HC-KAR

NC: 2025:KHC:34875
WP No. 7277 of 2025

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 7277 OF 2025 (T-RES)

BETWEEN:

M/S. FLIPKART INDIA PRIVATE LIMITED COMPANY
INCORPORATED UNDER THE
PROVISIONS OF THE COMPANIES ACT, 1956,
BUILDINGS ALYSSA, BEGONIA AND CLOVER,
EMBASSY TECH VILLAGE,
BENGALURU, KARNATAKA, 560103.
THROUGH ITS AUTHORISED SIGNATORY
MR. KUMAR PANKAJ

…PETITIONER

(BY SRI. TARUN GULATI, SENIOR COUNSEL FOR SRI. PRADEEP NAYAK, SRI. SANKEERTH VITAL, SRI.KISHORE KUNAL, SRI.PRANAAM CHANDRASHEKAR, ADVOCATES)

AND:

1. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES,
   LVO-15, DVO-04, ROOM NO. 205, 2ND FLOOR, VTK-2,
   KORAMANGALA, BANGALORE- 560 047.

2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES,
   2ND FLOOR, VTK-2, KORAMANGALA,
   BANGALORE- 560 047.

3. DEPUTY COMMISSIONER OF COMMERCIAL TAXES
   (AUDIT) - 4.7, DVO-04, ROOM NO. 205,
   2ND FLOOR, VTK-2,
   KORAMANGALA, BANGALORE- 560 047

…RESPONDENTS

(BY SRI. K. HEMA KUMAR, AGA)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-1 TO RELEASE REFUND OF THE BALANCE AMOUNT OF PRE-DEPOSIT TO THE PETITIONER AMOUNTING TO RS. 16,11,19,226/- IN CASH OR OTHERWISE AND DIRECT THE R-1 TO RELEASE INTEREST ON THE REFUND OF RS. 6,90,51,900/- AND RS. 16,11,19,226/- FROM THE DATE OF DEPOSIT TILL THE DATE OF PAYMENT AND FOR SUCH FURTHER AND OTHER RELIEFS ETC.,

THIS PETITION IS BEING HEARD AND RESERVED ON 16.04.2025, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

CAV ORDER

In this petition, petitioner seeks for the following reliefs:

" (a) Issue a writ of mandamus, or a writ in the nature of mandamus, or any other appropriate writ, Order or directions, directing the Respondent No.1 to release refund of the balance amount of pre-deposit to the Petitioner amounting to Rs.16,11,19,226/- in cash or otherwise;

(b) Issue a Writ of mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or directions, directing the Respondent No.1 to release interest on the refund of Rs.6,90,51,900/- and Rs.16,11,19,226/- from the date of deposit till the date of payment; and for such further and other reliefs, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.

(c) Pass such other orders as may be deemed fit by this Hon'ble court, in the interest of justice."

2. The brief facts giving rise to the present petition are as under:-

The petitioner is a dealer registered with the Respondent Commercial Tax Department and is engaged, *interalia*, in the business of B2B trading across a wide gamut of products including Mobiles, Electronic items, Apparels, Footwear, etc., For the tax period 2011-12 to 2014-15, re-assessment orders were passed against the petitioner raising a total demand of Rs.23,01,70,324/- by way of Orders dated 29.07.2016, 11.09.2017, 11.09.2017 and 23.11.2017 respectively under the Karnataka Value Added Tax Act, 2003("KVAT Act") *interalia,* treating mobile phone charger as unscheduled commodity and taxing them separately at a higher rate. Against the said re-assessment orders, petitioner preferred appeals before Joint Commissioner of Commercial Taxes(Appeals), i.e., the First Appellate Authority and on 09.10.2017 and 10.10.2017, petitioner made a pre-deposit of 30% of the total demand through cash totaling to Rs.6,90,51,099/- in terms of Section 62 of the KVAT Act.

2.1 The aforesaid appeals filed by the petitioner were dismissed by the First Appellate Authority vide Order dated 25.03.2019, aggrieved by which, petitioner filed appeals before the Karnataka Appellate Tribunal, Bangalore (KAT), in which on 20.07.2019, petitioner also made payment of the balance 70% pre-deposit of the demand amounting to Rs.16,11,19,226/- using Input Tax Credit (ITC) available in its Electronic Credit Ledger (ECL). It is a matter of record and an undisputed fact that pursuant to payment of 70% of the demand by way of pre-deposit using ITC on 20.07.2019, no further disputes were raised by the respondent before the KAT and the liability discharged through ITC was therefore accepted by the respondents.

2.2 By orders dated 31.03.2022, the KAT allowed the appeals filed by the petitioner and the Sales Tax Revision Petitions filed by the Respondents-Department were dismissed by the Hon'ble Division Bench of this Court in STRP No.25/2023 dated 31.10.2023, STRP No.25/2023 dated 29.08.2023 and STRP No.13/2023 dated 29.08.2023 and accordingly, the decision of the KAT attained finality, as a result / consequence of which, petitioner became entitled for refund of the entire(100%) amount of pre-

deposit. However, the respondents only issued VAT/185 notices for refund of 30% of the pre-deposit amount totaling to Rs. 6,90,51,099/- which was paid through cash and continued to withhold 70% of the pre-deposit amount totaling to Rs.16,11,19,226/- which was paid using ITC.

2.3 The table representing breakup of the pre-deposit amount paid through cash and through ITC is as under*:*

Tax Period	*Pre-deposit paid on **09.10.2017 and 10.10.2017** through cash at the time of filing appeal before the First Appellate Authority*	*Pre-deposit paid through ITC on **20.07.2019** at the time of filing appeal before the First Appellate Authority*	*Amount refundable as per the judgment of KAT and this Hon'ble Court*
2011-12	*2,98,309*	*6,96,052*	*6,94,361*
2012-13	*25,06,938,*	*58,49,521*	*83,56,459*
2013-14	*52,18,659*	*1,21,76,871*	*1,73,95,530*
2014-15	*6,10,27,193*	*14,23,96,782*	*20,34,23,975*
Total	***6,90,51,099/-***	***16,11,19,226/-***	***23,01,70,324/-***

2.4 It is the grievance of the petitioner that while 30% of the pre-deposit paid by the petitioner through cash at the time of filing the appeal before the first appellate authority was refunded by the respondents back to the petitioner, the remaining balance of 70%

pre-deposit paid by the petitioner at the time of filing the appeal by utilizing the Input Tax Credit (ITC) available in its Electronic Credit Ledger (ECL) was not refunded back to the petitioner by the respondents. Pursuant to which, petitioner submitted representations dated 29.02.2024, 15.03.2024, 09.05.2024, 23.05.2024, 30.07.2024 and 09.12.2024 calling upon the respondents to refund/release/sanction the balance 70% of the pre-deposit amounting to Rs.16,11,19,226/- together with the applicable interest back to the petitioner in cash and since the said request was not complied with by the respondents, who did not refund as claimed by the petitioner in cash, petitioner is before this Court by way of the present petition.

3. Heard learned Senior counsel for the petitioner and learned AGA for the respondents – revenue and perused the material on record.

4. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior counsel for the petitioner submitted that the petitioner was entitled to refund of the entire amount (100%) deposited by it back in cash

including 70% by way of pre-deposit paid through utilization of ITC in terms of Section 142(7)(b) and 142(8)(b) of the KGST Act and the non-refunding of the said amount in cash back to the petitioner and withholding/retention of the same by the respondents is illegal and accordingly, the present petition deserves to be allowed and necessary directions be issued to the respondents to refund the aforesaid 70% pre-deposit amount of Rs.16,11,19,226/- together with interest, both in cash back to the petitioner at the earliest. In support of his submissions, learned Senior for the petitioner placed reliance upon the following statutory provisions and judgments:

(i) Relevant provisions of Central Goods and Service Tax Act, 2017;

(ii) Relevant provisions of Karnataka GST Act, 2017;

(iii) Relevant provisions of Karnataka Value Added Tax Act, 2003;

(iv) Union of India vs. Bundl Technologies (P) Ltd., - (2022) 136 taxmann.com 112 (Karnataka);

(v) Diwakar Enterprises Pvt. Ltd., vs. Commissioner, CGST – (2023) 5 Centax 256 (P & H);

(vi) Suretex Prophylactcs (India) P.Ltd., vs. Union of India –(2023) 8 Centax 19 (Kar);

(vii) Commissioner of Central Excise, Chennai vs. Calcutta Chemical Co., Ltd., - 2001 (133) ELT 278 (Mad);

(viii) Shiv Kumar Jain vs. Union of India – 2004 (168) ELT 158 (Cal);

(ix) Rane Brake Lining Ltd., vs.Commercial Tax Officer – 2024(8) TMI 1394 – Madras High Court;

(x) Larsen and Tourbo vs. Deputy Commissioner – 2024 (10) TMI 1604 – Madras High Court;

(xi) Thermax Ltd., vs. Union of India – 2019 (31) GSTK 60 (Guj);

(xii) Eicher Motors Ltd., vs. Union of India – 1999 (106) ELT 3 (SC);

(xiii) Sandvik Asia vs. CIT – (2006) 280 ITR 643;

(xiv) Union of India vs. Tata Chemicals Ltd., - (2014) 363 ITR 658;

(xv) Wig Brothers vs. Union of India – (2003) SCC OnLine All 773;

5. Per Contra, learned AGA would reiterate the various contentions urged in the statement of objections and submits that

as per the Circular dated 16.04.2018, arrears of interest and penalty only can be discharged through cash ledger and not 70% of VAT arrears which included interest and penalty which was discharged by way of pre-deposit by the petitioner through its ECL and petitioner would be entitled to recover the same through the credit ledger alone and not by way of cash refund. It was submitted that since the petitioner had voluntarily discharged balance 70% VAT liability by utilizing its ITC, refund in cash was not permissible since only arrears are recoverable by reversing ITC and the same does not apply to voluntary payment by the petitioner. It was also submitted that since the petitioner did not submit any details of ITC reversal nor file an application for re-credit of the ITC utilized by him for 70% pre-deposit, the petitioner was not entitled to seek refund in cash as claimed in the present petition, which is liable to be dismissed.

6. Before adverting to the rival submissions, it would be apposite to refer to the relevant provisions contained in Section 142 of the KGST Act, 2017, which reads as under;-

142. Miscellaneous transitional provisions.-

(1) xxxxxxxxxxxxxxxx

(2) xxxxxxxxxxxxxxxx

(3) Every claim for refund filed by any person before, on or after the appointed day for refund of any amount of input tax credit, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be ***refunded to him in cash*** *in accordance with the provisions of the said law:*

Provided that where any claim for refund of the amount of input tax credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(4) Every claim for refund filed after the appointed day for refund of any tax paid under the existing law in respect of the goods exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:

Provided that where any claim for refund of input tax credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(5) Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of

*services not provided shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him **shall be paid in cash**, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944. (1 of 1944.)*

*(6) (a) every proceeding of appeal, revision, review or reference relating to a claim for input tax credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of the existing law, and any amount of credit found to be admissible to the claimant **shall be refunded to him in cash** in accordance with the provisions of the existing law, and the amount rejected, if any, shall not be admissible as input tax credit under this Act:*

Provided that no refund shall be allowed of any amount of input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(b) every proceeding of appeal, revision, review or reference relating to recovery of input tax credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of the existing law, and if any amount of credit becomes recoverable as a result of such appeal, revision, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this

Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(7) (a) every proceeding of appeal, revision, review or reference relating to any output tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, revision, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(b) every proceeding of appeal, revision, review or reference relating to any output tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and any amount found to be admissible to the claimant ***shall be refunded to him in cash*** *in accordance with the provisions of the existing law and the amount rejected, if any, shall not be admissible as input tax credit under this Act.*

(8) (a) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(b) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same ***shall be refunded to him in cash*** *under the said law, and the amount rejected, if any, shall not be admissible as input tax credit under this Act.*

(9) (a) where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of input tax credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

(b) where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or input tax credit is found to be admissible to any taxable person, the same ***shall be refunded to him in cash*** *under the existing law, and the amount rejected, if any, shall not be admissible as input tax credit under this Act.*

7. Section 142 essentially outlines transitional provisions for handling goods and services tax during the switch from the earlier legislations to GST; it covers scenarios like the return of goods, price revisions in contracts and refund claims under existing laws;

refunds and recoveries of taxes, duties, and CENVAT credits are addressed, specifying conditions under which they are admissible or lapse; it also details tax liabilities for goods and services supplied post-transition and clarifies that no tax is payable on goods/services already taxed under previous laws; additionally, it provides guidelines for goods sent on approval and Tax Deductions at Source (TDS) . It must be noted that by virtue of Section 174, the rights and obligations of assesses incurred under the earlier legislations are kept intact and there is a need to have a mechanism to exercise those rights and obligations which are found in the transitional provisions.

8. A plain reading of the aforesaid Miscellaneous Transitional provisions contemplated in Section 142 of the KGST Act, will indicate that for the purpose of the present petition, the ***'existing law'*** referred to therein is the ***Karnataka Value Added Tax Act, 2003 (KVAT Act)*** and the '***appointed day' is 01.07.2017*** i.e., the day on which the KGST Act, 2017 came into force; so also, the ***'Act'*** referred to in these provisions mean the '***KGST Act'*** ; with this background, if the aforesaid provisions are analyzed, the following conclusions emerge:

- **Section 142(3)** contemplates that if any claim for refund is made by a person before/on/after 01.07.2017 seeking refund of CENVAT credit/duty/tax/any other amount paid under the KVAT Act, such claim shall be disposed as per KVAT Act and if any such amount is held to accrue to him, the same shall be refunded in 'CASH' subject to other conditions stipulated in the said provision; ***the expression 'refund in Cash' has been specifically provided in this provision;***
- **Section 142(4)** contemplates that a claim for refund filed after 01.07.2017 for refund of any duty/tax paid under the KVAT Act in respect of goods or services exported before/after 01.07.2017 shall be disposed of in accordance with KVAT Act, subject to the conditions mentioned in the said provision; ***interestingly there is a conscious omission of the words "refund in cash" in this provision***;
- **Section 142(5)** contemplates that a claim for refund for refund filed by a person after 01.07.2017 in relation to refund of tax paid under KVAT Act in respect of services not provided shall be disposed of in in accordance with KVAT Act; if such refund becomes payable the same is to be

refunded in 'CASH'; ***this provision contains a non-obstante clause which states that the said refund shall be paid in cash notwithstanding anything to the contrary contained in the KVAT Act; even in this provision there is express usage of the words 'cash'***;

- Both **Sections 142(6) and 142(7)** contemplate situations where proceedings of appeal/review/reference are initiated before/on/after 01.07.2017 under the KVAT Act relating to either recovery of amounts or refund of amounts, such proceedings shall be disposed of in accordance with KVAT Act;
- **Section 142(6)(a)** contemplates that such CENVAT Credit found to be admissible to the claimant shall be refunded to him in 'cash' as a result of the aforesaid appeal/review/reference proceedings; ***even in this provision there is a non-obstante clause and the express usage of the word 'cash';***
- **Section 142(6)(b)** pertains to recovery of CENVAT Credit by the Department-revenue as a result of aforesaid appeal/review/reference proceedings;

- **Section 142(7)(a)** stipulates recovery of output duty or tax liability by the department-revenue as a result of aforesaid appeal/review/reference proceedings;
- **Section 142(7)(b)** provides for refund admissible to the claimant as a result of aforesaid appeal/review/reference proceedings to be refunded back in 'CASH'; ***even this provision contains a non-obstante clause and the expression 'refunded to him in cash' is specifically found in this provision;***
- **Section 142(8)(a)** contemplates recovery pursuant to result of assessment/adjudication proceedings in relation to tax/interest/fine/penalty;
- **Section 142(8)(b)** contemplates that if any of the aforesaid amounts becomes refundable to the taxable person in pursuance assessment or adjudication proceedings, the said amount shall be refunded back in 'CASH'; ***even this provision not only contains a non-obstante clause but also uses the specific/categorical expression the same shall be 'refunded to him in cash';***

- **Section 142(9)(a)** stipulates that if a person files returns under the KVAT Act and after 01.07.2017, such returns are revised, any recoverable amount or inadmissible CENVAT credit shall be recovered in terms of the said provision;
- **Section 142(9)(b)** contemplates that pursuant to any such return being revised, any amount or CENVAT credit becomes admissible/payable, the said amount shall be refunded back in 'CASH'; ***even this provision not only contains a non-obstante clause but also uses the specific/categorical expression the same shall be 'refunded to him in cash;***
- The expressions/words ***'refund in CASH'*** have been consciously, specifically, expressly and unambiguously used in all the aforementioned provisions except in ***Section 142(5) in which there is a conscious omission of the words, 'refund in Cash';***

9. A harmonious and purposive construction / interpretation of the statutory scheme underlying the aforesaid provisions is sufficient to come to the sole / unmistakable conclusion that if a claim for refund is made in relation to any amounts payable in relation to proceedings under the KVAT Act including appeal /

review / reference / adjudication / assessment and such claim for refund is found to be admissible, the same shall be refunded back in cash; significantly, the aforesaid provisions do not make any distinction between payment made / recovered from the tax payer either in the form of cash or in the form of utilizing ITC balance in the ECL of the tax payer.

10. In this context, it is relevant to state that paragraph 4.1(b) of the Circular bearing No.GST-03/2018-19 dated 16.04.2018 recovery / payment / utilization of amounts towards arrears of VAT or wrongly availed ITC or of Entry tax and other tax leviable under the KVAT Act to be paid either through the Electronic Credit Ledger or Electronic Cash Ledger; it follows therefrom that it is permissible for recovery / payment of any amounts either by way of cash or by way of utilization of ITC from the Electronic Credit Ledger; in either case, i.e., if payment is made either through cash or through utilization of ITC from the ECL, if a claim is made for refund of any amount, either pursuant to result of appeal, review or reference as contemplated under Section 142(7)(b) or as a result of assessment or adjudication proceedings as contemplated under 142(8)(b), irrespective of whether the amount was paid by way of

cash or by utilizing ITC from the ECL, all refundable amounts found to be admissible / payable pursuant to such proceedings shall be refunded only by way of CASH as is clear from the said provisions.

11. In other words, in the light of the aforesaid Circular dated 16.04.2018 which permits a recovery / payment both by way of cash or through Electronic Credit Ledger, any refund relating to such deposit made either by cash or through ECL shall necessarily have to be refunded only by way of cash in terms of the aforesaid provisions; in the instant case, it is an undisputed fact borne out from the material on record and categorically admitted by the respondents that the petitioner became entitled to refund of the entire 100% deposited by it viz., 30% by cash and 70% through ITC/ECL by virtue of the sales tax revision petitions filed by the respondents – revenue being dismissed by this Court and having become conclusive and binding upon the respondents; as a consequence / result of the said proceedings culminating in favour of the petitioner, pursuant to which, refund became admissible / payable in favour of the petitioner, the respondents would clearly become liable to refund the entire pre-deposit amount including the 70% pre-deposit through ITC/ECL back to the petitioner by way of

cash only, in terms of Section 142(7)(b) and 142(8)(b) of the KGST Act and consequently, the petitioner is fully justified in seeking refund of the 70% pre-deposit paid by him through ITC/ECL to be refunded back to him in cash together with interest on the entire deposit for delayed refund and the present petition deserves to be allowed.

12. The respondents placed reliance upon the Circular dated 16.04.2018 in order to contend that since petitioner has voluntarily discharged balance 70% VAT liability through reversal of ITC through ECL and the Circular dated 16.04.2018 provides payment of arrears of interest and penalty can be made through cash ledger, the petitioner is not entitled to refund of amounts paid through ECL to be refunded back to the petitioner by cash; the said contention of the respondents cannot be accepted for more than one reason; the 70% pre-deposit made by the petitioner was not voluntary and the same was towards pre-deposit for the purpose of appeal; secondly, irrespective of the fact that clause 4.1 of the Circular dated 16.04.2018 relating to VAT / ITC / Entry Tax provides for payment through ECL or Cash Ledger and clause 4.2 provides for payment in relation to interest and penalty through cash ledger, in the light of

the specific provisions contained in Section 142(3), (5), 6(a), 7(b), 8(b) and 9(b), all of which specifically / categorically provide for refund by way of Cash, the petitioner would be entitled to refund in cash of the entire amount including 30% cash pre-deposit and 70% ITC utilization through ECL; to put it differently, the statutory scheme underlying the aforesaid provisions will clearly indicate that all types / kinds of refund found to be payable / admissible under any of the various situations / circumstances enumerated in Section 142(3) to 142(9) of the KGST Act would entail refund back in cash only and as such, the said contention urged by the respondents cannot be accepted.

13. The undisputed material on record indicates that while 30% pre-deposit was made by the petitioner in Cash on 09.10.2017 and 10.10.2017 before First Appellate Authority, the balance/remaining 70% pre-deposit was made by the petitioner on 20.07.2019 through ITC/ECL in the appeals before the KAT; it is significant to note that this 70% pre-deposit made by the petitioner through ITC/ECL was consciously / voluntarily accepted, received and collected by the respondents from the petitioner without any demur and without raising any objections to the effect that the said

70% pre-deposit cannot be accepted through ITC/ECL and that it ought to have been made by the petitioner only through cash; it is an undisputed fact that the said 70% pre-deposit through ITC/ECL having been accepted by the petitioner without raising any objections, the KAT proceeded to dispose off the appeals in favour of the petitioner and was confirmed by this Court as stated supra as a consequence/result of which petitioner became entitled to refund of the entire 100% pre-deposit including 70% pre-deposit made through ITC/ECL by way of refund back in CASH in terms of in terms of Section 142(7)(b) and 142(8)(b) of the KGST Act; it follows there from that having accepted the 70% pre-deposit through ITC/ECL, respondents are estopped and not entitled to place reliance upon the aforesaid Circular dated 16.04.2018 to contend that the same cannot be refunded back in Cash, particularly in the light of the provisions contained in Section 142(7)(b) and 142(8)(b) of the KGST Act, which clearly contemplate that all types / kinds of amounts refundable/admissible are to be refunded back in CASH without there being any distinction drawn / made between cash deposit or ITC/ECL deposit

and as such, the various contentions urged by the respondents cannot be accepted on this score also.

14. Though both sides did not advert to Rule 92-1A of the KGST Rules which was inserted vide Notification No.16/2020 w.e.f 23.03.2020, for the purpose of completeness, I deem it appropriate to refer to the said provision, which reads as under:

> ***Rule 92(1A):*** *Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue* ***FORM GST PMT-03*** *re-crediting the said amount as Input Tax Credit in electronic credit ledger.*

15. As stated supra, Rule 92(1A) was inserted w.e.f 23.03.2020 and seems to suggest that amounts debited from the

ECL and subsequently found to be admissible/refundable, the refund would have to re-credited back to the tax payer as ITC in his ECL; in this context, there is no gainsaying the fact that Rule 92(1A) is prospective in nature, application and operation and w.e.f 23.03.2020, when it came into force and is clearly not retrospective on account of the same being a delegated/subordinate legislation; consequently, Rule 92(1A) will have no application/not apply to deposits/payments made through ITC/ECL prior to 23.03.2020, when it was inserted for the first time; in the instant case, petitioner having undisputedly made 70% pre-deposit through ITC/ECL on 20.07.2019, much prior to Rule 92(1A) coming into force w.e.f 23.03.2020, the said Rule 92(1A) would not apply and be inapplicable to the said deposit made by the petitioner and as such, Rule 92(1A) cannot be relied upon or made the basis to come to the conclusion that the petitioner is not entitled to refund by CASH, especially in the light of the provisions contained in Section 142(7)(b) and 142(8)(b) of the KGST Act, which clearly contemplate that all types/kinds of amounts refundable/admissible are to be refunded back in CASH without there being any distinction drawn/made between cash deposit or ITC/ECL deposit

and the claim of the petitioner deserves to be upheld on this score also.

16. Insofar as the contention urged by the respondents that since the petitioner did not reclaim / refund of the 70% pre-deposit by filing an application in this regard, the petitioner is not entitled to cash refund is concerned, it is relevant to note that the petitioner had not applied for reclaiming / re-crediting of ITC utilised by him from his ECL towards 70% pre-deposit; on the other hand, petitioner specifically / consistently sought for refund by way of Cash in terms of Section 142(7)(b) and 142(8)(b), which is applicable to the claim of the petitioner who is accordingly, entitled to refund of the entire pre-deposit by way of cash as claimed by him and consequently, even this contention urged by the respondents cannot be accepted.

17. As stated supra, the refund by way of cash is to be made in terms of Section 142 of the KGST Act, which provides for transitional provisions. In the case of ***K.Paripoornan vs. State of Kerala - (1994) 5 SCC 593,*** the Apex Court held as under:-

71. *Section 30 of the amending Act bears the heading "Transitional provisions". Explaining the role of transitional provisions in a statute, Bennion has stated:*

> *"Where an Act contains substantive, amending or repealing enactments, it commonly also includes transitional provisions which regulate the coming into operation of those enactments and modify their effect during the period of transition. Where an Act fails to include such provisions expressly, the court is required to draw inferences as to the intended transitional arrangements as, in the light of the interpretative criteria, it considers Parliament to have intended."*
>
> *(Francis Bennion : Statutory Interpretation, 2nd Edn., p. 213)*

The learned author has further pointed out:

> *"Transitional provisions in an Act or other instrument are provisions which spell out precisely when and how the operative parts of the instrument are to take effect. It is important for the interpreter to realise, and bear constantly in mind, that what appears to be the plain meaning of a substantive enactment is often modified by transitional provisions located elsewhere in the Act." (p. 213)*

Similarly Thornton in his treatise on Legislative Drafting has stated [Thornton on Legislative Drafting, 3rd Edn., 1987, p. 319, quoted in Britnell v. Secretary of State for Social Security, (1991) 2 All ER 726, 730 Per Lord Keith] :

> *"The function of a transitional provision is to make special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force."*

For the purpose of ascertaining whether and, if so, to what extent the provisions of sub-section (1-A) introduced

> *in Section 23 by the amending Act are applicable to proceedings that were pending on the date of the commencement of the amending Act it is necessary to read Section 23(1-A) along with the transitional provisions contained in sub-section (1) of Section 30 of the amending Act."*

18. Viewed from this angle also, it is clear that the transitional provisions can modify the existing provisions to provide for matters which are felt important to the Legislature and consequently, the express provisions in the transitional provisions providing for refund in cash have to be given effect to and as such, the petitioner would be entitled to reclaim the remaining 70% pre-deposit also to be refunded back to him in Cash.

19. In ***Rane Brake Lining's case supra,*** the Madras High Court held that the amount which is liable to be refunded after adjudication and appropriation, should be refunded in cash in terms of Section 142(8)(b) of the CGST Act, as under:-

> *"7. Having considered the submissions made by the learned counsel for the Petitioner and the learned Additional Government Pleader (Pondicherry) for the Respondent, I am of the view that the challenge to the Impugned Order is unsustainable. However, the*

appropriation made in the Impugned Order is unsustainable. If the amounts are due and payable to the Petitioner after adjustment of the tax they have to be refunded back to the Petitioner.

8. There is no question of lapsing of the aforesaid amount so as to enable the Government to appropriate the amounts of refund that is/was due and payable to the Petitioner under the provisions of the PVAT Act, 2007 and CST Act, 1956.

9. Under these circumstances, Respondent is directed to refund a sum of Rs.5,89,030/- to the Petitioner. Since the amount is refundable, the Respondent is directed to refund the amount by crediting the amount in the Electronic Cash Register in terms of Section 142(8)(b) of the CGST Act."

20. In ***Larsen and Toubro's case supra,*** the Madras High Court held that the pre-deposit made using ITC ought to be refunded in cash to the assessee as under:-

"28. Revision orders passed by the first respondent on 18.02.2015 were challenged in W.P.Nos.8584, 8585 and 8586 of 2015. These Writ Petitions were disposed by this Court vide its Order dated 25.03.2015 to pass a fresh order. The Petitioner was however asked to deposit amounts by the Court in its Order dated 25.03.2015.

29. Amounts were also deposited by the petitioner pursuant to the directions of this Court dated 25.03.2015 in

W.P.Nos.8584, 8585 and 8586 of 2015. However, the deposit was made by the petitioner by debiting amounts from its Input Tax Credit availed under the Tamil Nadu Value Added Tax (TNVAT) Act, 2006.

31. Following the order of this Court in Tax Case (Revision) Nos.10 and Tax Case (Revision) No.11 of 2013 on 13.12.2018, three separate Revision Orders dated 14.09.2021 were also passed dropping the demand. In the Revision Orders passed on 14.09.2021, it was concluded that the petitioner was also entitled for refund of pre-deposit made for the respective Assessment Orders for a sum of Rs.29,15,629/-, Rs.35,69,351/- and Rs.1,17,781/-. These Revision Orders passed on 14.09.2021 also accompanied Form 'C' which is a Refund Order.

32. The amount of pre-deposit debited by the petitioner in the returns filed by the petitioner for the respective months for the Assessment Years 2015- 2016 from its input tax credit claimed under the Tamil Nadu Value Added Tax regime is now sought to be denied vide Impugned Intimations all dated 25.11.2021 invoking the Circular No.05/2015/MM3/15440/2013 dated 06.02.2015. The Court is of the view that refund of the aforesaid amounts cannot be denied, since the substantial questions of law now has been answered in favour of the petitioner in terms of the order passed in Tax Case (Revision) Nos.10 and 11 of 2013 dated 13.12.2018.

33. Further, having accepted the pre-deposit of input tax credit through a debit in the VAT Returns and having

considered the Revision Orders passed on 14.09.2021, it is not open for the Commercial Tax Department now to turn around and deny the refund stating that the petitioner had not complied with the Order dated 25.03.2015 passed by this Court in W.P.Nos.8584, 8585 and 8586 of 2015.

35. As per Section 142(6)(a) and (b) of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017, the amounts paid as pre-deposit has to be refunded back. Section 142(6)(a) and (b) of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017 read as under:-

> *"142. Miscellaneous Transitional Provisions:*
>
> *(6) (a) Every proceeding of appeal, revision, review or reference relating to a claim for input tax credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of the existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash in accordance with the provisions of the existing law, and the amount rejected, if any, shall not be admissible as input tax credit under this Act:*
>
> *Provided that no refund shall be allowed of any amount of input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act;*
>
> *(b) Every proceeding of appeal, revision, review or reference relating to recovery of input tax credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of the existing law, and if any amount of credit becomes recoverable as a result of such appeal, revision, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.""*

21. In ***Thermax Ltd.,'s case supra,*** the Gujarat High Court held that any amount accruing eventually to the petitioner should be paid in cash as under:-

> ***"10.*** *It is thus eminently clear from the aforesaid observations made in the impugned order that the duty, which was paid by the petitioner, which was otherwise not payable on the exported goods and therefore, rebate of such duty was not admissible in terms of Rule 18 of the Central Excise Rules. However, the duty, which was paid by the petitioner is held to be treated as voluntary deposit. As per Section 142(3) of the GST Act, every claim for the refund filed by any person before, on or after the appointed day i.e. 1-7-2017 for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, should be disposed of in accordance with the provisions of existing law and any amount eventually accruing to such person should be paid in cash. We are of the considered opinion that in view of this clear provision, the Respondent No. 2 ought to have directed the sanctioning Authority to refund the amount of the duty refundable to the petitioner in cash instead of credit in Cenvat Account.*
>
> ***11.*** *In case of Lanxess India Pvt. Ltd. (supra), the Commissioner (Appeals) has directed the sanctioning Authority to refund in cash. As per the GST transition provisions, the balance of credit lying un-utilized in account as on 30-6-2017 only gets carried forward. Hence, in the present case also, what was lying in Cenvat account of the*

petitioner before 10-7-2017 was to be carried forward in fresh account of Cenvat account after appointed day i.e. 1-7-2017.

12. *We are therefore, of the considered view that the Respondent No. 2 ought to have directed the sanctioning Authority to refund the duty of the amount in cash instead of credit in the Cenvat account.*

13. *For the foregoing reasons, the petition succeeds and is hereby allowed. The impugned order passed by the Respondent No. 2 in No. 24/2017-CX(WZ)/ASRA/Mumbai, dated 27-12-2017 is partly modified to the extent that instead of crediting the duty in the Cenvat account of the petitioner, the sanctioning Authority is directed to refund the amount in cash to the petitioner."*

22. Therefore, the refund of the balance amount of pre-deposit Rs.16,11,19,226/- should be done in cash as per the clear mandate of the provisions contained in Sections 142(7)(b) and 142(8)(b) of the KGST Act.

23. In ***Eicher Motors's case supra,*** the Apex Court held that facility of credit is as good as tax paid till tax is adjusted on future goods on the basis of the several commitments which would have been made by the assessees concerned as under:-

*"**5.** Rule 57-F(4-A) was introduced into the Rules pursuant to the Budget for 1995-96 providing for lapsing of credit lying unutilised on 16-3-1995 with a manufacturer of tractors falling under Heading No. 87.01 or motor vehicles falling under Headings Nos. 87.02 and 87.04 or chassis of such tractors or such motor vehicles under Heading No. 87.06. However, credit taken on inputs which were lying in the factory on 16-3-1995 either as parts or contained in finished products lying in stock on 16-3-1995 was allowed. Prior to the 1995-96 Budget, the Central excise/additional duty of customs paid on inputs was allowed as credit for payment of excise duty on the final products, in the manufacture of which such inputs were used. The condition required for the same was that the credit of duty paid on inputs could have been used for discharge of duty/liability only in respect of those final products in the manufacture of which such inputs were used. Thus it was claimed that there was a nexus between the inputs and the final products. In the 1995-96 Budget, the MODVAT Scheme was liberalised/simplified and the credit earned on any input was allowed to be utilised for payment of duty on any final product manufactured within the same factory irrespective of whether such inputs were used in its manufacture or not. The experience showed that credit accrued on inputs is less than the duty liable to be paid on the final products and thus the credit of duty earned on inputs gets fully utilised and some amount has to be paid by the manufacturer by way of cash. Prior to the 1995-96 Budget, the excise duty on inputs used in the manufacture*

of tractors and commercial vehicles varied from 15% to 25%, whereas the final products attracted excise duty of 10% or 15% only. The value addition was also not of such a magnitude that the excise duty required to be paid on final products could have exceeded the total input credit allowed. Since the excess credit could not have been utilised for payment of the excise duty on any other product, the unutilised credit was getting accumulated. The stand of the assessees is that they have utilised the facility of paying excise duty on the inputs and carried the credit towards excise duty payable on the finished products. For the purpose of utilisation of the credit, all vestitive (sic) facts or necessary incidents thereto have taken place prior to 16-3-1995 or utilisation of the finished products prior to 16-3-1995. Thus the assessees became entitled to take the credit of the input instantaneously once the input is received in the factory on the basis of the existing Scheme. Now by application of Rule 57-F(4-A), the credit attributable to inputs already used in the manufacture of the final products and the final products which have already been cleared from the factory alone is sought to be lapsed, that is, the amount that is sought to be lapsed relates to the inputs already used in the manufacture of the final products but the final products have already been cleared from the factory before 16-3-1995. Thus the right to the credit has become absolute at any rate when the input is used in the manufacture of the final product. The basic postulate that the Scheme is merely being altered and, therefore, does not have any retrospective or retroactive

effect, submitted on behalf of the State, does not appeal to us. As pointed out by us that when on the strength of the Rules available, certain acts have been done by the parties concerned, incidents following thereto must take place in accordance with the Scheme under which the duty had been paid on the manufactured products and if such a situation is sought to be altered, necessarily it follows that the right, which had accrued to a party such as the availability of a scheme, is affected and, in particular, it loses sight of the fact that the provision for facility of credit is as good as tax paid till tax is adjusted on future goods on the basis of the several commitments which would have been made by the assessees concerned. Therefore, the Scheme sought to be introduced cannot be made applicable to the goods which had already come into existence in respect of which the earlier Scheme was applied under which the assessees had availed of the credit facility for payment of taxes. It is on the basis of the earlier Scheme necessarily that the taxes have to be adjusted and payment made complete. Any manner or mode of application of the said Rule would result in affecting the rights of the assessees."

24. Insofar as interest payable to the petitioner on account of delayed refund is concerned, in ***Sandvik Asia's case supra,*** the Apex Court held that an assessee is entitled to compensation

by way of interest for the delay in payment of amounts lawfully due to the assessee as under:-

> ***"46.*** *The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30-4-1997. Interest on delayed payment of refund was not paid to the appellant on 27-3-1981 and 30-4-1986 due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assesses, the Department first adjusts the amount paid towards interest so that the principle amount of tax payable remains outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only up to the date of refund of tax while they take the benefit of assesses' funds by delaying the payment of interest on*

refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to lakhs and lakhs of assesses. Very large number of assesses are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assesses amounts of interest lawfully and admittedly due to them as has happened in the instant case. It is a case of the appellant as set out above in the instant case for Assessment Year 1978-79, it has been deprived of an amount of Rs 40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.

Compensation

47. *The word "compensation" has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edn., 2005, p. 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 a breach of contract or duty; remuneration or wages given to an employee or officer."

48. *There cannot be any doubt that the award of interest on the refunded amount is as per the statutory provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the court has to take all relevant factors into consideration while awarding the rate of interest on the compensation.*

49. *This is the fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case at the appropriate and relevant point of time and because of whose inaction the appellant was made to suffer both financially and mentally, even though the amount was liable to be refunded in the year 1986 and even prior thereto. A copy of this judgment will be forwarded to the Hon'ble Minister for Finance for his perusal and further appropriate action against the erring officials on whose lethargic and adamant attitude the Department has to suffer financially.*

50. *By allowing this appeal, the Income Tax Department would have to pay a huge sum of money by way of compensation at the rate specified in the Act, varying from 12% to 15% which would be on the high side. Though, we hold that the Department is solely responsible*

for the delayed payment, we feel that the interest of justice would be amply met if we order payment of simple interest @ 9% p.a. from the date it became payable till the date it is actually paid. Even though the appellant is entitled to interest prior to 31-3-1986, learned counsel for the appellant fairly restricted his claim towards interest from 31-3-1986 to 27-3-1998 on which date a sum of Rs 40,84,906 was refunded.

51. *The assessment years in question in the four appeals are Assessment Years 1977-78, 1978-79, 1981-82 and 1982-83. Already the matter was pending for more than two decades. We, therefore, direct the respondents herein to pay the interest on Rs 40,84,906 (rounded off to Rs 40,84,900) simple interest @ 9% p.a. from 31-3-1986 to 27-3-1998 within one month from today, failing which the Department shall pay the penal interest @ 15% p.a. for the abovesaid period."*

25. In ***Wig Brothers's case supra,*** the Apex Court held as under:-

"28. *It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all but is the normal accretion on capital. Had the petitioner paid the amount in question in July, 1991, when it was due, the respondents would have invested the same somewhere and earned interest thereon. Instead, the petitioner has kept the money with himself for about 12 years and has earned interest thereon. Hence for every Rs. 100 which the*

petitioner had to pay in July, 1991, he has in fact, earned an additional Rs. 300. This is because Rs. 100 becomes Rs. 200 after six years, and in another six years this Rs. 200 doubles and becomes Rs. 400. Thus, even though we have dismissed this writ petition today, the petitioner has really not only won the case (because of the interim order of this Court) he has really earned Rs. 300 for every Rs. 100 he had to pay. Thus, even though we are dismissing this petition the petitioner has got three time more amount than what he has to pay now. All this happened because of the interim order of this Court staying the demand."

26. In ***Tata Chemicals Ltd.,'s case supra,*** the Apex Court held that assessee is entitled to compensation by way of interest for the delay in payment of amounts lawfully due to the assessee. It was also held that refund due and payable to the assessee is debt owed and payable by the revenue and there being no excess amount/ tax collected by the revenue, it 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 and 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. The relevant portion of the said judgment reads as under:-

> ***"30.*** *The refund becomes due when tax deducted at source, advance tax paid, self-assessment tax paid and tax paid on regular assessment exceeds tax chargeable for the year as a result of an order passed in appeal or other proceedings under the Act. When refund is of any advance tax (including tax deducted/collected at source), interest is payable for the period starting from the first day of the assessment year to the date of grant of refund. No interest is, however, payable if the excess payment is less than 10 per cent of tax determined under Section 143(1) or on regular assessment. No interest is payable for the period for which the proceedings resulting in the refund are delayed for the reasons attributable to the assessee (wholly or partly). The rate of interest and entitlement to interest on excess tax are determined by the statutory provisions of the Act. Interest payment is a statutory obligation and non-discretionary in nature to the assessee. In tune with the aforesaid general principle, Section 244-A is drafted and enacted. The language employed in Section 244-A of the Act is clear and plain. It grants substantive right of interest and is not procedural. The principles for grant of interest are the same as under the provisions of Section 244 applicable to assessments before 1-4-1989,*

albeit with clarity of application as contained in Section 244-A.

31. *The Department has also issued circular clarifying the purpose and object of introducing Section 244-A of the Act to replace Sections 214, 243 and 244 of the Act. It is clarified therein, that, since there was some lacunae in the earlier provisions with regard to non-payment of interest by the Revenue to the assessee for the money remaining with the Government, the said section is introduced for payment of interest by the Department for delay in grant of refunds. A general right (sic duty) exists in the State to refund any tax collected for its purpose, and a corresponding right exists to refund to individuals any sum paid by them as taxes which are found to have been wrongfully exacted or are believed to be, for any reason, inequitable. The statutory obligation to refund carried with it the right to interest also. This is true in the case of the assessee under the Act.*

32. *The question before us is: whether the resident/deductor is also entitled to interest on refund of excess deduction or erroneous deduction of tax at source under Section 195 of the Act?*

33. *We would begin our discussion by referring to Circular No. 790 dated 20-4-2000, issued by the Board. Omitting what is not necessary, the material portion of the circular is extracted:*

*"****

6. Refund to the person making payment under Section 195 is being allowed as income does not accrue to the non-resident. The amount paid into the

> *government account in such cases, is no longer 'tax'. In view of this, no interest under Section 244-A is admissible on refunds to be granted in accordance with this circular or on the refunds already granted in accordance with Circular No. 769."*

34. *What the deductor/resident primarily contend is that, what has been deposited by him is a tax, may be for and on behalf of non-resident/foreign company and when the beneficial circular provides for refund of tax to the deductor under certain circumstances, the refund of tax should carry interest.*

35. *The circular issued by the Central Board of Direct Taxes ("the Board", for short) is binding on the Department. The binding nature of circulars is explained by this Court in UCO Bank v. CIT [(1999) 4 SCC 599 : (1999) 237 ITR 889] , wherein this Court has observed that the circulars issued by the Board in exercise of its powers under Section 119 of the Act would be binding on the Income Tax Authorities even if they deviate from the provisions of the Act, so long as they seek to mitigate the rigour of a particular section for the benefit of the assessee. Therefore, we cannot be taking exception to the reasoning and conclusion reached by the authorities under the Act. However, the Tribunal and the High Court, have granted interest on the amount of tax deposited by the resident/deductor from the date of payment on the ground, firstly, the refund of tax is directed by the first appellate authority in the appeal filed by the deductor/resident under Section 240 of the Act and secondly, the Revenue for having retained the sum by way of tax has to compensate the person who had deposited the tax.*

36. *Section 240 of the Act provides for refund of any amount that becomes due to an assessee as a result of an order in appeal or any other proceedings under the Act. The phrase "other proceedings under the Act" is of wide amplitude. This Court has observed that, the other proceedings under the Act would include orders passed under Section 154 (rectification proceedings), orders passed by the High Court or Supreme Court under Section 260 (in reference), or order passed by the Commissioner in revision applications under Section 263 or in an application under Section 273-A.*

37. *A "tax refund" is a refund of taxes when the tax liability is less than the tax paid. As per the old section an assessee was entitled for payment of interest on the amount of taxes refunded pursuant to an order passed under the Act, including the order passed in an appeal. In the present fact scenario, the deductor/assessee had paid taxes pursuant to a special order passed by the assessing officer/Income Tax Officer. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorisedly by the Department. When the collection is illegal, there is corresponding obligation on the Revenue to*

refund such amount with interest inasmuch as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244-A, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. There is no reason to restrict the same to an assessee only without extending the similar benefit to a resident/deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/foreign company.

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

party which ex ae quo et bono ought to be refunded, the right to interest follows, as a matter of course.

39. *In the present case, it is not in doubt that the payment of tax made by the resident/depositor is in excess and the department chooses to refund the excess payment of tax to the depositor. We have held that the interest requires to be paid on such refunds. The catechise is from what date interest is payable, since the present case does not fall either under clause (a) or (b) of Section 244-A of the Act. In the absence of an express provision as contained in clause (a), it cannot be said that the interest is payable from the 1st of April of the assessment year. Simultaneously, since the said payment is not made pursuant to a notice issued under Section 156 of the Act, Explanation to clause (b) has no application. In such cases, as the opening words of clause (b) specifically referred to as "in any other case", the interest is payable from the date of payment of tax. The sequel of our discussion is the resident/deductor is entitled not only to the refund of tax deposited under Section 195(2) of the Act, but has to be refunded with interest from the date of payment of such tax.*

27. The above judgment was also followed by the Apex Court in ***Poornima Advani vs. State (NCT of Delhi) – 2025 SCC OnLine SC 419.***

28. In ***Calcutta Chemical's case supra,*** the Madras High Court held as under:-

> ***"7.*** *On the other hand, learned Senior Counsel for the respondent-Company submits that there is no error in the order of the learned single Judge as they have paid the pre-deposit for entertaining the appeal and once the appeal is allowed and the demand was set aside, the deposit amount is bound to be repaid with interest, and the learned single Judge has rightly awarded interest and this Court should not interfere in the discretion so exercised.*
>
> ***8.*** *We have heard the learned Counsel for the parties and perused the materials on record. The order of the CEGAT was passed on 2-9-1999, whereas, the pre-deposit amount was repaid on 14-9-2000. The learned A.C.G.S.C. has not been able to show whether it is necessary for them to get audit clearance as the amount involved is, more than 5. lakhs rupees, as argued and when they moved for such clearance. He cannot take advantage of the reply dated 11-9-2000 on the pretext that there is no provision to pay interest in case of return of pre-deposit. The argument of learned Additional Central Government Standing Counsel that the learned single Judge wrongly relied upon the case laws cited is not acceptable. Further, in the above cases, interest was allowed. So, the Department cannot escape the liability to pay interest merely stating that the Court has not found fault on the Department as was done in the above cases. In the absence of any material that there is no delay on the part of the Department, it cannot be*

presumed that the delay is on account of the non-clearance from the Audit Department. That apart in the absence of any material to show that the amount could not be paid in time due to the mistake on account of non-clearance from Audit Department, the Department is liable to pay interest. If we consider the argument of the learned Additional Central Government Standing Counsel in another aspect also, one the Department is claiming interest from assessees for non-payment of deposit within due time and imposing 24% interest, the Department cannot take the plea that they are not liable to refund the pre-deposit amount with interest for want of no provision to that effect. Under the circumstances, the respondent-Company is entitled to receive interest on the payment of pre-deposit amount."

29. In ***Shiv Kumar Jain's case supra,*** the Calcutta High Court held as under:-

"5. *In my view, the time taken for refund of the money in terms of the CEGAT's order is unreasonable. CEGAT's order was passed on 21st June, 2001 so one could expect either the matter to be taken to higher up, and for this, under law ninety days time is given and on expiry of this time the department was expected to refund this money, since it is a Government Department. So, unlike the ordinary citizen another three months of grace time may be given for taking action. So, the department should have released this amount within the reasonable time of six*

months, namely by 31st December, 2001. Unfortunately this has not been done. So, I think after expiry of 31st December, 2001 the Government has no justification for withholding this money, and I hold this is an negligent inaction on the part of the Government. The Government cannot deprive the enjoyment of the property without due recourse to law and this withholding cannot be termed to be a lawful one nor an established procedure under the law. Therefore, this inaction is wholly unjustified and this has really caused the deprivation of the petitioner's enjoyment of the property namely the aforesaid amount. Therefore this is positively violative of the provision of Article 300A in Chapter IV under Part XII of the Constitution of India. When there is breach of constitutional right either by omission or by commission by the State such breach can be remedied under Article 226 of the Constitution of India. The petitioner could have earned interest during this period but because of the withholding this could not be done. I find in support of my observation from the judgment cited by Mr. Chowdhury as above. In that case a pre deposit amount was directed to be refunded with interest at the rate of 15% per annum. Of course at that point of time the rate of interest of Bank might be higher, but having regard to the present facts and circumstances of this case the rate of interest as allowable now admittedly by the Reserve Bank of India in case of its bond not exceeding 8% per annum, will be appropriate. Therefore, I direct the respondents to pay interest at the rate of 8% on the aforesaid amount of Rs. 10 lacs to be

calculated from January 2002 till 3rd April, 2003 when the payment of principal amount was effected. This payment of interest shall be made within a period of three months from the date of communication of this order. However, there will be no interest for this period."

30. In view of the aforesaid facts and circumstances and the provisions contained in Sections 142(7)(b) and 142(8)(b) of the KGST Act, I am of the considered opinion that the petitioner is entitled to the entire 70% pre-deposit made through ITC/ECL by way of refund in CASH from the respondents who are liable to repay/refund the entire 70% pre-deposit paid through ITC/ECL back to the petitioner together with interest due to delayed refund within a stipulated timeframe.

31. In the result, I pass the following:-

ORDER

(i) Petition is hereby allowed.

(ii) The respondents are directed to refund/release/repay the pre-deposit(70%) amounting to Rs.16,11,19,226/- back to the petitioner in ***CASH*** within a period of six weeks from the date of receipt of a copy of this order.

(iii) Respondents are also directed to pay applicable interest to the petitioner in ***CASH*** in accordance with law on the total deposit of Rs.23,01,70,324/-(30% cash deposit in Rs.6,90,51,900 + 70% ITC/ECL deposit in Rs.16,11,19,226) from the date of deposit till date of payment to the petitioner in ***CASH*** within a period of six weeks from the date of receipt of a copy of this order.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

Srl.