supreme Court of India would operate prospectively.

7.1. Regard being had to the conspectus of very many judgments on the subject as referred to in the foregoing paragraphs, it is unequivocal that the decision of the Hon'ble Supreme Court of India unless spells out explicitly to have prospective effect, the same is to be understood as existing from the inception. In the absence of any direction by the Hon'ble Supreme Court of India that the interpretation set forth or law laid down by it would be prospective in operation, the argument of the Revenue to avoid payment of interest that the refund flows from the ruling of the Hon'ble Supreme Court of India in *Mohit Minerals Pvt. Ltd. (supra)* and the department having refunded the IGST so collected to the petitioner in consideration of application under Section 54 of the GST Act in this respect within the period stipulated in the statute cannot be accepted.

7.2. In such view of the matter, this Court cannot sustain the Order dated 15.01.2024 passed by the Additional Commissioner, GST (Appeals) in Order-in-Appeal No.158/GST/BBSR/ADC/2023-24 affirming the Order dated 06.02.2023 passed by the Assistant Commissioner, Central GST and Central Excise,

Cuttack-II Division, Cuttack in Form RFD-06 refusing to grant interest on the amount of refund. Hence, the Order dated 15.01.2024 *vide* Annexure-10 is set aside and Order dated 06.02.2023 *vide* Annexure-8 is quashed. Therefore, taking cue from the Order dated 05.08.2024 passed in the instant case, as referred to above, this Court directs the opposite parties to pay interest on the amount of the IGST as refunded.

7.3. Since the question involved in the present case relates to interest on amount refunded, it is clear that the petitioner is entitled to interest on the amount refunded with respect to IGST collected on "ocean freight" for the period the opposite parties retained the same and restrained the petitioner from utilising it. In other words, such interest should commence to run from the date on which the petitioner parted with the money in the first instance and was restrained from using such amount representing the IGST on the component of "ocean freight".

7.4. The refund itself is as a result of a finding that the tax ought not to have been collected from the petitioner in the first place. If the tax has to be refunded, and in fact, has been refunded to the petitioner, clearly, therefore, in the considered view of the Court, the interest thereon should begin to run from the date of the deposit of such tax. Consequently, the opposite party-competent

authority will pay to the petitioner simple interest @6% per annum on the amount of refund from the period beginning with the date of making payment of the IGST on "ocean freight" in the first instance till the date of actual payment of refund made which shall not be more than eight weeks from today. If there is any further delay than the said period in payment of interest on the refunded amount, the authority concerned will be liable to pay simple interest @9% per annum on the sum refunded for the period of delay.

8. With the aforesaid observations and directions, the writ petition stands disposed of and pending Interlocutory Application(s), if any, is also disposed of, but in the circumstances there shall be no order as to costs.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE