

**IN THE HIGH COURT OF ORISSA : CUTTACK.**

**W.P.(C) No. 13736 of 2017 & batch**

(An Application under Articles 226 and 227  
of the Constitution of India, 1950)

M/s.Shree Bharat Motors Ltd.  
and Another  
(W.P.(C) No. 13736 of 2017) ... Petitioners

**VERSUS**

The Sales Tax Officer,  
Bhubaneswar-I Circle, Bhubaneswar  
and Others ... Opposite parties

**Advocates appeared in the case:**

*For the Petitioners* : Mr. Surya Prasad Mishra,  
Senior Advocate  
with  
M/s. Bhabani Prasad Mohanty  
and  
Rudra Prasad Kar,  
Advocates

*For the Opposite Parties* : Mr. Rakesh Dwivedi,  
Senior Advocate  
with Ms. Kirti Renu Mishra,  
Advocate  
and Mr. Sunil Mishra,  
Additional Standing Counsel  
(Commercial Taxes Organisation)

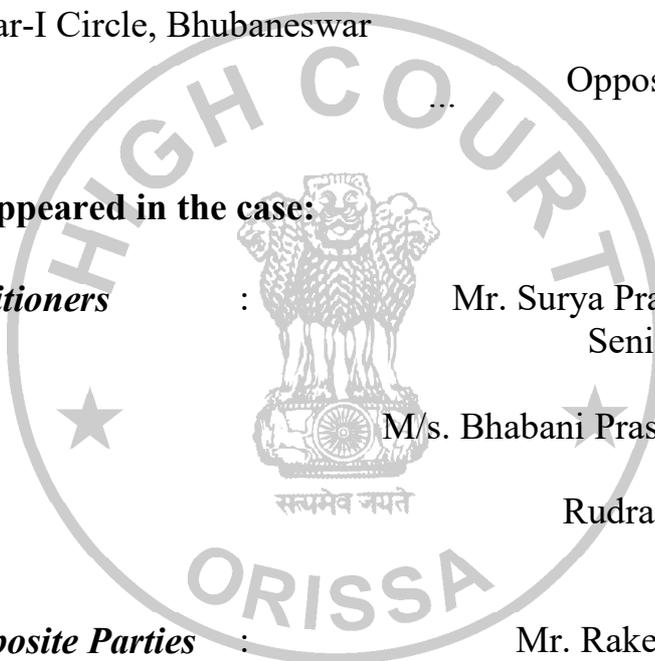
**WITH**

*M/s. Praxair India*  
(W.P.(C) No. 5030 of 2013) ... *Petitioner*  
Mr. Jnanesh Mohanty, Advocate

*-versus-*

*State & Others* ... *Opposite Parties*  
Mr. Sunil Mishra, Addl. Standing Counsel

**AFR**



**M/s. Nestle India Ltd**  
**(W.P.(C) No. 13573 of 2014)**

...

**Petitioner**

M/s. Sumit Lal, Advocate & associates

-versus-

**Commissioner of Sales Tax**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Essel Mining & Industries Ltd**  
**(W.P.(C) No. 11367 of 2017)**

...

**Petitioner**

Mr. R.P. Kar, Advocate

Mr. Bhabani P. Mohanty, Advocate

-versus-

**State of Odisha**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Koshala Enterprises Pvt. Ltd.**  
**(W.P.(C) No. 11908 of 2017)**

...

**Petitioner**

Mr. Sidhartha Ray, Sr. Advocate

Mr. K.K. Sahoo, Advocate

-versus-

**Commissioner of Commercial  
Taxes & Another**

...

**Opposite Parties**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Koshala Enterprises Pvt. Ltd.**  
**(W.P.(C) No. 11910 of 2017)**

...

**Petitioner**

Mr. Sidhartha Ray, Sr. Advocate

Mr. K.K. Sahoo, Advocate

-versus-

**Commissioner of Commercial  
Taxes & Another**

...

**Opposite Parties**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Koshala Enterprises Pvt. Ltd.**  
**(W.P.(C) No. 11911 of 2017)**

...

**Petitioner**

Mr. Sidhartha Ray, Sr. Advocate

Mr. K.K. Sahoo, Advocate

-versus-

**Commissioner of Commercial**

**Taxes & Another**

... **Opposite Parties**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Koshala Enterprises Pvt. Ltd.**  
**(W.P.(C) No. 11913 of 2017)**

... **Petitioner**  
Mr. Sidhartha Ray, Sr. Advocate  
Mr. K.K. Sahoo, Advocate

-versus-

**Commissioner of Commercial**  
**Taxes & Another**

... **Opposite Parties**

**M/s. Koshala Automobiles Pvt. Ltd.**  
**(W.P.(C) No. 12176 of 2017)**

... **Petitioner**  
Mr. Sidhartha Ray, Sr. Advocate  
Mr. K.K. Sahoo, Advocate

-versus-

**Commissioner of Commercial Taxes**

... **Opposite Party**

**M/s. Koshala Automobiles Pvt. Ltd.**  
**(W.P.(C) No. 12177 of 2017)**

... **Petitioner**  
Mr. Sidhartha Ray, Sr. Advocate  
Mr. K.K. Sahoo, Advocate

-versus-

**Commissioner of Commercial Taxes**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Koshala Automobiles Pvt. Ltd.**  
**(W.P.(C) No. 12437 of 2017)**

... **Petitioner**  
Mr. Sidhartha Ray, Sr. Advocate  
Mr. K.K. Sahoo, Advocate

-versus-

**Commissioner of Commercial**  
**Taxes & Another**

... **Opposite Parties**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Indera Motors**  
**(W.P.(C) No. 12626 of 2017)**

... **Petitioner**  
Mr. Sidhartha Ray, Sr. Advocate  
Mr. K.K. Sahoo, Advocate

*-versus-*

**Commissioner of Commercial  
Taxes & Another**

... **Opposite Parties**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Indera Motors  
(W.P.(C) No. 12628 of 2017)**

... **Petitioner**  
Mr. Sidhartha Ray, Sr. Advocate  
Mr. K.K. Sahoo, Advocate

*-versus-*

**Commissioner of Commercial  
Taxes & Another**

... **Opposite Parties**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Amarnath Enterprises  
(W.P.(C) No. 15601 of 2017)**

... **Petitioner**  
Mr. Mukesh Kumar Agarwal, Advocate

*-versus-*

**Commissioner of Commercial Taxes**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Kiran Sanitary and Machinery  
(W.P.(C) No. 15605 of 2017)**

... **Petitioner**  
Mr. Mukesh Kumar Agarwal, Advocate

*-versus-*

**Commissioner of Commercial Taxes**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Seetal Automobiles  
(W.P.(C) No. 17867 of 2017)**

... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P. Kar, Advocate

*-versus-*

**Sales Tax Officer, Bhubaneswar-II**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Utkal Polyweave Industries Pvt. Ltd.  
(W.P.(C) No. 19313 of 2017)**

... **Petitioner**  
Mr. Bijaya Panda, Advocate

*-versus-*

**Commissioner of Sales Tax, Balasore**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Bharat Motors**  
**(W.P.(C) No. 19541 of 2017)**

... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Bhubaneswar-I**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. JMG Automobiles**  
**(W.P.(C) No. 19723 of 2017)**

... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Cuttack-1 Circle**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Super Sales Automobiles Pvt. Ltd.**  
**(W.P.(C) No. 19725 of 2017)**

... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Cuttack-1 Circle**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. City Motors Pvt. Ltd.**  
**(W.P.(C) No. 19727 of 2017)**

... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Bhubaneswar-III**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Consortium Automobiles Pvt. Ltd.**  
**(W.P.(C) No. 19728 of 2017)**

... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Bhubaneswar-III Circle**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Super Sales Motors Pvt. Ltd.**  
**(W.P.(C) No. 19729 of 2017)**

... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate

Mr. R.P. Kar, Advocate

*-versus-*

**Sales Tax Officer, Bhubaneswar-III Circle ...**

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Utkal Automobiles Pvt. Ltd.  
(W.P.(C) No. 19737 of 2017**

...

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate

Mr. R.P. Kar, Advocate

*-versus-*

**Sales Tax Officer**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. R.K. Marbels  
(W.P.(C) No. 19738 of 2017)**

...

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate

Mr. R.P. Kar, Advocate

*-versus-*

**Sales Tax Officer**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Utkal Auto  
(W.P.(C) No. 19739 of 2017**

...

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate

Mr. R.P. Kar, Advocate

*-versus-*

**Sales Tax Officer**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Sunny Motors  
(W.P.(C) No. 19974 of 2017)**

...

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate

Mr. R.P. Kar, Advocate

*-versus-*

**Sales Tax Officer, Cuttack-1 Circle**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Orbit Motos Pvt.Ltd.  
(W.P.(C) No. 19975 of 2017)**

...

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate

Mr. R.P. Kar, Advocate

*-versus-*

**Sales Tax Officer, Rourkela-II Circle ...**

**Opposite Party**

WP(C) No.13736 of 2017 & etc., etc.

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Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Sky Automobiles**  
**(W.P.(C) No.20256 of 2017)**

... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Swati Marbels**  
**(W.P.(C) No. 20257 of 2017)**

... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Sonthalia Motors Pvt. Ltd.**  
**(W.P.(C) No. 20258 of 2017)**

... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Neelam Motors**  
**(W.P.(C) No. 20259 of 2017)**

... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Trupti Automotives**  
**(W.P.(C) No. 20260 of 2017)**

... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Freedom Automobiles Pvt. Ltd.**  
**(W.P.(C) No. 20261 of 2017)**

... **Petitioner**

WP(C) No.13736 of 2017 & etc., etc.

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Shuvlaxmi Motors**  
**(W.P.(C) No. 20457 of 2017)**

... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Sidhi Laxmi Motors**  
**(W.P.(C) No. 20459 of 2017)**

... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Laxmi Auto Combine**  
**(W.P.(C) No. 20461 of 2017)**

... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Laxmi Raj Motors Pvt. Ltd.**  
**(W.P.(C) No. 20463 of 2017)**

... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Jamuna Auto**  
**(W.P.(C) No. 20464 of 2017)**

... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**

WP(C) No.13736 of 2017 & etc., etc.

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Mr. Sunil Mishra, Addl. Standing Counsel

**M/s.Odyssey Motors Pvt. Ltd.**  
**(W.P.(C) No. 20465 of 2017)**

... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Jai Jawan Motors**  
**(W.P.(C) No. 20467 of 2017)**

... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Kamala Automobiles**  
**(W.P.(C) No. 20762 of 2017)**

... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Cuttack-1 Circle** ...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s.Durga Auto Centre**  
**(W.P.(C) No. 20763 of 2017)**

... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Cuttack-1 Circle** ...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s.Khimji Autorides Pvt. Ltd.**  
**(W.P.(C) No. 20764 of 2017)**

... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Bhubaneswar-II Circle** ...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s.Sri Hanuman Mosaic and Marbles**

**(W.P.(C) No. 20765 of 2017)**

... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

**-versus-**

**Sales Tax Officer, Bhubaneswar-III Circle...**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Rohan Autorides Pvt. Ltd.**

**(W.P.(C) No. 20766 of 2017)**

... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

**-versus-**

**Sales Tax Officer, Bhubaneswar-IV Circle ...**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Monoj Automobiles**

**(W.P.(C) No. 20938 of 2017)**

... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

**-versus-**

**Sales Tax Officer, Cuttack-1 Circle**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Gajra Gears Pvt. Ltd.**

**(W.P.(C) No. 20939 of 2017)**

... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

**-versus-**

**Sales Tax Officer, Cuttack-1 Circle**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Lexus Motors Ltd.**

**(W.P.(C) No. 20940 of 2017)**

... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

**-versus-**

**Sales Tax Officer, Cuttack-II Circle**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Kalinga Auto Syndicate**

**(W.P.(C) No. 20941 of 2017)**

... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Koraput Circle,  
Koraput**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Kalinga Automobiles  
(W.P.(C) No. 20942 of 2017)**

...

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Koraput Circle,  
Koraput**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Kalinga Auto Services  
(W.P.(C) No. 20943 of 2017)**

...

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Kalahandi Circle,  
Kalahandi**



**M/s. Rahul Auto Agency Pvt. Ltd.  
(W.P.(C) No. 20944 of 2017)**

...

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Cuttack-1 Circle**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Rahul Spares Pvt. Ltd.  
(W.P.(C) No. 20945 of 2017)**

...

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Cuttack-1 Circle**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. HCL Infosystems Ltd.  
(W.P.(C) No. 20946 of 2017)**

...

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Bhubaneswar-II Circle** ... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. S.S. Steeoy Pvt. Ltd.**  
**(W.P.(C) No. 21007 of 2017)** ... **Petitioner**

Mr. Santosh Kumar Mishra, Advocate

-versus-

**Commissioner of Commercial Taxes** ... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s.Field Motors Pvt. Ltd.**  
**(W.P.(C) No. 21015 of 2017)** ... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate

Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Cuttack-II Circle** ... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Maa Samaleswari Automobiles**  
**(W.P.(C) No. 21016 of 2017)** ... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate

Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Sambalpur-1** ... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s.Arundhati Motors Pvt. Ltd.**  
**(W.P.(C) No. 21017 of 2017)** ... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate

Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Bolangir Circle** ... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Aryan Ispat and Power Pvt. Ltd.**  
**(W.P.(C) No. 21018 of 2017)** ... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate

Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Sambalpur-II Circle** ... **Opposite Party**

**M/s. Ceramic Sales Corporation**  
**(W.P.(C) No. 21189 of 2017)** ... **Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

*-versus-*

**Sales Tax Officer**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Ceramic Galaxy**  
**(W.P.(C) No. 21190 of 2017)**

...

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

*-versus-*

**Sales Tax Officer**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Shree Marbles**  
**(W.P.(C) No. 21191 of 2017)**

...

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

*-versus-*

**Sales Tax Officer**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Swati Marbles Industries Pvt. Ltd.**  
**(W.P.(C) No. 21193 of 2017)**

...

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

*-versus-*

**Sales Tax Officer**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. G.M.B. Marble Pvt. Ltd.**  
**(W.P.(C) No. 21194 of 2017)**

...

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

*-versus-*

**Sales Tax Officer**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Shree Krishna Supply Agency**  
**(W.P.(C) No. 21195 of 2017)**

....

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Jagannath and Jagannath**  
**(W.P.(C) No. 21196 of 2017)**

... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Jayshree Plywoods**  
**(W.P.(C) No. 21198 of 2017)**

... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Ceramic World**  
**(W.P.(C) No. 21199 of 2017)**

... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Mahaeswari Marbles and Granites**  
**(W.P.(C) No. 21200 of 2017)**

... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Rawani Construction**  
**(W.P.(C) No. 21327 of 2017)**

... **Petitioner**  
Mr. Sidharth Padhy, Advocate

-versus-

**The Commissioner of  
Commercial Taxes**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**Sri Baji Behera  
(W.P.(C) No. 21328 of 2017)**

.... **Petitioner**  
Mr. Sidharth Padhy, Advocate

-versus-

**The Commissioner of Commercial  
Taxes**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Subash Motors  
(W.P.(C) No. 21360 of 2017)**

.... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Taz Automobiles  
(W.P.(C) No. 21362 of 2017)**

.... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Sri Ram Auto  
(W.P.(C) No. 21377 of 2017)**

.... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**The Sales Tax Officer,  
Ganjam-I**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. SDCV Auto Pvt. Ltd  
(W.P.(C) No. 21378 of 2017)**

.... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**The Sales Tax Officer,**

WP(C) No.13736 of 2017 & etc., etc.

**Bhubaneswar-I Circle**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Arundhati Automotive**  
**(W.P.(C) No. 21380 of 2017)**

.... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**The Sales Tax Officer,**  
**Kalahandi**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Mahaveer Auto**  
**(W.P.(C) No. 21529 of 2017)**

.... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer,**  
**Bhubaneswar-II**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Senapati Motors**  
**(W.P.(C) No. 21531 of 2017)**

.... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Jagatsinghpur Circle,**  
**Paradeep**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Soumik Automobiles**  
**(W.P.(C) No. 21532 of 2017)**

.... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**Sales Tax Officer, Jajpur Circle,**  
**Jajpur**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Dua Motors**  
**(W.P.(C) No. 21533 of 2017)**

.... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

*Sales Tax Officer, Rourkela-1* ..... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. Samal Mosaics and Marbles*  
*(W.P.(C) No. 21609 of 2017)* ..... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

*Sales Tax Officer,*  
*Bhubaneswar-II* ..... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. Mamata Marbles*  
*(W.P.(C) No. 21788 of 2017)* ..... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

*Sales Tax Officer* ..... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. Mahesh Automobiles*  
*(W.P.(C) No. 21789 of 2017)* ..... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

*Sales Tax Officer* ..... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. Hari Motors*  
*(W.P.(C) No. 21792 of 2017)* ..... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

*Sales Tax Officer* ..... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. Shree Balaji Engicons Pvt. Ltd.*  
*(W.P.(C) No. 21793 of 2017)* ..... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate



**Sales Tax Officer,  
Bhubaneswar-I Circle**

....  
Mr. Sunil Mishra, Addl. Standing Counsel

**Opposite Party**

**M/s. Das Motors  
(W.P.(C) No. 21979 of 2017)**

....  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

**Petitioner**

-versus-

**Sales Tax Officer, Bhadrak Circle**

....  
Mr. Sunil Mishra, Addl. Standing Counsel

**Opposite Party**

**M/s. Capital Marbles and Granites  
(W.P.(C) No. 22557 of 2017)**

....  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

**Petitioner**

-versus-

**Sales Tax Officer,  
Bhubaneswar-1 Circle**

....  
Mr. Sunil Mishra, Addl. Standing Counsel

**Opposite Party**

**M/s. Sarbati Minerals  
(W.P.(C) No. 22916 of 2017)**

....  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

**Petitioner**

-versus-

**Sales Tax Officer, Bhubaneswar-II**

....  
Mr. Sunil Mishra, Addl. Standing Counsel

**Opposite Party**

**M/s. Sonthalia Motors Pvt. Ltd.  
(W.P.(C) No. 22938 of 2017)**

....  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

**Petitioner**

-versus-

**Sales Tax Officer, Cuttack-1**

....  
Mr. Sunil Mishra, Addl. Standing Counsel

**Opposite Party**

**M/s. Utkal Automobiles Pvt. Ltd.  
(W.P.(C) No. 22939 of 2017)**

....  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

**Petitioner**

-versus-

**Sales Tax Officer, Bhubaneswar III** .... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Utkal Auto Service**  
**(W.P.(C) No. 23085 of 2017)** .... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**The Sales Tax Officer, Jharsuguda** .... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Ujjawal Govind**  
**(W.P.(C) No. 23086 of 2017)** .... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**The Sales Tax Officer, Sambalpur-I** .... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Gugnani Motors**  
**(W.P.(C) No. 23087 of 2017)** .... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**The Sales Tax Officer, Bhubaneswar-I** .... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Koshla Automobiles Pvt. Ltd.**  
**(W.P.(C) No. 23368 of 2017)** .... **Petitioner**  
Mr. Sidhartha Ray, Sr. Advocate with  
Mr. K.K. Sahoo, Advocate

-versus-

**Commissioner of Commercial Taxes**  
**Cuttack-I** .... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. IRC Natural Resources Pvt. Ltd.**  
**(W.P.(C) No. 23377 of 2017)** .... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**The Sales Tax Officer,**

WP(C) No.13736 of 2017 & etc., etc.

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**Sambalpur-I Circle**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Sainik Mining and Allied Services Ltd.**

**(W.P.(C) No. 23378 of 2017)**

.... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**The Sales Tax Officer, Jharsuguda Circle**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Navdurga Wheels Pvt. Ltd.**

**(W.P.(C) No. 23518 of 2017)**

.... **Petitioner**  
Mr.Rajib Rath, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Paraass Centre Auto Pvt. Ltd.**

**(W.P.(C) No. 23519 of 2017)**

.... **Petitioner**  
Mr.Rajib Rath, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Mahanadi Investments and Properties Pvt. Ltd.**

**(W.P.(C) No. 23761 of 2017)**

.... **Petitioner**  
Mr. Satyajit Mohanty, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Sri Shyam Motors**

**(W.P.(C) No. 23763 of 2017)**

.... **Petitioner**  
Mr.Rajib Rath, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Shivam Automobiiles**  
**(W.P.(C) No. 23787 of 2017)**

.... **Petitioner**  
Mr. Jagabandhu Sahoo, Sr. Advocate with  
Ms. Kajal Sahoo, Advocate

-versus-

**Dy. Commissioner of Sales Tax**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Jas Motors**  
**(W.P.(C) No. 23843 of 2017)**

.... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**Sales Tax Officer, Sambalpur-I**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Hindalco Industries Ltd.**  
**(W.P.(C) No. 23917 of 2017)**

.... **Petitioner**  
Mr. Satyajit Mohanty, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Gajra Differential Gears Ltd.**  
**(W.P.(C) No. 24195 of 2017)**

.... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer, Cuttack-I**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Ind-Barath Energy Utkal Ltd.**  
**(W.P.(C) No. 24196 of 2017)**

.... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,**  
**Jharsuguda Circle**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Pritam Enterprises**  
**(W.P.(C) No. 24197 of 2017)**

.... **Petitioner**

WP(C) No.13736 of 2017 & etc., etc.

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Keonjhar Circle**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Ananta Automobiles  
(W.P.(C) No. 24427 of 2017)**

.... **Petitioner**  
Mr. Sujan Kumar Roy, Advocate  
K.R. Choudhury, Advocate

-versus-

**The Sales Tax Officer,  
Bhubaneswar-I**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Siddhi Vinayak Marbles  
(W.P.(C) No. 24500 of 2017)**

.... **Petitioner**  
Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**Sales Tax Officer**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Grand Auto Udyog Pvt. Ltd.  
(W.P.(C) No. 24853 of 2017)**

.... **Petitioner**  
Mr. Rajib Rath, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Aakash Motors  
(W.P.(C) No. 25083 of 2017)**

.... **Petitioner**  
Mr. Rajib Rath, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. A.C.C. Ltd.  
(W.P.(C) No. 25219 of 2017)**

.... **Petitioner**  
Mr. Jagabandhu Sahoo, Sr. Advocate with  
Ms. Kajal Sahoo, Advocate

-versus-

**State of Odisha**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Indian Farmers Fertilizers Co-operative Ltd.**

**(W.P.(C) No. 25443 of 2017)**

....

**Petitioner**

Mr. Prakash Kumar Jena, Advocate

-versus-

**Deputy Commissioner of  
Sales Tax**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Shubhamm Automobiles**

**(W.P.(C) No. 26022 of 2017)**

....

**Petitioner**

Mr. Rajib Rath, Advocate

-versus-

**State of Odisha**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Jyote Motors Pvt. Ltd.**

**(W.P.(C) No. 26465 of 2017)**

....

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate

Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Balasore**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Jyote Motors**

**(W.P.(C) No. 26503 of 2017)**

....

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate

Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Bhubaneswar-I**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Venus Autoworks Pvt. Ltd**

**(W.P.(C) No. 26504 of 2017)**

....

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate

Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Bhubaneswar-IV Circle**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. SGBL Automobiles Pvt. Ltd.**  
**(W.P.(C) No. 26505 of 2017)**

....

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P.Kar, Advocate

*-versus-*

**The Sales Tax Officer,**  
**Cuttack-I**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s.Hindustan Sales Pvt. Ltd.**  
**(W.P.(C) No. 27250 of 2017)**

....

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P.Kar, Advocate

*-versus-*

**Joint Commissioner of Sales Tax**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s.Legend Cars Pvt. Ltd.**  
**(W.P.(C) No. 27252 of 2017)**

....

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P.Kar, Advocate

*-versus-*

**Sales Tax Officer,**  
**Koraput Circle**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Shyam Metals and Energy Ltd.**  
**(W.P.(C) No. 27253 of 2017)**

....

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P.Kar, Advocate

*-versus-*

**Dy. Commissioner of Sales Tax**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. PGL Ramji Motors Pvt. Ltd.**  
**(W.P.(C) No. 137 of 2018)**

....

**Petitioner**

Mr. Bhabani P.Mohanty, Advocate  
Mr. R.P.Kar, Advocate

*-versus-*

**The Sales Tax Officer,**  
**Bhubaneswar-I**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Ganesh Sawmill and Ganesh Traders**  
**(W.P.(C) No. 150 of 2018)**

.... **Petitioner**

Mr. Jagabandhu Sahoo, Sr. Advocate  
with Ms. Kajal Sahoo, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Anchor Electricals Pvt. Ltd.**  
**(W.P.(C) No. 167 of 2018)**

.... **Petitioner**

Mr. T.K. Satapathy, Advocate

-versus-

**The Commissioner of Sales Tax**

.... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Rajlaxmi Motors**  
**(W.P.(C) No. 255 of 2018)**

.... **Petitioner**

Mr. Rajib Rath, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Arya Motors**  
**(W.P.(C) No. 406 of 2018)**

.... **Petitioner**

Mr. R.P. Kar, Advocate

Mr. B.P. Mohanty, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Narayani Motors Pvt. Ltd.**  
**(W.P.(C) No. 421 of 2018)**

.... **Petitioner**

Mr. Rajib Rath, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Lohiya Motors Pvt. Ltd.**  
**(W.P.(C) No. 919 of 2018)**

.... **Petitioner**

Mr. Sanjeev Udgata, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Emami Paper Mills Ltd.**  
**(W.P.(C) No. 1061 of 2018)**

.... **Petitioner**  
Mr. Mukesh Agarwal, Advocate

-versus-

**Joint Commissioner of Sales Tax**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. OM Automobiles**  
**(W.P.(C) No. 1341 of 2018)**

.... **Petitioner**  
Mr. Pranaya Kishore Harichandan, Advocate

-versus-

**The Deputy Commissioner  
of Sales Tax**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. OM Automobiles**  
**(W.P.(C) No. 1342 of 2018)**

.... **Petitioner**  
Mr. Pranaya Kishore Harichandan, Advocate

-versus-

**The Deputy Commissioner  
of Sales Tax**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. OM Automobiles**  
**(W.P.(C) No. 1343 of 2018)**

.... **Petitioner**  
Mr. Pranaya Kishore Harichandan, Advocate

-versus-

**The Deputy Commissioner  
Of Sales Tax**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Santosh Motors**  
**(W.P.(C) No. 1344 of 2018)**

.... **Petitioner**  
Mr. Pranaya Kishore Harichandan, Advocate

-versus-

**The Deputy Commissioner  
of Sales Tax, Ganjam-I**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Santosh Motors**  
**(W.P.(C) No. 1345 of 2018)**

.... **Petitioner**  
Mr. Pranaya Kishore Harichandan, Advocate  
-versus-

**The Deputy Commissioner**  
**of Sales Tax, Ganjam-I**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Indian Farmers Fertilizers Cooperative Ltd.**  
**(W.P.(C) No. 1545 of 2018)**

.... **Petitioner**  
Mr. Pranaya Kishore Harichandan, Advocate  
-versus-

**Deputy Commissioner**  
**of Sales Tax, Jagatsinghpur**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Lakshmi Motors, Alakapuri Market**  
**Complex, Berhampur**  
**(W.P.(C) No. 1548 of 2018)**

.... **Petitioner**  
Mr. Pranaya Kishore Harichandan, Advocate  
-versus-

**The Deputy Commissioner**  
**of Sales Tax, Ganjam-1**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Lakshmi Motors, Alakapuri Market**  
**Complex, Berhampur**  
**(W.P.(C) No. 1550 of 2018)**

.... **Petitioner**  
Mr. Pranaya Kishore Harichandan, Advocate  
-versus-

**The Deputy Commissioner**  
**of Sales Tax, Ganjam-II**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Lakshmi Motors, Alakapuri Market**  
**Complex, Berhampur**  
**(W.P.(C) No. 1551 of 2018)**

.... **Petitioner**  
Mr. Pranaya Kishore Harichandan, Advocate  
-versus-

**The Deputy Commissioner**  
**of Sales Tax, Ganjam-1**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. OCL India Ltd.**  
**(W.P.(C) No. 1775 of 2018)**

... **Petitioner**  
Mr. S.P. Misra, Sr. Advocate  
Mr. Sarada P.Sarangi, Advocate

-versus-

**State of Odisha**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Hindalco Industries Ltd.**  
**(W.P.(C) No. 1868 of 2018)**

... **Petitioner**  
Mr. Satyajit Mohanty, Advocate

-versus-

**State of Odisha**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Rungta Mines Ltd.**  
**(W.P.(C) No. 2106 of 2018)**

... **Petitioner**  
Ms. Kajal Sahoo, Advocate

-versus-

**State of Odisha**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Aryan Ispat and Power Pvt. Ltd.**  
**(W.P.(C) No. 2507 of 2018)**

... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**State of Odisha**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Khandelwal Steel and Pipes**  
**(W.P.(C) No. 2519 of 2018)**

... **Petitioner**  
Mr. Radheshyam Chimanka, Advocate

-versus-

**The Deputy Commissioner of Sales Tax,**  
**BBSR-I Circle**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Harsheel Auto Plant**  
**(W.P.(C) No. 2555 of 2018)**

... **Petitioner**  
Mr. S.K. Mishra, Advocate

-versus-

**Commissioner of Sales Taxes**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. OCL India Limited**  
**(W.P.(C) No. 2629 of 2018)**

.... **Petitioner**  
Mr. S.P.Misra, Sr. Advocate  
Mr. Sarada P.Sarangi, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. OCL India Limited**  
**(W.P.(C) No. 2672 of 2018)**

.... **Petitioner**  
Mr. S.P.Misra, Sr. Advocate  
Mr. Sarada P.Sarangi, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Bharat Sanchar Nigam Ltd.**  
**(W.P.(C) No.2869 of 2018)**

.... **Petitioner**  
Mr. Pranaya Kishore Harichandan, Advocate

-versus-

**The Sales Tax Officer, Bhubaneswar-II Circle** ...

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Rungta Mines Limited**  
**(W.P.(C) No. 2939 of 2018)**

.... **Petitioner**  
Mr. Jagabandhu Sahoo, Sr. Advocate  
with Ms. Kajal Sahoo, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Fee Grade and Co. Ltd.**  
**(W.P.(C) No. 2941 of 2018)**

.... **Petitioner**  
Mr. Jagabandhu Sahoo, Sr. Advocate with  
Ms. Kajal Sahoo, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Mangilal Rungta**  
**(W.P.(C) No. 2942 of 2018)**

.... **Petitioner**  
Mr. Jagabandhu Sahoo, Sr. Advocate with

Ms. Kajal Sahoo, Advocate

*State of Odisha* ..... **Opposite Party**  
 Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. Bonai Industrial Co. Ltd.*  
*(W.P.(C) No. 2943 of 2018)* ..... **Petitioner**  
 Mr. Jagabandhu Sahoo, Sr. Advocate with  
 Ms. Kajal Sahoo, Advocate

*State of Odisha* ..... **Opposite Party**  
 Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. Rungta Sons Pvt. Ltd.*  
*(W.P.(C) No. 2944 of 2018)* ..... **Petitioner**  
 Mr. Jagabandhu Sahoo, Sr. Advocate with  
 Ms. Kajal Sahoo, Advocate

*State of Odisha* ..... **Opposite Party**  
 Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. Sunny Motors*  
*(W.P.(C) No. 3200 of 2018)* ..... **Petitioner**  
 Mr. Bhabani P. Mohanty, Advocate  
 Mr. R.P. Kar, Advocate

*The Sales Tax Officer, Cuttack-1* ..... **Opposite Party**  
 Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. B.K. Enterprises*  
*(W.P.(C) No. 3316 of 2018)* ..... **Petitioner**  
 Mr. Bhabani P. Mohanty, Advocate  
 Mr. R.P. Kar, Advocate

*Sales Tax Officer, Sambalpur 1 and Others* ..... **Opposite Parties**  
 Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. Paradeep Phosphates Ltd.*  
*(W.P.(C) No.3529 of 2018)* ..... **Petitioner**  
 Mr. Jagabandhu Sahoo, Sr. Advocate with  
 Ms. Kajal Sahoo, Advocate

*State of Odisha* ..... **Opposite Party**  
 Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. R.K. Stone Crusher*  
*(W.P.(C) No. 3611 of 2018)* ..... **Petitioner**  
*WP(C) No.13736 of 2017 & etc., etc.*

Mr. Sidharth Sankar Padhy, Advocate

-versus-

**The Commissioner of Commercial  
Taxes**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Patel Motors  
(W.P.(C) No. 4362 of 2018)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**The Sales Tax Officer, Koraput Circle  
Jeypore**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Nageswar Automobiles  
(W.P.(C) No. 5151 of 2018)**

....

**Petitioner**

Mr. Prakash Kumar Jena, Advocate

-versus-

**Sales Tax Officer, Cuttack**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. OM Navadurga Motors Pvt. Ltd.  
(W.P.(C) No. 5738 of 2018)**

....

**Petitioner**

Mr. Rajib Rath, Advocate

-versus-

**State of Odisha**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Samal Mosaic and Marbles  
(W.P.(C) No. 6955 of 2018)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**The Sales Tax Officer,  
Bhubaneswar**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Utkal Auto  
(W.P.(C) No. 7061 of 2018)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P. Kar, Advocate

*The Sales Tax Officer* ..... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. Deep Jyoti Motors*  
*(W.P.(C) No. 9215 of 2018)* ..... **Petitioner**  
Mr. Rajib Rath, Advocate

*The State of Odisha* ..... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. Rohan Autoriders Pvt. Ltd.*  
*(W.P.(C) No. 14498 of 2018)* ..... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P. Kar, Advocate

*The Sales Tax Officer,*  
*Bhubaneswar IV circle* ..... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. Rohan Autoriders Pvt. Ltd.*  
*(W.P.(C) No. 14499 of 2018)* ..... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P. Kar, Advocate

*The Sales Tax Officer,*  
*Bhubaneswar IV circle* ..... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. Venus Automotives*  
*(W.P.(C) No. 14500 of 2018)* ..... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P. Kar, Advocate

*The Sales Tax Officer,*  
*Bhubaneswar IV circle* ..... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

*M/s. Pramila Enterprises*  
*(W.P.(C) No. 14681 of 2018)* ..... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P. Kar, Advocate

*WP(C) No.13736 of 2017 & etc., etc.*

-versus-

**The Sales Tax Officer,  
Bhubaneswar IV circle**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Orient Construction Pvt. Ltd.  
(W.P.(C) No. 14700 of 2018)**

.... **Petitioner**  
Mr. P.R. Mishra, Advocate

-versus-

**Commissioner of Commercial Taxes  
and Goods Service**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Praxair India Pvt. Ltd.  
(W.P.(C) No. 14449 of 2018)**

.... **Petitioner**  
Mr. Pami Rath, Advocate  
Mr. J. Mohanty, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Praxair India Pvt. Ltd.  
(W.P.(C) No. 14452 of 2018)**

.... **Petitioner**  
Mr. Pami Rath, Advocate  
Mr. J. Mohanty, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**State of Odisha  
(STREV No. 11 of 2019)**

.... **Petitioner**  
Mr. Sunil Mishra, Addl. Standing Counsel  
-versus-

**M/s. Dalmia Cement (Bharat) Ltd.**

.... **Opposite Party**

**M/s. Tex Marketing Agency  
(STREV No. 117 of 2019)**

.... **Petitioner**  
Mr. Sanjeev Udgata, Advocate

-versus-

**State of Odisha**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Jindal Stainless**

**(W.P.(C) No. 6281 of 2020)**

....

**Petitioner**

Mr. Bibekananda Mohanti, Sr. Advocate with  
Mr. Adhiraj Mohanty, Advocate

*-versus-*

**Commissioner of Sales Tax, Odisha**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Super Sales Motors Pvt. Ltd.**

**(W.P.(C) No. 13080 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P. Kar, Advocate

*-versus-*

**The Sales Tax Officer,  
Bhubaneswar-III**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Utkal Auto**

**(W.P.(C) No. 13088 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P. Kar, Advocate

*-versus-*

**The Sales Tax Officer**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. City Motors Pvt. Ltd.**

**(W.P.(C) No. 13089 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P. Kar, Advocate

*-versus-*

**The Sales Tax Officer**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Birla Tyres**

**(W.P.(C) No. 13275 of 2020)**

....

**Petitioner**

Mr. Sidhartha Ray, Sr. Advocate  
Mr. K.K. Sahoo, Advocate

*-versus-*

**Commissioner of Sales Tax CT & GST**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Arundhati Motors Pvt. Ltd.**

**(W.P.(C) No. 13283 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P. Kar, Advocate

-versus-

**The Sales Tax Officer,  
Bolangir Circle**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Swati Marbles  
(W.P.(C) No. 13286 of 2020)**

.... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**Sales Tax Officer, Cuttack-I  
Central Circle**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Arundhati Automotive  
(W.P.(C) No. 13298 of 2020)**

.... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**Sales Tax Officer, Kalahandi Circle**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Kalinga Auto Services  
(W.P.(C) No. 13502 of 2020)**

.... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Kalahandi Circle**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Sky Automobiles  
(W.P.(C) No. 13504 of 2020)**

.... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Cuttack II**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Vinayak Automobiles  
(W.P.(C) No. 13509 of 2020)**

.... **Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Bhubaneswar I**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Shree Vinayak Motors  
(W.P.(C) No. 13513 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Bhubaneswar IV Circle**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Hari Motors Pvt. Ltd.  
(W.P.(C) No. 13642 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Balasore Circle**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Khimji Autorides Pvt. Ltd.  
(W.P.(C) No. 13643 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Bhubaneswar II Circle**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Sunny Motors  
(W.P.(C) No. 13644 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Cuttack I Circle**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Utkal Automobiles Pvt. Ltd.**  
**(W.P.(C) No. 13645 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

*-versus-*

**The Sales Tax Officer,**  
**Bhubaneswar III Circle**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Kalinga Auto Syndicate**  
**(W.P.(C) No. 14352 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

*-versus-*

**The Sales Tax Officer,**  
**Koraput**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Seetal Automobiles**  
**(W.P.(C) No. 14356 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

*-versus-*

**The Sales Tax Officer,**  
**Bhubaneswar**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Kalinga Automobiles**  
**(W.P.(C) No. 14357 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

*-versus-*

**The Sales Tax Officer,**  
**Koraput**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Lexus Motors**  
**(W.P.(C) No. 14704 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

*-versus-*

**The Sales Tax Officer**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Sonthalia Motors Pvt. Ltd.**  
**(W.P.(C) No. 14707 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer, Cuttack**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Sri Hanuman Mosaic and Marbles**  
**(W.P.(C) No. 16788 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,**  
**Bhubaneswar III Circles**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. JMG Automobiles**  
**(W.P.(C) No. 16792 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer, Cuttack-I Circle**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Samal Mosaic and Marbles**  
**(W.P.(C) No. 16881 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,**  
**Bhubaneswar-2 Circle**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Laxmi Raj Motors Pvt. Ltd.**  
**(W.P.(C) No. 17108 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,**  
**Angul**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Shuvalaxmi Motors**  
**(W.P.(C) No. 17109 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

*-versus-*

**The Sales Tax Officer,**  
**Angul**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Freedom Automobiles Pvt. Ltd.**  
**(W.P.(C) No. 17110 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

*-versus-*

**The Sales Tax Officer,**  
**Bhubaneswar**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Laxmi Auto Combine**  
**(W.P.(C) No. 17225 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

*-versus-*

**The Sales Tax Officer,**  
**Angul**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Trupti Enterprises Pvt. Ltd.**  
**(W.P.(C) No.20826 of 2020)**

....

**Petitioner**

Mr. S.K. Mishra, Advocate

*-versus-*

**Commissioner of Commercial Taxes**  
**and Goods and Service Tax**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Ananta Automobiles Pvt. Ltd.**  
**(W.P.(C) No. 23786 of 2020)**

....

**Petitioner**

Ms. Kananbala Roy Choudhury, Advocate  
Mr. S.K. Roy Choudhury, Advocate

*-versus-*

**The Sales Tax Officer,  
Bhubaneswar**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. UJJWAL Govind Auto  
(W.P.(C) No. 25990 of 2020)**

.... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Sambalpur**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. HCL Infosystems Limited  
(W.P.(C) No. 25994 of 2020)**

.... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Bhubaneswar**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Patel Motors  
(W.P.(C) No.25996 of 2020)**

.... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Koraput Circle, Jeypore**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Trupti Automotives  
(W.P.(C) No. 25997 of 2020)**

.... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Kamala Automobiles  
(W.P.(C) No.26095 of 2020)**

.... **Petitioner**  
Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Cuttack-I**

.... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

WP(C) No.13736 of 2017 & etc., etc.

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**M/s. Gugnani Motors, Bhubaneswar**  
**(W.P.(C) No.26112 of 2020)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,**  
**Bhubaneswar I**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Reach Dredging Ltd.**  
**(W.P.(C) No. 27581 of 2020)**

....

**Petitioner**

Mr. Umesh Ch. Behura, Advocate

-versus-

**The Deputy Commissioner of Sales Tax**

....

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Sony India Ltd**  
**(W.P.(C) No. 28132 of 2020)**

....

**Petitioner**

Mr. Mukesh Panda, Advocate

-versus-

**State of Odisha**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. S.N. Jyoti Associates**  
**(W.P.(C) No.10802 of 2021)**

....

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,**  
**Bhubaneswar I Circle**

...

**Opposite Party**

**M/s. Havells India Ltd**  
**(W.P.(C) No. 11033 of 2022 )**

...

**Petitioner**

Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,**  
**CT & GST Circle, Bhubaneswar)**

...

**Opposite Party**

Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Durga Auto Centre, Cuttack**  
**(W.P.(C) No.34460 of 2022)**

...

**Petitioner**

WP(C) No.13736 of 2017 & etc., etc.

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Mr. Bhabani P. Mohanty, Advocate  
Mr. R.P.Kar, Advocate

-versus-

**The Sales Tax Officer,  
Cuttack I, Central Circle**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Jindal India Thermal Power Ltd.  
New Delhi  
(W.P.(C) No. 34659 of 2022)**

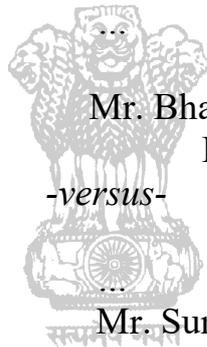
... **Petitioner**  
Mr. Asit Kumar Dash, Advocate  
Mr. Rudra Prasad Kar, Advocate

-versus-

**The Commissioner of Commercial  
Taxes, Odisha, Cuttack**

... **Opposite Party**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Tez Automobiles  
(W.P.(C) No. 16905 of 2020)**



**Petitioner**

Mr. Bhabani Prasad Mohanty, Advocate  
Mr. Rudra Prasad Kar, Advocate

-versus-

**The Sales Tax Officer,  
Jajpur Circle & Others**

... **Opposite Parties**  
Mr. Sunil Mishra, Addl. Standing Counsel

**M/s. Tata Steel Ltd.  
(W.P.(C) No.5054 of 2016)**

... **Petitioner**  
Mr. Jagabandhu Sahoo, Sr. Advocate with  
Ms. Kajal Sahoo, Advocate

-versus-

**State of Odisha and Others**

... **Opposite Parties**  
Mr. Sunil Mishra, Addl. Standing Counsel

**AND**

**M/s. Annapurna Agencies  
(W.P.(C) No.3290 of 2018)**

... **Petitioner**  
Mr. Mukesh Agarwal, Advocate

-versus-

**Sales Tax Officer, Cuttack 1 City Circle**

... **Opposite Parties**  
Mr. Sidharth Shankar Padhy, Addl. Standing Counsel

**CORAM:  
THE CHIEF JUSTICE  
JUSTICE MURAHARI SRI RAMAN**

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**Date of Hearing concluded : 09.02.2023 :: Date of Judgment: 15.03.2023**

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**JUDGMENT**

***MURAHARI SRI RAMAN, J.—***

- I.* The petitioner No.1-Shree Bharat Motors Ltd., public limited company registered under the Companies Act, 1956, represented by Sri Jay Prakash Didwania, Managing Director of the company joined as the petitioner No.2 (hereinafter referred to as “petitioner”) questioning the veracity of Assessment Order dated 11.11.2016 passed by the Assessing Authority (ET), Bhubaneswar-I Circle, Bhubaneswar under Section 9C of the Odisha Entry Tax Act, 1999 (“OET Act” for short) pertaining to tax periods 01.04.2013 to 31.03.2015 (Annexure-6) and issue of Notice(s) in Form E-24 prescribed under Rule 10(6)(b) of the Odisha Entry Tax Rules, 1999 (for brevity referred to as, “OET Rules”) whereby along with the quantum of deficit tax found in the returns relating to the tax periods from 01.04.2015 to 30.04.2017, the Assessing Authority raised demand(s) of interest @ 1% per month in terms of Section 7(5) *vide* Annexure-9 series, assailed the revised entry tax demand notice issued in Form E-8 by the Deputy Commissioner of Sales Tax, Bhubaneswar-I Circle, Bhubaneswar for the tax periods from 01.04.2008 to 31.03.2015 as upheld *vide* Annexure-10, *i.e.*, Order dated 24.06.2017 passed in Revision Case No.30(E)/2017-18 by the Commissioner of Sales Tax, Odisha while disposing of

revision petition filed at the behest of the petitioner under Section 18 of said Act.

1.1. This apart, the petitioner has also assailed instructions *vide* Letter bearing No.9755-Rev-35/59/2017-Rev-CCT/CT, dated 23.06.2017 addressed to the field formations to undertake recovery process in view of *Order dated 28<sup>th</sup> March, 2017* of the Hon'ble Supreme Court passed in *State of Odisha Vrs. Reliance Industries Ltd. and Others, SLP(C) No.14454-14778/2008* pursuant to legal position as set at rest by Nine-Judge Constitution Bench decision of said Hon'ble Court in the matters of *Jindal Stainless Ltd. Vrs. State of Haryana, (2017) 12 SCC 1*.

1.2. Therefore, the petitioner has prayed for the following reliefs:

- "i) *issue a writ of certiorari or a writ in the nature of certiorari, or such other appropriate order/writ/direction quashing the order dated 11.11.2016 passed by the opposite party No.2, under Annexure-6;*
- ii) *issue a writ of certiorari or a writ in the nature of certiorari, or such other appropriate order/writ/direction quashing the notices in E-24 dated 26.05.2017 under Annexure-9 series;*
- iii) *issue a writ of certiorari or a writ in the nature of certiorari, or such other appropriate order/writ/direction quashing the notices in E-8 dated 26.05.2017 under Annexure-8 series;*
- iv) *issue a writ of certiorari or a writ in the nature of certiorari, or such other appropriate order/writ/direction quashing the order dated 24.06.2017 under Annexure-11;*
- v) *issue a writ of certiorari or a writ in the nature of certiorari, or such other appropriate order/writ/direction*

*quashing the Circular dated 23.06.2017 under Annexure-10;*

- vi) issue a writ of mandamus or a writ in the nature of mandamus, or such other appropriate order/writ/direction restraining the opposite parties from proceeding against the petitioner No.1 under the OET Act in any manner whatsoever until the constitutional validity thereof is determined in accordance with law;*
- vii) issue any other writ(s) or pass such other order(s) as deem just and proper in the interest of justice;*
- viii) grant costs.”*

1.3. Pertinent here to discuss background facts which necessitated the Revenue to insist for levying interest on the tax remained unpaid besides deficit tax during tax periods September, 2009 to March, 2017 and objection being raised by the dealers/persons in the State of Odisha. Though very many dealers/persons have joined together and counsel for parties have argued the matters objecting to levy of interest @ 2% per month [prior to amendment] / @ 1% per month [after amendment] by invoking provisions of Section 7(5) of the OET Act, the petition relating to W.P.(C) No.13736 of 2017 is taken as the lead case as the petitioner has questioned not only assessment order, but also the notice issued demanding less payment of tax in Form E-24 [see Rule 10(6)(b)] read with Form E-8 [see Rule 16] as also Revisional Order of the Commissioner of Sales Tax, Odisha passed under Section 18 of the OET Act.

***Facts of the case:***

2. Instant dispute has roots in the *Judgment dated 13<sup>th</sup> November, 2002* delivered by the Division Bench of this Court in the matters

of *Indian Metals and Ferro Alloys Corporation of Odisha Vrs. State of Odisha, OJC No.3995 of 2000 & etc. etc.*, wherein referring to *inter alia* law laid down in *Atiabari Tea Co. Ltd. Vrs. State of Assam, AIR 1961 SC 232; Automobile Transport of Rajasthan Vrs. State of Rajasthan, AIR 1962 SC 1406; Khyerbari Tea Co. Ltd. Vrs. State of Odisha, AIR 1964 SC 925; Bhagat Ram Vrs. Commissioner of Sales Tax, (1995) 1 SCC 673; State of Bihar Vrs. Bihar Chamber of Commerce, (1996) 9 SCC 136 = (1996) 103 STC 1 (SC)* while declining to strike down the OET Act, 1999, applied the principle of reading down and held as follows:

- “42. *Once we have understood the scope of the Act as indicated above, there is no difficulty in holding that the legislation is well within Entry 52 of List II of the Seventh Schedule to the Constitution and it does not violate Article 301 of the Constitution. On the above finding there is no question of the legislation violating the mandatory requirements of Article 304(b) of the Constitution of India. The argument in that behalf has also to be overruled.*
43. *The argument that because the entire State is divided into local authorities under the Act and hence the legislation is outside Entry 52 of List II of the Constitution of India cannot also be accepted since it is a compensatory tax and since what is taxed or intended to be taxed is only entry of goods into a local area for consumption, sale or use within that area, the whole of the State has necessarily to be brought within the purview of the Act to the extent it is part of a local area as defined in the Act. Therefore, nothing turns on the argument that all parts of the State are brought within the definition by making it a part of one local area or another. The legislation cannot be successfully challenged as a colourable piece of legislation.*

44. *In the result, while declining to strike down the Orissa Entry Tax Act, 1999 as ultra vires, we direct that—*

- (1) *Unless the basic ingredients, i.e., Entry of scheduled goods for the purpose of Consumption, Use or Sale into a local area of the State are satisfied, the provisions of the Orissa Entry Tax Act, 1999 shall not be attracted;*
- (2) *The goods which enter into a local area/areas only for the purpose of transit will not be subject to Entry Tax; and*
- (3) *Every manufacturer of scheduled goods under Section 26 shall collect by way of Entry Tax amount equal to the tax payable on the value of the finished products under Section 3 of the Act from the buying dealer either directly or through an intermediary only if the scheduled goods sold are intended for entry into any local area of the State for the purpose of Consumption, Use or Sale.”*

2.1. Against the aforesaid Judgment, the writ petitioners carried the matters in SLPs to the Hon'ble Supreme Court, which were converted to Civil Appeals and registered as Civil Appeal Nos.2637 of 2003, 1956 of 2003, 2633 of 2003, 2638 of 2003, 3720, 3721 and 3722 of 2003. Those appeals were initially taken up along with C.A. No. 3453 of 2002 (*M/s. Jindal Stripe Limited and Another Vrs. State of Haryana and Others*) and certain connected matters by a two-Judge Bench of the Supreme Court. In *Jindal Stripe Ltd. Vrs. State of Haryana*, (2004) 134 STC 303 (SC), the Bench hearing the matters doubted the correctness of the views expressed in *Bhagatram Rajeevkumar (supra)* which was relied on in a subsequent decision in *Bihar Chambers of Commerce (supra)*, and observed as follows:

“25. Since the concept of compensatory tax has been judicially evolved as an exception to the provisions of Article 301 and as the parameters of this judicial concept are blurred particularly by reason of the decisions in *Bhagatram’s case* (1995) 96 STC 654 (SC) and *Bihar Chamber of Commerce’s case*, (1996) 6 SCC 136, we are of the view that the interpretation of Article 301 vis-à-vis compensatory tax should be authoritatively laid down with certitude by the Constitution Bench under Article 145(3).”

2.2. The Constitution Bench (5-Judge Bench) in *Jindal Stainless Limited and Another Vrs. State of Haryana and Others*, (2006) 145 STC 544 (SC) stated as follows:

“49. In our opinion, the doubt expressed by the referring Bench about the correctness of the decision in *Bhagatram’s case* 1995 Supp. (1) SCC 673 = (1995) 96 STC 654 (SC) followed by the judgment in the case of *Bihar Chamber of Commerce*, (1996) 103 STC 1 (SC) = (1996) 9 SCC 136 was well-founded.

50. We reiterate that the doctrine of ‘direct and immediate effect’ of the impugned law on trade and commerce under Article 301 as propounded in *Atiabari Tea Co. Ltd. Vrs. State of Assam*, AIR 1961 SC 232 and the working test enunciated in *Automobile Transport (Rajasthan) Ltd. Vrs. State of Rajasthan*, AIR 1962 SC 1406 for deciding whether a tax is compensatory or not vide para 19 of the report, will continue to apply and the test of ‘some connection’ indicated in para 8 of the judgment in *Bhagatram Rejeevkumar Vrs. Commissioner of Sales Tax, M.P.* 1995 Supp (1) SCC 673 and followed in the case of *State of Bihar Vrs. Bihar Chamber of Commerce*, (*supra*) is, in our opinion, not good law. Accordingly, the constitutional validity of various local enactments which are the subject matters of pending appeals, special leave petitions and writ petitions will now be listed for being disposed of in the light of this judgment.”

2.3. Thereafter, the two-Judge Bench of the Hon'ble Apex Court observed in *Jindal Stainless Ltd. (3) Vrs. State of Haryana*, (2006) 7 SCC 271 thus:

“5. Since relevant data do not appear to have been placed before the High Courts, we permit the parties to place them in the writ petitions concerned within two months. The High Courts concerned shall deal with the basic issue as to whether the impugned levy was compensatory in nature. The High Courts are requested to decide the aforesaid issue within five months from the date of receipt of our order. The judgment in the respective cases shall be placed on record by the parties concerned within a month from the date of the decision in each case pursuant to our direction.”

2.4. That is how seven writ petitions have again travelled to this Court to decide the basic issue, referred to above. In *National Aluminium Company Vrs. State of Odisha and Others and six others*, (2008) 15 VST 296 (Ori) [vide Judgment dated 17.01.2008] this Court held as follows:

“16. It is not disputed that the revenue received by way of entry tax collection is deposited in the consolidated fund of the State and the expenditure which is incurred for the development work is not specifically identifiable as a measure of compensation. Expenditure is made in general for the infrastructure development which is said to be for the welfare of the general public. The data given by the learned counsel appearing for the State, as quoted above, shows the entry tax collection in each year and the expenditure which is shown is more than the entry tax collected which itself would go to indicate that there is no link between the quantum of tax and the facilities/services provided to the trades people. More expenditure in comparison to the entry tax collected for the welfare of the general public itself shows that the expenditure made by the State in general is from the general revenue collection

*of the State by way of taxes. The State has shown the total expenditure for infrastructure development, development of check gates, water supply and sanitation etc. **Therefore, the State has failed to show that the entry tax collected under the Odisha Entry Tax Act has been reimbursed/recompense for the quantifiable/ measurable benefits to the trades people.** It is not proportional, rather it is progressive and it cannot be said that the tax collected is based on the principle 'pay for value'.*

\*\*\*

18. *We have already said above that though Article 304(a) and Article 304 (b) are to be construed and interpreted separately but the question raised as to whether the Orissa Entry Tax Act is within the parameters of Article 304(a) of the Constitution, is not the subject matter of issue in these seven writ petitions. However, this plea is open for the State in the other fresh writ petitions which are not being dealt here. We are only determining the issue whether the impugned levy imposed by way of Odisha Entry Tax Act was compensatory in nature and, therefore we consider whether the impugned enactment facially or patently indicates the quantifiable data on the basis of which the compensatory tax is sought to be levied and whether the Act facially indicates the benefits which is quantifiable or measurable and the proportionality of the quantifiable benefits but we have not found any such thing in the Act. They do not show that payment of entry tax is reimbursement/recompense for the quantifiable and measurable benefits to be provided to its payers. Providing facilities to the citizens or others would not definitely come under the activities like movement of trade, commerce and intercourse for the free flow of trade and commerce.*
19. ***Therefore, the State has failed to show that the Orissa Entry Tax is reimbursement/recompense for the quantifiable and measurable benefits provided to trades people and the provision for realization of tax therein was not compensatory in nature.***

2.5. During pendency of aforesaid seven writ petitions, many dealers/persons by way of filing fresh writ petitions questioned the *vires* of the OET Act, where new plea of discrimination under Article 304(a) of the Constitution of India was raised by the State of Odisha. This Court pronounced Judgment on 18<sup>th</sup> February, 2008 in the case of *Reliance Industries Ltd. Vrs. State of Odisha, etc. etc., (2008) 16 STC 85 (Ori)*, wherein upholding the validity of the OET Act, it has held as follows:

“28. *To sum up, we are of the opinion that the State has the following three alternatives to impose a levy or tax which would not be violative of Article 301 meaning thereby it will not be treated as a hindrance in trade, commerce and intercourse. They are:*

- (i) if the levy imposed is compensatory in nature and facially or patently indicates the quantifiable data on the basis of which the compensatory levy or tax is sought to be levied and the Act facially indicates the benefits which is quantifiable or measurable and the proportionality of the quantifiable benefits and should be in the form of reimbursement/recompense for the quantifiable and measurable benefits to be provided to its payers or trades people;*
- (ii) if the tax is levied under Clause (a) of Article 304 but subject to conditions given therein that such levy or tax on goods would not result in discrimination between the goods imported from other States and similar goods manufactured or produced within the State entering into a local area. However, the scope of Clause (a) of Article 304 is limited to the extent that the State cannot impose tax on the goods imported from other States and are not manufactured or produced within that State;*
- (iii) if the tax is imposed following the provisions of Clause (b) of Article 304 meaning thereby that the*

*previous sanction of the President has been obtained in imposing the tax.*

29. *Admittedly in enforcing the Orissa Entry Tax Act, previous sanction of the President was not obtained and therefore the Act cannot be said to be in accordance with Clause (b) of Article 304. We have already held in a batch of cases leading case of which was O.J.C. No. 1241 of 2000 that the Orissa Entry Tax is not compensatory or regulatory in nature and that the payment of entry tax is not reimbursement/recompense for the quantifiable and measurable benefits provided to its payers. Therefore, if we do not consider Article 304 Clause (a) or (b) certainly the Orissa Entry Tax would tantamount to infringement of Article 301.*
30. *The State has taken the plea that the Orissa Entry Tax Act has been enacted under Clause (a) of Article 304 of the Constitution. Therefore, as discussed above, no tax can be imposed on those goods imported from outside the State which are not manufactured or produced in the State of Orissa. However, we do not find any discrimination in the provisions of the Act between the goods imported from outside the State and those manufactured or produced in the State of Orissa and are brought into the local area within a State. In this regard, the definition of 'entry of goods' given in Clause (d) of Section 2 is relevant which shows that there is no discrimination between the goods produced or manufactured within the State of Orissa or imported from outside and are brought within the local area. The rate of tax imposed under the Act or the Rules are also applicable uniformly on the goods imported from outside or goods manufactured within the State which are brought into a local area. **Therefore, it cannot be said that the Orissa Entry Tax Act is not made under Clause (a) of Article 304 of the Constitution. However, the State has no jurisdiction to impose tax on such goods imported from outside and are not manufactured within the State of Orissa. Therefore, the opposite parties may make scrutiny of the same and not realize entry tax on such goods but for this the Act cannot be declared ultra vires.***

- 2.6. Aggrieved by the observation regarding jurisdiction of the State of Odisha to levy entry tax, SLP(C) being Nos.14454-14778/2008 were preferred before the Supreme Court of India.
- 2.7. The said Court in I.A. Nos. 327-651 filed at the behest of the State of Odisha in SLP(C) Nos.14454-14778/2008 on 30.10.2009 passed the following interim order:

*“Pending further orders, there shall be stay of the impugned judgement till further orders in terms of prayer clause (a) to the extent held in para 13 (sic. 30), which reads as under:*

*‘The State has no jurisdiction to impose tax on such goods imported from outside and are not manufactured within the State of Orissa. Therefore, the opposite parties may make scrutiny of the same and not realize entry tax on such goods’.*

*In the meantime, this group of Orissa matters is adjourned for a period of three weeks. It is made clear that the State will submit the cut-off date for the simple reason that this Court intends to record that each and every assessee in this group of cases shall pay the outstanding amount, as of cut-off date, in instalments within the time fixed by this Court. Secondly, it is also made clear that, if the State ultimately loses, it shall refund the amount with interest which shall be fixed by this Court at the time of final hearing of these matters. However, each and every assessee in this group of cases shall undertake to pay the outstanding amount in instalments with the current liability that may accrue, pending disposal of these special leave petitions. It is further made clear that the assessee in this group of cases will have to deposit the outstanding taxes without penalty.*

*Till the next date of hearing, no recovery for the time being.”*

- 2.8. On 03.02.2010, said Court has been pleased to modify aforesaid interim Order dated 30.10.2009 to the following effect:

*“In re: Rest of the interlocutory applications:*

*In this batch of interlocutory applications, the Department has furnished to this Court names of traders in List-A and names of manufacturers in List-B, excepting M/s. Bhushan Steel and Strips Limited, M/s. Bhushan Energy, M/s. Vedanta Alumina Limited and M/s. Reliance Industries Limited, whose cases we have dealt with separately, who are required to pay Entry tax upto 30th September, 2009. Both these lists are covered by Paragraph (30) of the impugned judgement. The lists read thus:*

**\*\*\***

*Having regard to the outstanding amounts in List-A and List-B, mentioned hereinabove, we are of the view that each of the assesseees will, without prejudice to its rights, deposit with the Department one-third of the outstanding amount indicated in List-A and List-B as on 30th September, 2009, before 31st March, 2010. Each of such assesseees will also continue to deposit with the Department the outstanding amount on the basis of the current liabilities, which has accrued after 30th September, 2009, at the rate of 33 1/3rd% of the amount due in the monthly Returns which each of the assesseees has been filing with the Department.*

*It needs to be clarified that this order is confined to cases falling under Paragraph (30) of the impugned judgement. As far as the item, which is not covered by Paragraph (30) of the impugned judgement, is concerned, liberty is given to the assesseees to move separate interlocutory applications.*

*Before concluding, it may be mentioned that the State of Orissa will file an affidavit undertaking to refund the amount in the event of the State losing its case with interest to be fixed at the final hearing of the matter. Such an undertaking will be given by the Chief Secretary of the State. **We make it clear that the amount which we are directing the assesseees to pay shall be treated as a deposit and not as a tax till hearing and final disposal of the matter.***

***The interim order passed by this Court on 30th October, 2009, to the extent indicated above, stands modified.***

*In the traders' list [List-A], there are two Companies, namely Reliance Communications Infrastructure Limited and Reliance*

*Communications Limited. There is a substantial difference regarding the outstandings between the figures supplied by the State and the figures supplied by the Companies. We are directing the assesseees to move the State within one week from today and get the figures reconciled.*

*Subject to above, these interlocutory applications are, accordingly, disposed of.*

*Before concluding, we may state that, in the pending cases before the Constitution Bench, number of intervention/impleadment applications have been filed. All such applications, both for impleadment and intervention, shall be confined to the constitutional validity of the impugned law. We make it clear that such applicants, who have moved by way of impleadment/intervention applications, would not be entitled to an unconditional stay. They will not be entitled to the benefit of this order passed today. The State would be entitled to move against each of such applicants in accordance with law. This clarification is required to be given as we are informed by the learned senior counsel appearing for the Department that number of assesseees, who have not moved this Court by filing special leave petitions/civil appeals, are also refusing to pay Entry tax. The order passed today is confined only to the parties whose names are mentioned in List-A and List-B hereinabove. The intervention and impleadment applications, however, will remain on the file of this Court, they will not be dismissed, but they will remain confined only to the question of constitutional validity of the impugned law and in each of such cases, it is made clear that there is no stay on recovery.”*

- 2.9. During the pendency of aforesaid matters before the Hon’ble Supreme Court, further writ petitions were filed challenging the vires of the OET Act and this Court following aforesaid interim Order dated 03.02.2010 passed by the Hon’ble Supreme Court used to dispose of the writ petition(s). One of such cases being *M/s. Annapurna Agency Vrs. State of Odisha, W.P.(C) No.5555 of 2010*, following Order was passed on 06.05.2010:

*“Heard learned counsel for the petitioner and learned counsel for the Revenue.*

*It is stated by the learned counsel for the petitioner that the dispute relating to paragraph 30 of the judgment dated 18.02.2008 rendered by this Court in the case of M/s. Reliance Industries Ltd., Vrs. State of Orissa and Others reported in (2008) 16 VST 85 (Orissa), which is similar to the case of the present petitioner, is now pending adjudication before the apex Court in SLP(C) No. 14454-14778 of 2008.*

*In view of the order dated 3.2.2010 passed by the apex Court in I.A. Nos. 327-651/2009, arising out of the aforesaid SLPs, we direct the petitioner to pay 1/3 of the arrear dues that would be computed up to 30.9.2009, by the end of May, 2010. As to the other arrear dues and current liability with effect from October 2009 onwards, the petitioner shall go on paying at the rate of 33 1/3% from June, 2010 along with the return.*

*We make it very clear that the amount which is directed to be paid shall be treated as a deposit and is not a tax till final decision is taken by the apex Court. However, the aforesaid payment is without prejudice to the rights and contentions of the parties.*

*In the event the State loses its case in SLP, the order of the apex Court deposited amount shall be refunded with interest in terms of the order of the apex Court.*

*The writ petition is disposed of accordingly.*

*Issue urgent certified copy.*

*Let a free copy of this order be supplied to the learned counsel for the Revenue.”*

2.10. The Hon’ble Supreme Court [5-Judge Bench] in *Jindal Stainless Ltd. Vrs. State of Haryana*, (2010) 4 SCC 595 observed as follows:

“5. The question, therefore, which we need to answer, in the first instance, before going into the validity of each of the

*State laws impugned before us is— whether after 49 years, this Court should revisit the tests propounded in the earlier decisions in Atiabari Tea Co. Ltd., AIR 1961 SC 232 = (1961) 1 SCR 809 and Automobile Transport (Rajasthan) Ltd., AIR 1962 SC 1406 = (1963) 1 SCR 491? At this stage, it may be mentioned that the States whose entry tax laws have been challenged have contended before us that the tests propounded in Atiabari Tea Co. Ltd., AIR 1961 SC 232 = (1961) 1 SCR 809 and Automobile Transport (Rajasthan) Ltd., AIR 1962 SC 1406 = (1963) 1 SCR 491 have failed to strike a balance between the “freedom of trade and commerce” under Article 301 of the Constitution and the States’ authority to levy taxes under Articles 245 and 246 of the Constitution read with the appropriate legislative entries in the Seventh Schedule to the Constitution of India. The States, therefore, sought revisiting of the aforesaid two decisions in Atiabari Tea Co. Ltd., AIR 1961 SC 232 = (1961) 1 SCR 809 and Automobile Transport (Rajasthan) Ltd., AIR 1962 SC 1406 = (1963) 1 SCR 491 by a larger Bench.*

*\*\*\**

- 10. Applying the tests laid down in the aforesaid two cases i.e. Keshav Mills Co. Ltd., AIR 1965 SC 1636 = (1965) 2 SCR 908 and Central Board of Dawoodi Bohra Community, (2005) 2 SCC 673 = 2005 SCC (Cri) 546 = 2005 SCC (L&S) 246, we find that on a number of aspects a larger Bench of this Court needs to revisit the interpretation of Part XIII of the Constitution including the various tests propounded in the judgments of the Constitution Bench of this Court in the aforesaid two cases, namely, Atiabari Tea Co., AIR 1961 SC 232 = (1961) 1 SCR 809 and Automobile Transport (Rajasthan) Ltd., AIR 1962 SC 1406 = (1963) 1 SCR 491.*
- 11. Some of these aspects which need consideration by a larger Bench of this Court may be briefly enumerated. Interplay/interrelationship between Article 304(a) and Article 304(b). The significance of the word “and” between Articles 304(a) and 304(b). The significance of*

*the non obstante clause in Article 304. The balancing of freedom of trade and commerce in Article 301 vis-à-vis the States' authority to levy taxes under Article 245 and Article 246 of the Constitution read with the appropriate legislative entries in the Seventh Schedule, particularly in the context of movement of trade and commerce.*

12. *Whether Article 304(a) and Article 304(b) deal with different subjects? Whether the impugned taxation law to be valid under Article 304(a) must also fulfil the conditions mentioned in Article 304(b), including Presidential assent? Whether the word "restrictions" in Article 302 and in Article 304(b) includes tax laws? Whether validity of a law impugned as violative of Article 301 should be judged only in the light of the test of non-discrimination? Does Article 303 circumscribe Article 301? Whether "internal goods" would come under Article 304(b) and "external goods" under Article 304(a)? Whether "per se test" propounded in Atiabari case [AIR 1961 SC 232 : (1961) 1 SCR 809] should or should not be rejected? Whether tax simpliciter constitutes a restriction under Part XIII of the Constitution? Whether the word "restriction" in Article 304(b) includes tax laws? Is taxation justiciable? Whether the "working test" laid down in Atiabari, AIR 1961 SC 232 = (1961) 1 SCR 809 makes a tax law per se violative of Article 301? Interrelationship between Article 19(1)(g) and Article 301 of the Constitution? These are some of the questions which warrant reconsideration of the judgments in Atiabari Tea Co. Ltd., AIR 1961 SC 232 = (1961) 1 SCR 809 and Automobile Transport (Rajasthan) Ltd., AIR 1962 SC 1406 = (1963) 1 SCR 491] by a larger Bench of this Court.*

13. *In conclusion, we may also mention that though the judgments in Atiabari Tea Co. Ltd., AIR 1961 SC 232 = (1961) 1 SCR 809 and Automobile Transport (Rajasthan) Ltd., AIR 1962 SC 1406 = (1963) 1 SCR 491 came to be delivered 49 years ago, a doubt was expressed about the tests laid down in those two judgments even in the year 1975 in G.K. Krishnan Vrs. State of T.N., (1975) 1 SCC 375 by Mathew, J., vide para 27, which reads as under: (SCC p. 385)*

“27. Whether the restrictions visualised by Article 304(b) would include the levy of a non-discriminatory tax is a matter on which there is scope for difference of opinion. Article 304(a) prohibits only imposition of a discriminatory tax. It is not clear from the article that a tax simpliciter can be treated as a restriction on the freedom of internal trade. Article 304(a) is intended to prevent discrimination against imported goods by imposing on them tax at a higher rate than that borne by goods produced in the State. A discriminatory tax against outside goods is not a tax simpliciter but is a barrier to trade and commerce. Article 304 itself makes a distinction between tax and restriction. That apart, taxing powers of the Union and States are separate and mutually exclusive. It is rather strange that power to tax given to States, say, for instance, under Entry 54 of List II to pass a law imposing tax on sale of goods should depend upon the goodwill of the Union Executive.”

14. For the aforesaid reasons, let this batch of cases be put before the Hon'ble the Chief Justice of India for constituting a suitable larger Bench for reconsideration of the judgments of this Court in *Atiabari Tea Co.*, AIR 1961 SC 232 = (1961) 1 SCR 809 and *Automobile Transport (Rajasthan) Ltd.*, AIR 1962 SC 1406 : (1963) 1 SCR 491.”

2.11. While the matter stood thus, this Court heard another batch of matters raising question as to whether scheduled goods imported from outside the territory of India is exigible to Odisha entry tax and delivered Judgment dated 09.10.2012 in the case of *Tata Steel Ltd. Vrs. State of Odisha, etc., etc.*, 2013 (I) ILR-CUT 256, by holding thus:

“36. Thus, on the basis of the discussions resorted to above, this Court comes to the conclusion that the argument advanced by learned counsel for the petitioners that entry

*tax is not leviable on the goods imported through buyers is attractive but is without substance.”*

2.12. Said Judgment being carried to the Hon’ble Supreme Court of India in *SLP(C) No.33923 of 2012, and Others*, the following interim Order dated 09.04.2013 was passed:

*“\*\*\* After hearing the learned counsel for the parties to the lis, we are of the opinion that a conditional interim order requires to be passed in these cases.*

*Accordingly, we direct the petitioner in each case to pay/deposit 50% of the tax demand with interest for the past period. However, there shall be absolute stay of recovery of the penalties. For the future period, as and when the demands are raised by the respondent-authorities, the petitioner in each case shall pay/deposit 50% of the said demand within 30 days’ time from the date of the demand.*

*If, for any reason, the petitioner in each case fails to comply with the orders and directions passed by this Court, the respondents would be at liberty to recover the entire tax liability with interest.*

*We make it clear that, if for any reason, the petitioner(s) succeed in these matters, the respondent-authorities shall refund the amounts paid by the petitioner(s) pursuant to the interim orders passed by us within 30 days’ time from the date of the order with statutory interest.*

*Ordered accordingly.”*

2.13. Nine-Judge Bench delivered Judgment on 11.11.2016 in the matters of *Jindal Stainless Ltd. Vrs. State of Haryana, 2016 AIR SCW 5617 = (2016) 11 SCALE 1 = (2017) 12 SCC 1* with the following dicta:

*“By majority the Court answers the reference in the following terms:*

1. *Taxes simpliciter are not within the contemplation of Part XIII of the Constitution of India. The word 'Free' used in Article 301 does not mean "free from taxation".*
2. *Only such taxes as are discriminatory in nature are prohibited by Article 304(a). It follows that levy of a non-discriminatory tax would not constitute an infraction of Article 301.*
3. *Clauses (a) and (b) of Article 304 have to be read disjunctively.*
4. *A levy that violates 304(a) cannot be saved even if the procedure under Article 304(b) or the proviso there under is satisfied.*
5. *The compensatory tax theory evolved in Automobile Transport case and subsequently modified in Jindal's case has no juristic basis and is therefore rejected.*
6. *Decisions of this Court in Atiabari, Automobile Transport and Jindal cases (supra) and all other judgments that follow these pronouncements are to the extent of such reliance over ruled.*
7. *A tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing State.*
8. *Article 304(a) frowns upon discrimination (of a hostile nature in the protectionist sense) and not on mere differentiation. Therefore, incentives, set-offs etc. granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically backward areas would not violate Article 304(a). The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular benches hearing the matters.*
9. *States are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from other States and goods produced within the State fall equally. Such measures if taken would not contravene Article 304(a) of the Constitution. The question*

*whether the levies in the present case indeed satisfy this test is left to be determined by the regular benches hearing the matters.*

10. *The questions whether the entire State can be notified as a local area and whether entry tax can be levied on goods entering the landmass of India from another country are left open to be determined in appropriate proceedings.”*

2.14. Thereafter, Division Bench of the Hon'ble Supreme Court of India, in the case of *Bharti Airtel Ltd. Vrs. Assessing Authority, Odisha Entry Tax and Another*, (2018) 57 GSTR 1 (SC) observed as follows:

- “7. *It is argued by learned counsel for the appellant that this Court went by the concept of “burden” and equalizing of said burden. It is submitted that since the law is now clarified, the validity of the provisions of Orissa Entry Tax are to be considered in the aforesaid prospect. We find that in some of the cases, particularly in the writ petition filed by M/s. Vedanta Aluminium Ltd. this issue was specifically raised in the High Court out of which SLP(C) No.8199 of 2008 arises. But the High Court did not decide it. Instead the High Court in the impugned judgment has gone by the rate of Entry Tax vis-a-viz the rate of VAT/Sales Tax. Since, in order to decide the question proper pleadings are required, which are not before us, it may not be possible for this Court to decide the issue. In these circumstances, we permit the appellants/assesseees to file fresh writ petitions with adequate material in the High Court. These petitions shall be filed within four weeks.*

*The interim order passed in these cases shall continue for a period of four weeks. We make it clear that if the applications for stay are filed before the High Court, the High Court shall be competent to decide these applications on their own merits and would not be influenced by continuation of stay granted by this Court as these stay orders were granted before answering the reference by the Nine Judge Bench and we have continued the same for*

*four weeks only to enable the assesseees to approach the High Court in the meantime.*

8. ***The interim orders dated 03.02.2010 were passed in these cases directing the appellants to pay 33% of the tax. We find that in many other cases coming from other States, interim stay was given subject to deposit of 50% of the tax amount. We, therefore, modify the aforesaid interim orders by directing the appellants to pay 50% of the demand Arrears in this manner shall be calculated and paid within a period of two weeks. The aforesaid order of stay, subject to payment of 50%, shall remain in operation for a period of four weeks as aforesaid.***

2.15. Further Judgment being *State of Kerala and Others Vrs. Fr. William Fernandez, etc., etc.*, (2018) 57 GSTR 6 (SC) = (2021) 11 SCC 705 has been delivered by Division Bench of the Hon'ble Supreme Court with the following observation:

*“143. Learned counsel appearing for the State of Orissa has opposed the prayer of the petitioner seeking liberty to raise the issue. It is contended that petitioners have not raised the relevant issues nor pleaded in support of the plea of discrimination under Article 304(a). The parameters under which entry tax can violate the Article 304(a) has now been conclusively laid down by Nine Judges Bench in Jindal Stainless Ltd.(supra). We are thus of the view that liberty be given to petitioners to raise the plea of discrimination under Article 304(a) in accordance with the law as laid down by Nine Judges Bench in Jindal Stainless Ltd.(supra). We, however, are of the view that for the above purposes, it is not necessary to grant any liberty to file a fresh writ petition at this stage and at this distance of time. The ends of justice shall be served, if liberty is granted to the petitioners to revive their writ petitions by making a proper application before the High Court. In the writ petitions which have been dismissed by the Orissa High court against which present appeals are decided, the liberty to revive such petition and to urge ground under*

*Article 304(a) is granted which can be availed only within the period of 30 days from the date of this judgment.*

144. *In view of foregoing discussion, we arrive at the following Conclusions:*

- (i) ***Orissa Entry Tax Act, 1999, Kerala Tax Act, 1994 and Bihar Tax on Entry of Goods in Local Area for Consumption, Use or Sale, 1993 (before its amendment by Bihar Act, 2003 and 2006) do not exclude levy of entry tax on the goods imported from any place outside territories of India into a local area for consumption, use or sale.***
- (ii) *All the Entry Tax Legislations questioned in these appeals are legislations which are within the legislative competence of the State legislatures and do not intrude the legislative domain of Parliament as reserved in Entry 41 & Entry 83 of List I.*
- (iii) *The import of goods from any territory outside India comes to an end when the goods enter into the custom frontiers of India and are released for home consumption.*
- (iv) ***After import of goods comes to an end the State legislature has full legislative competence to levy entry tax under Entry 52 List II.***
- (v) *The Original Package Theory as developed by the American Supreme Court in case of Brown Vrs. State of Maryland (supra) is not applicable in this country and the imported goods are not exempted from entry tax till it reaches to the factory premises/destination of its consumption, use or sale.*
- (vi) *Non-inclusion of custom duty in the definition of purchase value in the statute of entry tax is not an indicator of the fact that legislature never intended to levy entry tax on imported goods.*
- (vii) ***Entry tax legislation are fully covered by Entry 52 List II and the submission that essence of Entry 52 is octroi which can be levied only by local***

***authorities and State has no legislative competence to impose entry tax under Entry 52 List II is fallacious.***

(viii) *A plant imported in knocked out condition is fully covered with the definition of machinery and equipment under Part II of Schedule of the Orissa Act, 1999.*

145. *In view of our foregoing discussion and conclusion, we decide all the appeals in this batch of appeals in following manner:*

(i) ***All the appeals filed against the judgments of Orissa High Court are dismissed. The Transfer case is also dismissed.***

(ii) *All the appeals filed against the judgment of Patna High Court are dismissed.*

(iii) *The civil appeal filed against the judgment of Jharkhand High Court stands allowed.*

(iv) *The appeals filed by the State of Kerala are allowed. The judgment of the Division Bench holding that no entry tax was leviable on the vehicle imported from territories outside the country is set aside, restoring the judgment of the learned Single Judge.*

(v) *Writ Petition 574 of 2003, Parisons Agrotech Pvt. Ltd. Vrs. State of Kerala & Ors. is dismissed.*

(vi) ***In Civil Appeals filed against judgment of Orissa High Court, appellants who were writ petitioners before the High Court are given liberty to file an application within 30 days from today to revive their writ petitions and urge ground of discrimination under Article 304(a) as per law laid down by Nine Judges Bench in Jindal Stainless Ltd.(supra)."***

2.16. The Taxing Authorities having sprung into action by serving demand notices with respect to balance tax which remained

unpaid after complying with the conditional/partial deposit as directed by the Hon'ble Supreme Court along with interest invoking provisions of Section 7(5) of the OET Act besides penalty, writ petitions have been filed challenging Assessment Orders, notice(s) in Form E-24 indicating less payment of tax in the return(s) and demand notice(s) in Form E-8.

2.17. This Court in one of the writ petitions being *Ceramic Sales Corporation Vrs. State of Odisha, W.P.(C) No.21189 of 2017*, directed *vide* Order dated 8<sup>th</sup> December, 2017 for constitution of Committee to redress grievance pertaining to payment of penalty and interest by various tax payers under the OET Act. Accordingly, a Committee was formed with the following terms:

*“FINANCE DEPARTMENT  
ORDER  
The 17th January, 2018*

*SUB: Constitution of Committee to redress Grievances pertaining to payment of Penalty and interest by various Tax Payers under the Odisha Entry Tax Act, 1999.*

*No. 1522-FIN-CT1-TAX-0092/2017/F.—*

*The constitutional validity of the Odisha Entry Tax Act, 1999 was upheld by the Hon'ble Apex Court in their judgment dated the 27th March, 2017. Consequent upon such judgment, the Assessing Authorities have issued demand notices for payment of arrear Entry Tax along with penalty and interest to the concerned dealers. Being aggrieved, some of the dealers such as M/s Ceramic Sales Corporation and Others, approached the Hon'ble High Court of Orissa challenging the penalty and the interest component of the demand. While deciding these cases Hon'ble High Court *vide* their Order No. 4, dated the 8th December, 2017 in respect of WP(C) No.21189 of 2017 (M/s. Ceramic Sales Corporation -vrs- State of Odisha) has directed the Chief Secretary to constitute a committee to redress the grievances pertaining to payment of Arrear Tax, Penalty and*

*Interest by various Tax Payers under the Odisha Entry Tax Act, 1999.*

*After careful consideration, the Chief Secretary has been pleased to constitute a Committee with following members, namely:—*

- |       |  |     |                            |
|-------|--|-----|----------------------------|
| (i)   | <i>Principal Secretary to Government,<br/>Finance Department</i>             | ... | <i>Chairman</i>            |
| (ii)  | <i>Commissioner of Commercial Taxes,<br/>Odisha</i>                          | ... | <i>Member</i>              |
| (iii) | <i>Special Secretary to Government<br/>(CT-I Branch), Finance Department</i> | ... | <i>Member</i>              |
| (iv)  | <i>Additional Secretary (CT-I Branch),<br/>Finance Department</i>            | ... | <i>Member<br/>Convener</i> |

2. *The Committee shall, while examining their grievances, take a decision either on case to case basis or on the basis of guidelines to be decided by the Government.*
3. *The Joint Commissioner of Commercial Taxes (Law) and Deputy Commissioner of Commercial Taxes (Revenue), O/o. CCT, Odisha and officers of C.T.-I Branch, Finance Department shall assist the Committee. सत्यमेव जयते*

**ORDER**

*The order be published in the Extraordinary issue of the Odisha Gazette for general information of public.*

*N. K. RAUTRAY  
Additional Secretary to Government”*

- 2.18. Report submitted by the Committee as has been referred to by this Court in Order dated 24<sup>th</sup> April, 2019 in the matter of *S.S. Steelay Pvt. Ltd. Vrs. Commissioner of Commercial Taxes, Odisha and Others, W.P.(C) No. 21007 of 2017 and batch of matters runs as follows:*

“09. 24.04.2019

*Pursuant to order dated 08.12.2017 passed in W.P.(C) No.21189 of 2017, the report of the Committee constituted to redress grievances pertaining to payment of penalty and interest by various tax payers under the Odisha Entry Tax Act, 1999 in sealed cover is produced from the custody of Mr.B.P. Pradhan, learned Additional Government Advocate and in the presence of learned counsel for the parties, the cover is opened.*

*Perused the Report. The recommendations of the said Committee is quoted below:*

*“7. Recommendation of the Committee In the light of the analysis made above the Committee recommends the following guidelines for waiver of penalty, payment of interest and grant of other concessions specifying as follows:*

- (1) Penalty should not be levied/imposed for non-payment of the withheld amount of Entry Tax, if there is no suppression of turnover. (However, suppression of turnover, if any, should be dealt in as per law and levy of penalty should be made if permissible by law)*
- (2) The parties are liable to pay interest as per Section 7(5) of the Odisha Entry Tax Act on the withheld amount @ two percentum per month till 30.06.2012 and @ one percentum per month thereafter (as the Act was amended with effect from 01.07.2012 reducing the rate of interest) till full discharge of their tax liability.*
- (3) Additional time of upto a maximum of 5 years from the date of the order of the Hon'ble Apex Court, i.e. Time upto 28.03.2022 (or, for convenience upto*

31.03.2022 may be given on the request of parties by the Commissioner of CT & GST, on case to case basis, for discharge of the tax dues along with interest @ one percentum per month for the entire period of delay on suitable monthly/quarterly instalments till full discharge of their tax dues.

(4) These recommendations may be applicable to the parties who had obtained a stay or interim order from the Hon'ble supreme Court or Hon'ble High Court, regarding observation of the Hon'ble High Court in Para-30 of its order dated 18.02.2008 in W.P.(C) No.6515/2006.

(5) These recommendations will be submitted to State Government for appropriate decision. Neither these recommendations nor the decision of the State Government thereon shall be cited as precedence in other cases under the Odisha Entry Tax Act, 1999 or any other Tax Act.”

Pursuant to the above recommendations, all these matters require consideration. Therefore, the matters are admitted.

The petitioners will pay the tax amount as directed by the Hon'ble Supreme Court as well as interest from the date of the judgment of the Hon'ble Supreme, i.e., with effect from 28.03.2017, on or before 31st of July, 2019.

The matters shall be listed on 7th August, 2019.

In the meantime, it would be open to each of the petitioners to come for further time in case of any financial constraint on their part to comply with the direction as made above. **The tax component**

*already paid pursuant to order of the Hon'ble Supreme Court, shall be adjusted from the tax due and the interest will be calculated only on the balance amount from the date of judgment of the Hon'ble Supreme Court and the same shall be paid.*

*Interest for the period from 2010 to 2017 will be decided at final hearing stage.*

*Learned counsel for the petitioners will inform the learned counsel for the Revenue regarding the amount deposited by producing photocopy of the challan within a week from the date of deposit and not later than 3rd August, 2019.*

*If there is any difference, learned counsel for the Revenue will inform the counsel for the petitioners that the respective petitioner(s) is/are required to pay the differential amount on the basis of calculation made by the Assessing Officer and the same be complied with accordingly.”*

2.19. In the aforesaid batch matters [S.S. SteeLOY Pvt. Ltd. (*supra*)] this Court passed further orders on 02.01.2020. After extracting aforesaid Order dated 24.12.2019, the following order has been passed:

- “2. *We make it clear that those assesses who are complying with the orders, if request for instalments, the same will be considered by the Commissioner in accordance with the rules on filing of an undertaking by the concerned partner or the Director of the company along with a resolution of the said firm or company to the effect that they shall comply with the Court's order to be passed from time to time.*
3. *We further make it clear that pursuant to the order dated 24.04.2019 passed by this Court, while calculating the interest, the Commissioner will be lenient and calculate*

*simple interest, if an undertaking is given that the petitioners will pay the tax on or before a particular date.*

4. *If application, as aforesaid, is not moved by any of the petitioners intending to avail benefit of this order on or before 31.01.2020, it will be open for the Commissioner to execute the order on or after 01.02.2020. The Commissioner will also consider the payment of interest on installment as per the statute. The payment to be made is subject to the result of the writ petition. If the petitioners have paid any excess amount pursuant to the judgment of the Hon'ble Supreme Court, they will be entitled to claim refund. Rejection of any earlier application for installments claimed by the petitioners will not preclude him from making application for installments pursuant to this order.*
5. *These arrangements are made with a view to see that the assesseees pay the tax genuinely. Those persons, who have already been granted installments, will continue with the same arrangements and it will not be modified without giving any reasonable opportunity of hearing to the parties concerned.*
6. *Pursuant to the attachment notice, if any, if an undertaking is given that they will pay installments, the same will not be given effect to.*
7. *We make it clear that before taking into coercive action, the Commissioner will issue notice to the parties concerned and pass orders only after giving opportunity of hearing to the parties concerned.*

\*\*\*”

- 2.20. With the above backdrop, this Court heard the Senior Advocates, the Advocates appearing for the parties and Senior Counsel engaged by and the Additional Standing Counsel for the Commercial Tax Organisation and it is conceded at the bar that there is no dispute left for adjudication in the instant cases with regard to liability of entry tax and discharge of liability along

with interest after passing the Order dated 28.03.2017 by the Hon'ble Supreme Court in *State of Odisha Vrs. Reliance Industries Ltd. and Others, SLP(C) No.14454-14778/2008*.

2.21. The disputed question to be adjudicated at present in the aforementioned writ petitions is confined to the issue as culled out in *S.S. Steeloy Pvt. Ltd. (supra) vide* Order dated 24.12.2019.

***The issue:***

3. Whether, pursuant to direction of this Court the Committee having recommended not to enforce penalty for non-payment or withholding of entry tax, except in cases of suppression, the taxable persons/dealers are liable to pay interest under Section 7(5) for the period from 2010 (interim Order dated 03.02.2010 being passed by the Supreme Court in *State of Odisha Vrs. Reliance Industries Ltd., I.A. Nos. 327-651 in SLP(C) Nos.14454-14778/2008*) to 2017 (till 28.03.2017, i.e, date on which the Division Bench of Supreme Court allowed the appeals of the State of Odisha)?

***Argument(s) advanced by the learned Counsel for the petitioners:***

4. It is urged by counsel for the petitioner(s) that:

(a) since the Hon'ble Supreme Court directed for interim protection *vide* Order dated 03.02.2010 in *State of Odisha Vrs. Reliance Industries Ltd. (supra)*, there was sufficient cause for withholding tax liability to the extent of 2/3<sup>rd</sup> of tax due during the pendency of matters before the Hon'ble Supreme Court.

- (b) The Supreme Court having clarified in the said Order that such deposit of 1/3<sup>rd</sup> of tax liability would be treated as “deposit”, but not “tax” in the I.A. Nos. 327-651 in SLP(C) Nos.14454-14778/2008 filed by the State of Odisha, which was accepted by the Department as also the Orders of this Court disposing of writ petitions like that of *Annapurna Agency (supra)*, there is no occasion nor does any necessity arise for the Assessing Authority to invoke provisions of Section 7(5) of the OET Act.
- (c) The Taxing Authorities are not justified in raising demand by way of issue of Form E-24 prescribed under Rule 10(6)(b) without adhering to the mandate contained in sub-sections (10) and (11) of Section 7 and service of notice in Form E-24 is in conflict with ratio laid down in *Toyo Engineering Vrs. Sales Tax Officer, (2012) 47 VST 109 (Ori)*.
- (d) Till an assessment is made, the tax being not due as held in *Food Corporation of India Vrs. Sales Tax Officer, (1990) 78 STC 58 (Ori)*, the Taxing Authorities having not applied mind in proper perspective, the exercise of power under Section 7(5) being untenable, the writ petition(s) are liable to be allowed.
- (e) Since payment of partial amount (say 1/3<sup>rd</sup> or 50%) as against total tax liability disclosed in the return(s) since September, 2009 till February, 2017, is in tune with the interim order in favour of assessee(s), and the Department

having not undertaken the exercise to verify the returns in conformity with mandate provided under sub-sections (10) and (11) of Section 7, at this distance of time should not be allowed to invoke provisions of Section 7(5).

- (f) The view expressed in *J.K. Synthetics Limited Vrs. Commercial Taxes Officer*, (1994) 4 SCC 276 and *Steel Authority of India Ltd. Vrs. Commissioner of Central Tax*, (2019) 6 SCC 693 to the effect that though it is a part of adjective law, in absence of substantive provision empowering charging of interest, the circumstances envisaged under Section 7(5) of the OET Act does not authorize the Taxing Authority to raise demand for payment of interest in the present scenario.
- (g) Till the Hon'ble Supreme Court passed Order dated 28.03.2017 in the case of *State of Odisha Vrs. Reliance Industries Ltd. and Others*, SLP(C) No.14454-14778/2008 allowing the appeals, in view of its interim Order dated 03.02.2010 passed in interlocutory applications filed by the State of Odisha, the deposit(s) of 1/3<sup>rd</sup> of the tax due disclosed in the return(s) being considered "not tax" prior to pronouncement of Order on 28<sup>th</sup> March, 2017, the petitioner is liable to discharge only balance tax payable, but not interest.
- (h) Even for the sake of argument it is conceded that there was less payment of tax, since machinery provision was not invoked by the Department to determine the balance tax

and raise demand accordingly at the relevant point of time, there could not have been any demand for interest in absence of any finding by the Revenue as to insufficient cause. In other words, the Revenue having not recorded any finding as to “without sufficient cause” the petitioner withheld tax liability as disclosed in the return(s), there was no scope or occasion for the Authorities to insist for payment of interest on the balance tax payable. Since the circumstance under which there was short-payment of tax, principally on account of interim Order of the Hon’ble Supreme Court, additionally final order being passed by disposing of writ petition(s) by this Court following said interim order and the legal position as to exigibility of entry tax being unclear till 2017, cannot be imputed as lack of *bona fides*, negligence on the part of the petitioner or indolence of the taxable person(s). Hence, seeking to recover the balance tax along with interest is unjust and improper.

- (i) Clarity in position of law could finally be set forth by the Nine-Judge Bench of the Supreme Court in *Jindal Stainless Ltd. Vrs. State of Haryana, (2016) 11 SCALE 1 = 2016 AIR SCW 5617 = (2017) 12 SCC 1* and the taxable person has taken steps to discharge the burden of tax liability of 2/3<sup>rd</sup> which remained unpaid due to interim Order dated 03.02.2010 of the Supreme Court and final orders based on said interim order passed by this Court. Cause for the delay cannot be attributed to the petitioner.

In this connection, referring to *Bajaj Auto Ltd. Vrs. Deputy Commissioner of Sales Tax, vide Order dated 31.03.2021* passed by this Court in *W.P.(C) No.3804 of 2018*, wherein the ratio of decision in *Food Corporation of India Vrs. State of Haryana and Another, (2000) 119 STC 1 (SC)* has been followed, it is submitted that the legal position being clarified by the Supreme Court only on 28<sup>th</sup> March, 2017, the demand notice instructing the petitioner to deposit interest since 2010 till 2017 is not only untenable but also perverse and illegal.

- (j) It would be onerous on the part of the petitioner who has not passed on the burden of entry tax on the customers. The petitioner has filed its returns as required under the Act, and as a condition precedent paid the amount admitted in the returns. The returns were filed, and taxes are paid to the extent admitted therein. The portion of levy which is declared by this Court as not authorized *vide Reliance Industries Ltd., (2008) 16 VST 85 (Ori)* could not be said to be admitted tax. Such turnovers falling within the ambit of paragraph 30 of said Judgment were disclosed in the returns as was directed by the Supreme Court and this Court. In absence of any authority to collect and deposit amount of 2/3<sup>rd</sup>, the petitioner could not have been said to have defaulted in payment of admitted tax. The amount of entry tax sought to be levied with interest has never fallen due. Since the Hon'ble Supreme Court had directed that the part payment made would be treated as

“deposits” not “tax”, the petitioner-dealer had not collected entry tax amount from its customers. There being no tangible material to show by the opposite parties that at any point of time the petitioner had passed on the burden of entry tax on to the customers.

- 4.1. Therefore, in sum and substance the argument at the bar boils down to one and only point that the interest is not leviable on the balance unpaid entry tax for the period prior to 2017 inasmuch as the amount of 1/3<sup>rd</sup> was treated as “deposit” till pronouncement on 28.03.2017. Very levy of entry tax was in doldrums in many States, *vires* of which was subject-matter of challenge before the Supreme Court including that of the Odisha Entry Tax Act, 1999 and upon formation of the Committee pursuant to direction of this Court consciously reached at a consensus that penalty would not be enforced for such non-payment of tax in respect of turnover which fell within the ambit of proposition laid down in paragraph 30 of *Reliance Industries Ltd. Vrs. State of Odisha, (2008) 16 VST 85 (Ori)*.
- 4.2. There was “sufficient cause” for non-payment of entire entry tax liability disclosed in the return(s). Section 7(5) of the OET Act authorizes levy of interest only if the Taxing Authority shows that non-payment was “without sufficient cause”. In the present circumstance, thus, provision of Section 7(5) does not attract.
- 4.3. Refuting the contention of the Revenue to the effect that there was shifting of burden of tax on the customers, it has been specifically pleaded by the petitioner by way of rejoinder

affidavit that in view of enunciation of law at paragraph 30 of the *Reliance Industries Ltd., (2008) 16 VST 85 (Ori)*, the liability to pay tax on the turnover pertaining to goods brought into local area, similar goods being not manufactured or produced within the State of Odisha there was no scope for collection of tax from customers as the same would attract *vice* of Article 265 of the Constitution of India.

- 4.4. Attention of this Court is drawn by Sri Surya Prasad Mishra, Senior Advocate that the interim application(s) being I.A. Nos. 327-651 in SLP(C) Nos.14454-14778/2008 were filed by the State of Odisha, but not by the petitioner(s). The Supreme Court of India in the said interim applications was pleased to stay the operation of portion of paragraph 30 against which the State of Odisha was aggrieved *vide* Order dated 30.10.2009, and said order got subsequently modified by Order dated 03.02.2010 with direction to the parties to deposit 1/3<sup>rd</sup> of the tax liability.
- 4.5. Since the Hon'ble Supreme Court has directed by virtue of said Order dated 03.02.2010 that such deposit of 1/3<sup>rd</sup> of the tax liability to be treated as "deposit", but not as "tax", necessary corollary would be that the effect of paragraph 30 of *Reliance Industries Ltd., (2008) 16 VST 85 (Ori)* stands operative and therefore, no liability can be said to have subsisted till the effective order has been passed in the case of *State of Odisha Vrs. Reliance Industries Ltd.* on 28<sup>th</sup> March, 2017 by Division Bench of the Supreme Court after legal position is propounded by the larger Bench.

4.6. Sri Rudra Prasad Kar, Advocate urged that it is the State of Odisha litigated before the Supreme Court and might have succeeded, but that would not give it a justifiable reason to contend that the dealer has chosen to proceed with the litigation for which it would be saddled with levy of interest. To buttress his argument Sri Surya Prasad Mishra, learned senior counsel assisted by Sri Rudra Prasad Kar, learned counsel for the petitioner relied on the following paragraph of *Shree Chamundi Mopeds Ltd. Vrs. Church of South India Trust Assn.*, (1992) 3 SCC 1:

“10. *In the instant case, the proceedings before the Board under Sections 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant-company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under Section 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act were pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the order of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. **Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a***

*result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant-company against the order of the learned Single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 of 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed.”*

4.7. Justifying “sufficient cause” for not paying full “tax due” as per return(s), Sri Surya Prasad Mishra and Sri Jagabandhu Sahoo, Senior Advocates submitted that in *Calcutta Jute Manufacturing Co. Vrs. CTO*, (1997) 6 SCC 262, the Hon’ble Court distinguished ratio of *J.K. Synthetics Ltd.*, (1994) 4 SCC 276 and observed as follows:

“15. *But the position here is explicitly distinguishable from the factual situation in J.K. Synthetics Ltd., (1994) 4 SCC 276 Here, nobody had doubt that if Section 6-B of the Act was valid the tax was payable on the turnover. It was the constitutional validity of Section 6-B which was challenged by the appellants in the earlier writ petitions before the Calcutta High Court and which finally ended up in upholding of its validity. Hence, there was no question of the assessee waiting for the determination and the turnover as there was no dispute on that aspect. The fact that appellants questioned the constitutional validity of the charging provision cannot be equated with a dispute whether the freight paid would also form part of the sale amount. It was a highly debated dispute whether price amount would envelope the freight charges paid by the dealer and until the controversy was resolved by the Court in Hindustan Sugar Mills Vrs. State of Rajasthan, (1978) 4 SCC 271 the dealers were justified in excluding the freight charges from sale price. It was for that reason the Constitution Bench refrained from mulcting the taxpayer with liability to pay interest additionally. Appellants in these cases have never disputed that they are liable to pay tax on the turnover under Section 6-B of the Act even while they focussed on the vires of that provision.*”

4.8. Since this Court held that the State had no jurisdiction to levy entry tax on the goods brought into local area from outside but not manufactured/produced within the State of Odisha in *Reliance Industries Ltd.*, (2008) 16 VST 85 (Ori) there was sufficient cause for the petitioner not to pay full amount of tax

due in respect of such turnover. Sri Jagabandhu Sahoo in furtherance of what is submitted added that *Indian Metals and Ferro Alloys Corporation of Orissa (supra)* and *National Aluminium Company Ltd. (supra)* clearly laid down that the OET Act is not compensatory, thereby the statute falls within the scope of Article 304(b) of the Constitution. Nevertheless, later on there was change in stand by the State of Odisha and this Court dealt with the issue whether the statute fell within ambit of Article 304(a) in *Reliance Industries Ltd., (2008) 16 VST 85 (Ori)*. Thus, there was finding with regard to leviability of entry tax on the scheduled goods not manufactured/produced within the State of Odisha in paragraph 30 *ibid*. After the Hon'ble Supreme Court of India passed order on 28.03.2017, the petitioner has paid the balance amount of entry tax.

4.9. It is submitted that this Court also protected the interest of the petitioner-dealer by directing to constitute Committee and also passed order directing the petitioner(s) to approach the Commissioner of Sales Tax for smooth payment of balance tax by granting instalments. Such sufficiency in cause being genuine, there cannot be any demand of interest.

4.10. Sri Bijay Krushna Mahanti, learned Senior Advocate added by saying that the Taxing Authority was supposed to exercise the power under Section 7(5) of the OET Act read with Rule 10(6)(b) of the OET Rules in the manner prescribed, but not otherwise as enunciated by this Court in *Toyo Engineering (supra)*. Having overstepped the modality clarified in said Judgment of this Court, the demand for interest on balance entry

tax between 2010 and 2017 would become vitiated for want of jurisdiction and authority.

4.11. Sri Sidharth Ray, learned Senior Advocate supporting all the above contentions and arguments, urged that penalty could not be imposed by the Revenue Authorities inasmuch as there was sufficient cause for non-payment of tax due. There is much of difference between “tax due” and “tax payable”. Therefore, neither penalty could be visited nor does the petitioner(s) liable to be fastened with the interest under Section 7(5). Section 7(5) having close proximity with sub-sections (10) and (11), at his sweet-will the Taxing Authority is not competent to raise demand for interest/penalty inasmuch as this Court while delivering Judgment in *Reliance Industries Ltd., (2008) 16 VST 85 (Ori)* bestowed on the statutory authority to examine/scrutinize the transactions falling within the scope of what has been expounded in paragraph 30 *ibid.*

4.12. Sri Sanjiv Udgata, learned Advocate posed that when this Court following interim Order dated 03.02.2010 passed in consideration of I.As. in S.L.Ps. filed by the State of Odisha disposed of writ petition of the petitioner(s) questioning validity of the very levy of entry tax under the OET Act, the State of Odisha in certain cases having not preferred appeal before the Supreme Court, the same cannot be said to have revived for taking action to levy interest on the basis of Order dated 28<sup>th</sup> March, 2017 of Division Bench of the Supreme Court after declaration of law in Nine-Judge Bench of said Hon’ble Court in

the case of *Jindal Stainless Ltd.*, (2016) 11 SCALE 1 = 2016 AIR SCW 5617 = (2017) 12 SCC 1.

- 4.13. Ms. Charanya Lakshmikumaran, learned Advocate supporting the arguments of other counsel as discussed above, supplemented by saying that certain matters being disposed of by the Supreme Court along with other batch of cases along with *Fr. William Fernandez (supra)* on 9<sup>th</sup> October, 2017, there was “sufficient cause” for the petitioner(s) to wait till disposal of their cases.

***Argument(s) advanced by the Senior Counsel appearing for the Commercial Tax Organisation:***

5. Section 3 of the OET Act being charging provision, under self-assessment scheme of the statute, the petitioner(s) is required to pay tax due as per figures disclosed in returns supposed to be filed within time specified under Section 7(1) which is subject to scrutiny as provided under sub-sections (10) and (11) thereof. Section 9 deals with self-assessment. Regular assessment is exception. When the returns are not accepted, assessment under Section 9C or 10 is undertaken. On failure to pay amount of tax due as per return and “without sufficient cause”, interest is chargeable. As Hon’ble Supreme Court passed interim order in the context of challenge *qua* paragraph 30 of *Reliance Industries Ltd.*, (2008) 16 VST 85 (Ori). Ultimately the appeals of the State of Odisha being allowed, the liability to pay entry tax revived and the turnover as is disclosed in the returns is available to be exigible under the OET Act.

5.1. Sri Rakesh Dwivedi, learned Senior Advocate taking this Court to provisions of Section 7 and requirement of filing self-assessed returns and scrutiny thereof, submitted that notwithstanding interim orders of the Hon'ble Supreme Court nothing prevented the parties from discharging their respective tax liability. The interim orders of the Hon'ble Supreme Court while the validity of the OET Act was under consideration particularly so the Appeals preferred by the State of Odisha with regard to observation of this Court that "*the State has no jurisdiction to impose tax on such goods imported from outside and are not manufactured within the State of Orissa.*" could not have been construed by the taxable persons as if said observation has attained finality. The proceeding before the Hon'ble Supreme Court challenging *vires* of the statute does not mean the non-payment of legitimate taxes is on account of "sufficient cause". Thus, the contention of the petitioner(s) that the non-deposit of tax due as disclosed in the return(s) was with "sufficient cause" cannot be accepted. Therefore, in the fact-situation of the instant case, the provisions of Section 7(5) have been appropriately made attracted.

5.2. Referring to observation in *Gujarat Urja Vikas Nigam Ltd. Vrs. Amit Gupta, (2021) 7 SCC 209* that "*textually similar language in different enactments has to be construed in the context and scheme of the statute in which the words appear. The meaning and content attributed to statutory language in one enactment cannot in all circumstances be transplanted into a distinct, if not, alien soil*", Sri Dwivedi opposed the concept of liberal approach

as put forth in the context of condonation of delay regard being had to the language employed in the Limitation Act, 1963 *vis-à-vis* the Land Acquisition Act, 1894, while conceiving the meaning of “sufficient cause” *vide Basawaraj Vrs. Land Acquisition Officer, (2013) 14 SCC 81* and *Benarsi Das Saraf Vrs. Dalmia Dadri Cement, AIR 1959 P&H 232*.

- 5.3. Arguing further it is submitted that a purposive interpretation, depending both on the text and the context in which the provision was enacted, must, be adhered to: *Vide Arcelormittal India (P) Ltd. Vrs. Satish Kumar Gupta, (2019) 2 SCC 1; Shailesh Dhairyawan Vrs. Mohan Balkrishna Lulla, (2016) 3 SCC 619; Periyar & Pareekanni Rubbers Ltd. Vrs. State of Kerala, (2008) 14 SCC 704; CIT Vrs. Calcutta Knitweaves, (2014) 6 SCC 444*. Thus, the machinery provisions for calculating the tax or the procedure for its calculation are to be construed by ordinary rule of construction. Whereas a liability has been imposed on a dealer by the charging section, the statute is required to be construed in such a manner so as to make the machinery workable. In such view of the matter, when the taxable person is obligated to furnish returns as specified under Section 7(1) within stipulated period under Rule 10, upon scrutiny of such returns as provided for under sub-sections (10) and (11) of Section 7, if he is found to have failed to pay tax due as per the return, exercise of power under Section 7(5) is concomitant and therefore, there could not have been any imputation against levy of interest @ 2% or 1% per month as envisaged *ibid*.

5.4. In furtherance, it is also advanced that on the principles of “restitution” and “unjust enrichment” as propounded in *Indian Council for Enviro-Legal Action Vrs. Union of India*, (2011) 8 SCC 161, that with restitution so long as the deprivation of the other has not been fully compensated for, injustice to that extent remains, and this court being vested with wide powers to grant restitution can sustain the demand for levy of interest.

5.5. Sri Rakesh Dwivedi, learned senior counsel for the Commercial Tax Organisation pressed into service *Kerala State Electricity Board Vrs. M.R.F. Ltd.*, (1996) 1 SCC 597, to contend that in absence of any interim order granting stay of operation of the impugned judgment, the judgment of the High Court was binding between the parties despite pendency of the appeal.

5.6. Notwithstanding grant of interim order, in *Nava Bharat Ferro Alloys Ltd. Vrs. Transmission Corpn. of A.P. Ltd.*, (2011) 1 SCC 216 the Court held as follows:

“28. Superadded to all this is the fact that this Court was dealing with a case where the High Court had finally struck down the revised tariff, but the said decision was reversed in appeal. In the present case the appellant had obtained only an ad interim order of stay against the enforcement of the tariffs. There is a qualitative difference in the two situations. Even if one were to take a charitable view of the legal effect of any direction of the High Court, pending adjudication by the Court, cases in which the High Court finally held the tariffs to be bad would in our opinion stand on a different footing than cases where the party obtains an order granting interim protection to it. While there is an element of finality in the case of a final adjudication by a competent court insofar as that Court is concerned, an interim order can be vacated at any stage.

***The interim order may not even prevent a prudent party from paying the charges according to the revised tariffs if it does not propose to take any chance and suffer recovery of an additional amount on account of the non-payment of the dues by the date stipulated for the purpose.”***

- 5.7. It is also submitted that the interest being automatic and levied by operation of law, in view of *Pepsico (India) Holding Vrs. Commissioner Trade Tax, (2011) 13 SCC 68*, interim order during pendency of dispute may not be construed as “sufficient cause” which prevented the petitioner from discharging tax liability. It is argued that in order to avoid levy of interest, full taxes should have been deposited. Under such premise, it cannot be said that the petitioner(s) was prevented from payment of full tax due as per return and the non-payment can very well be said that it is “without sufficient cause”.

***Consideration of arguments of respective parties:***

6. From the facts narrated herein above with legal position as posited by different counsel including Sri Bijay Krushna Mahanti, Senior Advocate, Sri Surya Prasad Mishra, Senior Advocate, Sri Sidharth Ray, Senior Advocate, Sri Rudra Prasad Kar, Advocate, Sri Bhabani Prasad Mohanty, Advocate, Sri Sanjeev Udgata, Advocate and Ms. Charanya Lakshmikumaran this much would suffice to note for the purpose of adjudication of *lis* here that:

- (i) Penalty has been levied while finalizing assessment under Section 9C or Section 10 of the OET Act as if it was mandatory consequence flowing from the statutory

provisions for “assessment of tax” on account of non-payment of tax as per returns;

- (ii) Interest has been sought to be levied on the tax remained unpaid during 2010-17 by the Taxing Authority invoking provisions of sub-section (5) in view of scrutiny of return(s) as being empowered under sub-sections (10) and (11) of Section 7 of the OET Act after declaration of law by Nine-Judge Constitution Bench of the Hon’ble Supreme Court of India and as a consequence thereof the Orders passed by the Division Bench of said Court.
- (iii) The sum and substance of the argument of learned counsel is that since the State of Odisha in I.A. Nos. 327-651 in SLP(C) Nos.14454-14778/2008 has approached the Supreme Court in appeals and the Order dated 30.10.2009 granting stay of operation of portion of paragraph 30 of Judgment in *Reliance Industries Ltd., (2008) 16 VST 85 (Ori)* stood modified *vide* Order dated 03.02.2010, the non-payment of tax cannot be construed to have fallen within the expression “without sufficient cause” employed in Section 7(5) of the OET Act.
- (iv) The manner for invocation of jurisdiction under Section 7(5) of the OET Act read with Rule 10(6)(b) of the OET Rules as expounded by this Court in *Toyo Engineering (supra)* being not followed, the demand for less payment of tax as made in Form E-24 cannot sustain, much less

interest thereon on account of non-payment of balance tax during 2010-17.

***Jindal Stainless Ltd. Vrs. State of Haryana, (2017) 12 SCC 1 is a Judgment in rem:***

7. There is no cavil that Judgment rendered by Nine-Judge Constitution Bench of the Hon'ble Supreme Court of India in the matters of *Jindal Stainless Ltd. Vrs. State of Haryana, (2017) 12 SCC 1* is a Judgment *in rem* and not a Judgment *in personam*. *Deccan Paper Mills Co. Ltd. Vrs. Regency Mahavir Properties & Others, (2021) 4 SCC 786* laid down with respect to judgment *in rem* as follows:

“24. *P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn., Wadhwa Nagpur)* describes an *in rem* proceeding as follows:

*In rem. adj. [Latin “against a thing”] Involving or determining the status of a thing, and therefore the rights of persons generally with respect to that thing.— Also termed (archaically) impersonal. (Black 7th Edn., 1999)*

*‘An action in rem is one in which the judgment of the Court determines the title to property and the rights of the parties, not merely as between themselves, but also as against all persons at any time dealing with them or with the property upon which the Court had adjudicated.’ R.H. Graveson, Conflict of Laws 98 (7th ed. 1974).*

*Against the king; against the property, not against a person.*

*This term is derived from the Roman law, but is not used in English law in precisely the same sense as in that law. Indeed, Bracton, limits proceedings in rem to actions to obtain possession of res by which he understood real actions; (Bigelow on Estoppel 42, 43.)*

***A proceeding in rem is a proceeding instituted against a thing, and not against a person.***

*A proceeding in rem, in a strict sense, is one taken directly against property, and has for its object the disposition of the property, without reference to the title of individual claimants but in a larger and more general sense the term 'proceeding in rem' is applied to actions between parties where the direct object is to reach and dispose of property owned by them, or of some interest therein.*

***A judgement in rem is generally said to be a judgment declaratory of the status of some subject matter, whether this be a person, or a thing. Thus the probate of a will fixes the status of the document as a will; so a decree establishing or dissolving a marriage is a judgment in rem, because it fixes the status of the person. A judgment or forfeiture against specified articles of goods for violation of the revenue laws is a judgment in rem. In such case the judgment is conclusive against all the world, and, if the expression 'strictly in rem' may be applied to any class of cases, it should be confined to such as these. Chief Justice Marshall [Mankin Vrs. Chandler, 16 F Cas 625 at p.626 (CCDV 1823)] says:***

*'I have always understood that where a process is to be served on the thing itself, and where the mere possession of the thing itself, by the service of a process and making proclamation, authorizes the Court to decide upon it without notice to any individual whatever, it is a proceeding in rem, to which all the world are parties. The claimant if a party, whether he speaks or is silent, whether he asserts his claim or abandons it. But usage has distinguished as proceedings in rem a class of cases in which, while the seizure of the thing will be in aid of jurisdiction, yet it is essential that some form of notice be given to the particular person or persons. The proceeding thus assumes a phase of actions in personam, and a judgment will not be binding upon any one who was not before the Court.*

*An act or proceeding is in rem when it is done or directed with reference to no specific person and consequently*

*against or with reference to all whom it might concern, or 'all the world'.*

*Lawsuits brought against property as compared with those against a person; the Court's jurisdiction does not depend on notice to the property owner."*

25. *In R. Viswanathan Vrs. Rukn-ul-Mulk Syed Abdul Wajid, (1963) 3 SCR 22, this Court set out the Roman law concept of jus in rem as follows:*

*"17. Roman lawyers recognised a right either as a jus in rem or a jus in personam. According to its literal meaning "jus in rem" is a right in respect of a thing, a "jus in personam" is a right against or in respect of a person. In modern legal terminology a right in rem, postulates a duty to recognise the right imposed upon all persons generally, a right in personam postulates a duty imposed upon a determinate person or class of persons. **A right in rem is therefore protected against the world at large; a right in personam against determinate individuals or persons.** An action to enforce a jus in personam was originally regarded as an action in personam and an action to enforce a jus in rem was regarded as an action in rem. But in course of time, actions in rem and actions in personam acquired different content. When in an action the rights and interest of the parties themselves in the subject-matter are sought to be determined, the action is in personam. The effect of such an action is therefore merely to bind the parties thereto. Where the intervention of the Court is sought for the adjudication of a right or title to property, not merely as between the parties but against all persons generally, the action is in rem. Such an action is one brought in the Admiralty Division of the High Court possessing Admiralty jurisdiction by service of process against a ship or cargo within jurisdiction. There is another sense in which an action in rem is understood. A proceeding in relation to personal status is also treated as a*

*proceeding in rem, for the judgment of the proper court within the jurisdiction of which the parties are domiciled is by comity of nations admitted to recognition by other courts. As observed by Cheshire in his "Private International Law", Sixth Edition at page 109:*

*'In Roman law an action in rem was one brought in order to vindicate a jus in rem, i.e., a right such as ownership available against all persons, but the only action in rem known to English law is that which lies in an Admiralty court against a particular res, namely, a ship or some other res, such as cargo, associated with the ship.'*

*Dealing with judgments in rem and judgments in personam, Cheshire observed at page 653,*

*'It (judgment in rem) has been defined as a judgment of a court of competent jurisdiction determining the status of a person or thing (as distinct from the particular interest in it of a party to the litigation); and such a judgment is conclusive evidence for and against all persons whether parties, privies or strangers of the matter actually decided. \*\*\* A judgment in rem settles the destiny of the res itself 'and binds all persons claiming an interest in the property inconsistent with the judgment even though pronounced in their absence'; a judgment in personam, although it may concern a res, merely determines the rights of the litigants inter se to the res.'*

26. Also, a judgment in rem has been described in *Satrucharla Vijaya Rama Raju Vrs. Nimmaka Jaya Raju*, (2006) 1 SCC 212 as follows:

'10. ... A judgment in rem is defined in English law as "an adjudication pronounced (as its name indeed denotes) by the status, some particular subject-matter by a tribunal having competent authority for that purpose". **Spencer Bower on Res Judicata**

*defines the term as one which “declares, defines or otherwise determines the status of a person or of a thing, that is to say, the jural relation of the person or thing to the world generally”...’ ...”*

7.1. Judged the contention of the counsel for the petitioner(s) that the State of Odisha did not challenge the Order passed by this Court in certain cases before the Supreme Court does not obliterate the impact and the competence of the Taxing Authority in initiating action for recovery of taxes. However, so far as levy of interest is concerned the same depends on the language of the statutory provision.

***Relevant provisions of the OET Act and rules framed thereunder:***

8. To appreciate arguments and counter-arguments of respective parties following provisions contained in Sections 3 and 7 of the OET Act are relevant to be taken note of:

***Section 3:***

(1) *There shall be levied and collected a tax on entry of the scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding twelve per centum of the purchase value of such goods from such date as may be specified by the State Government and different dates and different rates may be specified for different goods and local areas subject to such conditions as may be prescribed.*

*Provided that the State Government may direct that in such circumstances and under such conditions and for such period as may be prescribed, a dealer shall pay in lieu of tax payable under this Act a sum fixed in the prescribed manner, and in such a case the tax shall be deemed to have been compounded.*

***Section 7:***

- (1) *Every registered dealer and every dealer who is liable to get himself registered under this Act shall furnish every month to the Commissioner, a return in such form, by such date as may be prescribed and shall furnish along with such return satisfactory proof of payment of **tax payable** by him under this Act:*

*Provided that a dealer who files quarterly return under VAT Act may furnish return under this Act every quarter paying the full amount of **such tax as payable** for the preceding quarter.*

*Explanation.—*

*A return not accompanied by proof of full payment of the tax due in respect of a tax period shall not be deemed to be a return for the purpose of this section.*

- (5) *Where a dealer required to file return under this section **fails without sufficient cause** to pay the amount of **tax due as per the return** for any tax period or fails to furnish return, such dealer shall be liable to pay interest in respect of—*

- (i) *the tax, which he fails to pay according to the return; or*
- (ii) *the tax payable for the period for which he has failed to furnish return,*

*at the rate of one per centum per month from the date the return for the period was due to the date of its payment or the date of order of assessment, whichever is earlier.*

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- (10) ***Each and every return** in relation to any tax period furnished by a dealer under this section, shall be subject to scrutiny by the assessing authority to verify the correctness of calculation, application of correct rate of tax and interest, claim of deductions, if any, under this Act and full payment of tax and interest payable by the dealer for such period.*

*(11) If any mistake is detected as a result of scrutiny made under sub-section (10), the assessing authority shall serve a notice in the prescribed form on the dealer to make payment of the extra amount of tax along with the interest as per the provisions of this Act, by the date specified in the said notice.”*

8.1. So far as is necessary for the present purpose, the following provisions of Rule 10 may be pertinent:

**Rule 10:**

*“(1) (a) The return under sub-section (1) of Section 7 of the Act shall be in Form E3 and shall be submitted within twenty one days of the date of expiry of the month or quarter, as the case may be, to which the return relates. The return shall be submitted to the Deputy/Assistant Commissioner/Sales Tax Officer of the Circle/assessment unit], as the case may be, to whom the return under VAT Act and the Rules made thereunder are required to be submitted by the dealer:*

*Provided that where the dealer is not registered under VAT Act and the Rules, such return shall be submitted to the Deputy/Assistant Commissioner/Sales Tax Officer of the Circle/assessment unit, under whose jurisdiction the principal place of business or place of business, as the case may be, of the dealer is situated.*

*(b) The revised return under sub-section (2) of Section 7 of the Act shall be in Form E3 and shall be submitted before the date on which the return for the succeeding tax period becomes due.*

*(c) From such date and in such manner as may be specified by the Commissioner by notification, the return required to be furnished under clause (a) or (b) of sub-rule (1), sub-rule (2) and sub-rule (2A) may also be filed electronically.*

- (d) *The Commissioner may, by notification specify the date from which all or a certain class of dealers shall, subject to such conditions as may be specified, submit return through the electronic mode only.*
- (e) *Every dealer who claims to have made sales against Declarations in Form E-15 or E-16 or both shall, in respect of such claim, furnish a statement in Form E-3A indicating particulars of sale of scheduled goods made against declaration in Forms E-15 and E-16 along with the return.*

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- (4) (a) *Every dealer required to pay interest under sub-section (5) of Section 7 of the Act in respect of any tax period, shall pay such interest at the time of making payment of tax payable in respect of such tax period.*
- (b) *The dealer shall furnish a statement showing details of calculation of the amount of interest payable as referred to in clause (a) and furnish such statement along with receipted challan or e-challan or crossed demand draft or banker's cheque evidencing payment of such interest.*
- (5) (a) *Where a dealer fails to make payment of the tax due and interest thereon along with the return or revised return furnished for any tax period, a notice in Form E22 requiring such dealer to show cause within fourteen days from the date of receipt of the notice, shall be served upon him.*
- (b) *Where the dealer fails to respond to such notice or explain the default in payment of tax or interest or both to the satisfaction of the authority issuing the notice under clause (a), penalty shall be imposed under sub-section (6) of Section 7 and the order shall be issued in Form E23.*
- (c) *Where a dealer fails to furnish the proof of payment as required under sub-section (1) of Section 7 a*

*notice in Form E22 requiring such dealer to show cause within fourteen days from the date of receipt of the notice, shall be served on such dealer and if the dealer either fails to respond to such notice or fails to explain to the authority issuing such notice sufficient cause for not furnishing the proof of payment as aforesaid, the penalty shall be imposed under sub-section (7) of Section 7 and the order shall be issued in Form E23.*

*(d) The mode of payment of penalty shall be the same as specified in sub-rule (3).*

*(6) (a) Each and every return in relation to any tax period furnished by a dealer shall be subject to manual or system based scrutiny.*

*(b) If, as a result of such scrutiny, the dealer is found to have made payment of tax less than what is payable by him for the tax period, as per the return furnished, the assessing authority shall serve a notice in Form E24 upon the dealer directing him to pay the balance tax and interest thereon by such date as may be specified in that notice.”*

9. Harmonious reading of the above provisions along with charging provision, *i.e.*, Section 3 of the OET Act gives clear indication that whereas the entry tax is exigible on entry of goods—specified in the Schedule appended to the OET Act— into the local area for consumption, use or sale therein and return disclosing “tax payable” is required to be furnished as per sub-section (1) of Section 7. It is provided under sub-section (10) thereof that each and every return is to be scrutinized by the Assessing Authority. If mistake is detected as a result of scrutiny, the Assessing Authority is vested with power to proceed with the matter against the dealer as provided under sub-section (11). Thus, it is explicit that detection of mistake in return upon

scrutiny triggers action against the dealer asking it “to make payment of the extra amount of tax along with the interest as per the provisions of this Act”. The OET Act provides for levy of interest under sub-section (5) of Section 7. No other provision empowering Authority to levy interest is brought to the notice of this Court by any of the parties.

***Issue of Notice in Form E-24 prescribed under Rule 10(6)(b) of the OET Rules directing the petitioner to deposit less payment of tax as detected:***

10. In the cases at hand, it is the consistent pleading of the petitioners that as this Court observed at paragraph 30 of *Reliance Industries Ltd., (2008) 16 VST 85 (Ori)* that the State of Odisha is not competent to levy entry tax on the goods brought from outside and not manufactured or produced within the State, the dealers are not required to pay entry tax. However, on the basis of interim Order dated 03.02.2010 passed in I.A. Nos. 327-651 in SLP(C) Nos.14454-14778/2008 of the State of Odisha by the Supreme Court they were required to “deposit” 1/3<sup>rd</sup> of tax due as disclosed in the returns. The Hon’ble Court made it clear that such payment is treated to be “deposit”, but not “tax”.

10.1. In the teeth of the declaration of law in paragraph 30 of *Reliance Industries Ltd., (2008) 16 VST 85 (Ori)*, the State is not authorized to collect tax in view of Article 265 of the Constitution of India. Especially when the petitioners are directed to make deposit of certain amount which is not made towards discharge of “tax” liability till the Appeals filed at the

behest of State of Odisha are finalized by the Hon'ble Supreme Court, it could not be stated that the disclosure of tax liability in the return and deposits made in accordance with arrangement as stated in the interim order is a "mistake" attributable to the dealer(s). On the facts and in the circumstances of the case, it appears the Taxing Authorities have never scrutinized the return as required under sub-section (10) of Section 7 and such course has been undertaken only after disposal of SLP(C) Nos.14454-14778/2008 filed by the State of Odisha against the dealers *vide* Order dated 28.03.2017. At the relevant of time when the returns were filed in conformity with interim Order dated 03.02.2010 of the Supreme Court read with paragraph 30 of *Reliance Industries Ltd., (2008) 16 VST 85 (Ori)*, it cannot be said that there was "mistake" in the returns in terms of sub-section (10) of Section 7.

- 10.2. It seems there is obvious reason for not undertaking scrutiny of returns during 2010-17. The Hon'ble Supreme Court in the interim Order dated 30.10.2009 granted stay of operation of paragraph 30 of said Judgment of this Court to the extent which spelt out that '*The State has no jurisdiction to impose tax on such goods imported from outside and are not manufactured within the State of Orissa. Therefore, the opposite parties may make scrutiny of the same and not realize entry tax on such goods*'. Though said interim order suffered modification *vide* Order dated 03.02.2010 by directing the dealers to deposit 1/3<sup>rd</sup> of the tax liability shown in the returns, the Assessing Authorities have not taken up "each and every return" for scrutiny.

10.3. Therefore, it is not justified on the part of the Assessing Authorities to issue demand notice(s) in Form E-24 prescribed under Rule 10(6)(b) of the OET Rules as a result of scrutiny under sub-sections (10) and (11) of Section 7 of the OET Act that too in violation of observations made in *Toyo Engineering (supra)*.

10.4. Following the ratio of *Toyo Engineering (supra)*, this Court would have to remit the matter to the Assessing Authority, but considering that the same would not serve fruitful purpose at this distance of time holds that issue of notice in Form E-24 under Rule 10(6)(b) of the OET Rules is not in conformity with the statutory requirement. Since the balance amount of tax due as per disclosure made in the return(s) is known to the petitioner, setting aside the notice in Form E-24 and remanding for computation of tax liability to the Taxing Authority would enure to the benefit of none. Therefore, the petitioner is required to determine its own liability as per self-assessed return(s) already filed.

***Levy of interest under Section 7(5) of the OET Act:***

11. Sub-section (5) of Section 7 has been pressed into service for levy of interest on the balance tax payable by the dealer. Whereas sub-section (1) of Section 7 used the term “tax payable”, sub-section (5) stipulates that failure to pay the amount of “tax due” as per the return without sufficient cause attracts levy of interest. The intention of Legislature has been made more transparent on reading of sub-rule (4) of Rule 10 of the OET Rules. In

unambiguous terms said sub-rule spells out that every dealer required to pay interest under sub-section (5) of Section 7 of the Act in respect of any tax period, *shall pay such interest at the time of making payment of tax payable* in respect of such tax period.

11.1. It is a part of scheme of the OET Act that tax becomes due the moment the dealer effects either purchases or brings scheduled goods into the local area for consumption, use or sale therein, which are subject to taxation and the obligation to pay the tax arises. Although the tax liability which comes into existence cannot be enforced till the quantification is effected by the “assessment” of the liability for payment of tax, the word ‘payable’ connotes a legally enforceable payment. As there was no scrutiny of return made by the Assessing Authority till the Hon’ble Supreme Court clarified the position of law no amount of tax was payable by the petitioner(s) with respect to transactions falling within the purview of paragraph 30 of *Reliance Industries Ltd., (2008) 16 VST 85 (Ori)*.

11.2. Under the above premises, the tax was not payable in view of interim Order dated 03.02.2010 of the Supreme Court read with paragraph 30 of *Reliance Industries Ltd., (2008) 16 VST 85 (Ori)*. The tax due revived upon eclipse being removed over paragraph 30 of said Judgment in *Order dated 28<sup>th</sup> March, 2017* of the Hon’ble Supreme Court passed in *State of Odisha Vrs. Reliance Industries Ltd. and Others, SLP(C) No.14454-14778/2008* pursuant to legal position being declared in *Jindal Stainless Ltd. Vrs. State of Haryana, (2017) 12 SCC 1*.

11.3. The process of self-assessment comprehends the concept of admitted tax. Reference can be had to Section 2(q) of the OET Act read with Section 2(47) of the Odisha Value Added Tax Act, 2004. Section 2(47) of the said OVAT Act defines the term “SELF-ASSESSMENT” to mean “a true and correct determination of net tax liability by a dealer in relation to any tax period”. Thus, the dealer is required by law to calculate his own tax liability and is given a time-frame to pay the same along with the return. It is quite possible that by the ultimate assessment the tax due may vary— be more or even less— but at the stage of making of the return, obligation has been cast on the dealer to pay the admitted tax. Under the scheme of the OET Act, tax is due at the time the return is due as per Section 7(1) read with Rule 10(1), *i.e.*, within twenty-one days of the date of expiry of the month or quarter, as the case may be, to which the return relates. It is, therefore, manifest that the liability is to be saddled with interest under Section 7(5), because of failure to make the payment of the tax due at the time of the submission of the return(s); and as provided in sub-rule (4) of Rule 10 the interest shall be paid at the time of making payment of “tax payable”.

11.4. Therefore, considering that the tax has become due as per returns, no sooner did the Hon’ble Supreme Court pronounce the Judgment, than the dealers started paying the balance amount of tax liability. At the time of furnishing return there was no default in terms of conceptual understanding of “tax due”. But later on passing of Order dated 28.03.2017 by the Supreme Court

allowing SLP(C) No.14454-14778/2008 of State of Odisha, tax has become due.

**12.** Analysis of Section 7(5) of the OET Act read with Rule 10 of the OET Rules transpires that interest is payable on tax due as discussed above, and the same is subject to fulfilment of condition that on failure to pay the amount of tax due as per the return “*without sufficient cause*”.

**12.1.** It is in the context of the transactions which fell within ken of paragraph 30 of the Judgment rendered by this Court in *Reliance Industries Ltd., (2008) 16 VST 85 (Ori)* that the petitioner(s) did not pay full amount of tax from 2010-17, which is in conformity with the terms of interim Order dated 30.10.2009 as modified *vide* Order dated 03.02.2010 by the Supreme Court. Such interim orders have been passed in the interlocutory applications being I.A. Nos. 327-651 in SLP(C) Nos.14454-14778/2008 moved by the State of Odisha. Therefore, it is indubitable that such circumstance comes within the fold of “sufficient cause”. It is not the case of the Revenue that the returns were submitted without disclosing proper turnover relating to scheduled goods brought into the local area, but such goods were not manufactured/produced within the State of Odisha. Only allegation levelled against the petitioner(s) is that along with return only 1/3<sup>rd</sup> of tax due was paid and the petitioner is liable to pay balance amount of tax with interest.

**12.2.** This apart, this Court acknowledged the difficulties of the petitioners and directed for constitution of Committee which has

consciously accepted the proposition not to impose penalty, but stuck to levy of interest under Section 7(5) of the OET Act. However, this Court on consideration of such report of the Committee, directed for discharge of liability to pay interest on the balance amount due after declaration of the law by the Hon'ble Supreme Court. This Court further was apprised of the fact that the Commissioner of Sales Tax, Odisha on being approached, has, in many cases, directed the parties to make payment of balance tax along with interest in instalments. This Court is, therefore, of the considered view that there was sufficient cause for the petitioners for non-deposit of tax at the relevant point of time. In other words, there was no failure to pay the amount of tax due as per the return "without sufficient cause".

12.3. The expression 'sufficient cause' is adequately elastic to enable the Court to apply the law in a meaningful manner which subserves ends of justice— that being the life purpose for the existence of the institution of the Court. Refer: *GRID Co. Vrs. NTPC, 2003 (II) OLR 559*.

12.4. In *Janardan Mohapatra Vrs. Brajabandhu Mohapatra, 2008 (II) OLR 573 (Ori)* the expression "sufficient cause" contained in Section 5 of the Limitation Act, 1963 is adequately flexible and widely elastic to enable the Courts to apply law in a meaningful manner. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and defeat the cause of justice. So trial court should effectively exercise its jurisdiction in a manner so as to justify the ends of justice as has

been described as the “Life purpose for the existence of the institution of Courts”. Apart from other considerations it must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

12.5. In *Sarawati Das Vrs. Pravat Kumar Sahoo*, 93 (2002) CLT 441 (Ori) it has been observed that the words ‘sufficient cause’ has to be interpreted in the given facts and circumstances of each case and Courts have to adjudge on the touch stone of pragmatic parameter and it can never be an iron tight jacket. Once it is found that the summons was duly served, it is for the litigant to appear in Court and prosecute the *lis*. Failure to do so, would not construe as ‘sufficient cause’. Such an interpretation will be unjust and would be a boon to unscrupulous litigants. Non-appearance of a party and non-engagement of an advocate by her will not be construed that the party were prevented by ‘sufficient cause’ from appearing when the appeal was called for hearing.

12.6. In *State of West Bengal Vrs. Administrator*, AIR 1972 SC 749 it has been observed by the Supreme Court that the expression ‘sufficient cause’ cannot be construed too liberally, merely because the party in default is the Government. It cannot also be gainsaid that the same consideration that will be shown by Courts to a private party when he claims the protection of Section 5 of the Limitation Act should also be available to the State. The words ‘sufficient cause’ should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of *bona fide* is imputable to a party.

12.7. Liberal construction of the expression ‘sufficient cause’ is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of *bona fide* is imputable. The expression ‘sufficient cause’ implies the presence of legal and adequate reasons. The word ‘sufficient’ means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a platitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. Reference may be had to *Balwant Singh Vrs. Jagdish Singh, 2010 AIR SCW 4848* and *State of Gujarat Vrs. Karnavati Veneers Pvt. Ltd., (2014) 68 VST 367 (Guj)*.

12.8. The meaning of ‘sufficient’ is ‘adequate’ or ‘enough’, inasmuch as may be necessary to answer the purpose intended. Therefore, word ‘sufficient’ embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard

of a cautious man. 'Sufficient cause' means that the party had not acted in a negligent manner or there was a want of *bona fide* on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been 'not acting diligently' or 'remaining inactive'. While deciding whether there is sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away the illegality perpetuated on the basis of the judgment impugned before it. Sufficient cause is thus the cause for which the party could not be blamed. Therefore, the petitioner must approach the court with a reasonable defence. There cannot be a straitjacket formula of universal application. *Vide Raimal Vrs. Rewa Coalfields Ltd., AIR 1962 SC 361; Lonard Grampanchayat Vrs. Ramgiri Gosavi, AIR 1968 SC 222; Surinder Singh Sibia Vrs. Vijay Kumar Sood, (1992) 1 SCC 70; Oriental Aroma Chemical Industries Ltd. Vrs. Gujarat Industrial Development Corporation, (2010) 5 SCC 459; Parimal Vrs. Veena, (2011) 3 SCC 545; Sudarshan Sareen Vrs. National Small Industries Corporation Ltd., 2013 SCC OnLine Del 4412; State of Bihar Vrs. Kameshwar Prasad Singh, (2000) 9 SCC 94; Madanlal Vrs. Shyamlal, (2002) 1 SCC 535; Davinder Pal Sehgal Vrs. Partap Steel Rolling Mills (P) Ltd., (2002) 3 SCC 156; Ram Nath Sao Vrs. Gobardhan Sao, (2002) 3 SCC 195, Kaushalya Devi Vrs. Prem Chand, (2005) 10 SCC 127, Srei International Finance Ltd. Vrs. Fairgrowth Financial Services Ltd., (2005) 13 SCC 95; Reena Sadh Vrs. Aniana Enterprises, (2008) 12 SCC 589.*

12.9. “Sufficient cause” is an elastic expression and no hard and fast guidelines are prescribed. The Court, in its discretion, has to consider the ‘sufficient cause’ in the facts and circumstances of every individual case. Although in interpreting the words ‘sufficient cause’, the Court has wide discretion but the same has to be exercised in the particular facts of the case. *Vide Hira Sweets & Confectionary Pvt. Ltd. Vrs. Hira Confectioners*, 2021 SCC OnLine Del 1823.

12.10. In *Santanu Kumar Mohapatra Vrs. Bijayanti Nanda*, 2006 (Supp.-I) OLR 1107 (Ori) reference has been made to *Arjun Singh Vrs. Mahindra Kumar*, AIR 1964 SC 993. There is no material difference between the facts to be established for satisfying the two tests of ‘good cause’ and ‘sufficient cause’. There cannot be a ‘good cause’ which is not ‘sufficient’ as affording an explanation for non-appearance, nor conversely a ‘sufficient cause’ which is used in this context in other statutes. If, on the other hand, there is any difference between the two, it can only be that the requirement of a ‘good cause’ is complied with on a lesser degree of proof than that of ‘sufficient cause’ assuming the applicability of the principle of *res judicata* to the decisions in the two proceedings, if the Court finds in the proceeding under Order 9, Rule 7, Code of Civil Procedure the lighter burden not discharged, it must be a *fortiori* bar the consideration of the same matter in the later proceeding under Order 9, Rule 13, C.P.C. where the standard of proof of that matter is higher.

12.11. So understood the conceptual recognition of the term “sufficient cause” in different contexts, it is necessary to bear in mind that there is an element of *bona fide* reasonable approach involved in said expression. For doing substantial justice, technical niceties are to be eschewed. In order to say that there is lack of sufficient cause, negligence, indolence and inaction attributable to the petitioner are factors for consideration. The petitioner, in the instant case, has shown *bona fide* cause which prevented it to discharge entire tax liability as disclosed to be due in respect of transactions falling within the scope of law laid down in paragraph 30 of the Judgment in *Reliance Industries Ltd., (2008) 16 VST 85 (Ori)*. The Assessing Authorities by issuing notice in Form E-24 straightway appeared to have scrutinized returns after matters have been disposed of by the Hon’ble Supreme Court of India. Neither the Apex Court nor this Court restrained the Revenue from proceeding with the assessment as per law and raise the demand. The orders of the Courts were to deposit the tax along with return. Pursuant to such direction the petitioner deposited the amount of tax. The Hon’ble Court clarified while passing the interim order that the amount so deposited were to be treated as “deposit” not “tax”. Till the date when the order dated 28.03.2017 is passed by the Supreme Court of India the said amount deposited could not be appropriated by the State of Odisha as “tax”.

12.12. Though pursuant to the orders, the returns furnished by the petitioner(s) disclosed turnover relating to the context of paragraph 30 of Judgment in *Reliance Industries Ltd., (2008) 16*

*VST 85 (Ori)*, and deposited 1/3<sup>rd</sup> amount of tax due as directed, the petitioner(s) cannot be said to have not paid the admitted tax. As earlier held that on account of partial payment made along with returns, it cannot fall within the meaning of “mistake” as used in Section 7(11) of the OET Act. Therefore, the levy of interest on such deposit is unwarranted, illogical and illegal.

12.13. During the pendency of the matters before the Supreme Court, there was no objection by the Revenue as to compliance of the interim orders as also the orders of this Court while disposing of the writ petitions.

12.14. With the above backdrop and the narration of facts adumbrated above, it is concluded that there was “sufficient cause” for the petitioner for depositing partial/conditional amount out of the tax due as per return in terms of sub-section (1) read with sub-section (5) of Section 7. Hence, the exercise of jurisdiction to levy interest under Section 7(5) of the OET Act cannot be countenanced in law.

13. It is trite that provision for interest is to be construed as substantive law and not machinery provision. Ordinarily charging section which fixes liability is to be strictly construed. But the rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must be so construed as would effectuate the object and purpose of the statute and not defeat the same. Any provision made for charging or levying interest on

delayed payment of tax must be construed as a substantive law and not adjectival law.

13.1. It has been re-stated *vide Shree Bhagwati Steel Rolling Mills Vrs. Commissioner of Central Excise, (2016) 36 GSTR 222 (SC)* that a Constitution Bench decision in *VVS Sugars Vrs. Government of Andhra Pradesh, (1999) 114 STC 47 (SC)* has held as follows:

*“This Court in India Carbon Ltd. Vrs. State of Assam, (1997) 106 STC 460 (SC) has held after analysing the Constitution Bench Judgment in J.K. Synthetics Ltd. Vrs. Commercial Tax Officer, (1994) 94 STC 422 (SC) that interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf. There being no substantive provision in the Act [Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961] for the levy of interest on arrears of tax that applied to purchases of sugarcane made subsequent to the date of commencement of the amending Act, no interest thereon could be so levied, based on the application of the said Rule 45 or otherwise.”*

13.2. In identical situation in the case of *Food Corporation of India Vrs. State of Haryana, (2000) 119 STC 1 (SC)* it has been observed as follows:

*“\*\*\* From the above extract of the demand notice issued to the appellant, it is clear that a fresh demand was made pursuant to the judgment of this Court which according to us is the right step to be taken consequent to the declaration of law made by this Court. The further question, therefore, is whether on the demands now made by the respondents on the appellant, can the State also claim interest? We have noticed that the power of the State to collect interest arises under Section 59 of the Act. The said section authorises the State to collect interest on belated payment of tax demanded but this payment of interest can be levied on such belated payment of tax which is legally payable for which a valid demand is condition precedent. As has been noticed by us, the demand notice of the year 1982 which was*

*issued during the period when the State had no authority to levy sales tax cannot be said to be a valid demand based on which interest could be claimed. A valid demand for the assessment year 1975-76 could have been made by the State of Haryana only after the judgment of this Court i.e. from 6th of January, 1997 and on such a demand being made on 20.2.97, the appellant has satisfied the said demand within the period available to it. If that be so, in our opinion, the State could not have demanded interest on the tax due for the assessment year 1975-76 based on its earlier demand notice. We are of the opinion that the interest demanded by the State of Haryana on the amount due from the appellant for the assessment year 1975-76 cannot be sustained. Therefore, the said demand of interest, impugned in the appeal is quashed. \*\*\*”*

13.3. In view of the above authoritative pronouncements there is no ambiguity in holding that in the presence of the expression “without sufficient cause” in sub-section (5) of Section 7 of the OET Act and the petitioner(s) having justified by showing sufficient cause for failure to deposit amount of tax due along with the return, which cannot be treated as admitted tax in view of legal position contained in paragraph 30 of *Reliance Industries Ltd., (2008) 16 VST 85 (Ori)*, interest under Section 7(5) of the OET Act is not chargeable on such turnover falling within ambit of portion the said Judgment.

***Whether Court can grant interest in exercise of jurisdiction under Article 226 of the Constitution of India:***

14. Since there is no other provision to comprehend piquant situation that arose in the present case, the State of Odisha is liable to be compensated. It may be apt to reiterate that the Hon’ble Supreme Court granted stay and directed the petitioner(s) to deposit 33-1/3% of the amount of tax due while filing returns, the same was

required to be obliged and in fact from undeniable pleading it emanated that the dealers in Odisha have complied with the terms of interim order of the Supreme Court as also orders passed in writ petition by this Court in consonance with such interim order.

14.1. Therefore, since 2010 when the interim order was passed by the Supreme Court in the interlocutory applications filed by the State of Odisha till 2017, when the issue(s) raised in the matter got crystallized, there was no occasion for the petitioner(s) to deposit total tax due for the Supreme Court in the interim Order dated 03.02.2010 categorically stated that such deposit would not be treated as “tax”. It is the admission of the petitioner that after pronouncement of Order dated 28.03.2017, it has deposited balance tax and this Court in the Order dated 24.04.2019 in *S.S. Steeloy Pvt. Ltd. Vrs. Commissioner of Commercial Taxes, Odisha and Others, W.P.(C) No. 21007 of 2017 and batch of matters* has directed to deposit the balance tax along with interest accrued on or after 28.03.2017. In the said cases, by the very same order limited the *lis* of these matters as to whether interest from 2010 to 2017 could be charged.

14.2. Interest is compensatory in character. Since by virtue of order of the Court entire amount of tax due was not discharged, such order should prejudice none. In the present case the petitioner(s) withheld 2/3<sup>rd</sup> of the tax due as disclosed in the return(s). The Hon’ble Supreme Court while passing Order dated 03.02.2010 clarified that if State of Odisha loses, it would refund the amount deposited by the dealers along with interest. However, there was

no proposition with regard to eventual losing of the petitioner(s). Nonetheless, the fact remains that the petitioner(s) could not succeed in the ultimate before the Supreme Court. Thus, there is warrant for an order from this Court granting compensation on the amount withheld since 2010 till 2017.

14.3. Noteworthy here to have regard to the principles laid down in *Odisha Forest Development Corporation Ltd. Vrs. Anupam Traders and Others*, 2019 SCC OnLine SC 1524. Following is the observation of the Hon'ble Supreme Court of India in the said reported case:

*“18. In the above backdrop, before we proceed any further, the intent of such conditional interim orders passed by the Courts will have to be gathered. In order to aid the same it will be apposite to take note of the observations contained in the decision of this Court in the case of M/s. Atma Ram Properties (P) Ltd. Vrs. M/s. Federal Motors Pvt. Ltd. (2005) 1 SCC 705 which is as hereunder,*

*‘The power to grant stay is discretionary and flows from the jurisdiction conferred on an appellate Court which is equitable in nature. To secure an order of stay merely by preferring an appeal is not the statutory right conferred on the appellant. So also, an appellate Court is not ordained to grant an order of stay merely because an appeal has been preferred and an application for an order of stay has been made. Therefore, an applicant for order of stay must do equity for seeking equity. Depending on the facts and circumstances of a given case an appellate Court, while passing an order of stay, may put the parties on such terms the enforcement whereof would satisfy the demand for justice of the party found successful at the end of the appeal. In **South Eastern Coalfields Ltd. Vrs. State of M.P. & Ors.**, (2003) 8 SCC 648, this Court while dealing with interim orders granted in favour of any party to litigation for the purpose of extending protection to it,*

*effective during the pendency of the proceedings, has held that such interim orders, passed at an interim stage, stand reversed in the event of the final decision going against the party successful in securing interim orders in its favour; and the successful party at the end would be justified in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand:*

- (a) the delivery to it of benefit earned by the opposite party under the interim order of the High Court, or*
- (b) compensation for what it has lost, and to grant such relief is the inherent jurisdiction of the Court.*

*In our opinion, while granting an order of stay under Order 41 Rule 5 of the CPC, the appellate court does have jurisdiction to put the party seeking stay order on such terms as would reasonably compensate the party successful at the end of the appeal in so far as those proceedings are concerned.'*

19. *Though the said observation was made in the context of interim order being considered under Order 41 Rule 5 CPC, it would be more appropriate in a writ proceedings in as much as, not only the interim prayer but the very writ petition will be entertained in the discretionary jurisdiction unlike the statutory appeal under Section 96 read with Order 41 of CPC. In such circumstance, though it is not necessary that a condition is to be imposed in every case for grant of interim order, if the Court in a given case imposes the condition, the same is to be treated as being with a purpose and not as an empty formality.*

*\*\*\**

23. *As noticed above, the appellant in any event would have the right to determine the loss suffered and recover the same in accordance with law as the process to re-tender, was at the '.....cost and risk' of the private respondent as stated in the notice of termination. In that circumstance, when it is prima facie indicated that due to the delay*

*caused at the instance of the private respondents the value of the Kendu leaves had reduced, thereby causing loss, in view of legal proceedings initiated by the private respondents, the Court will have to bear in mind the maxim actus curiae neminem gravabit, namely, no party should suffer due to the act of Court. In such event, since the interim order was at the instance of the respondent the appellant should in our opinion be permitted to retain the amount and complete the process by providing opportunity to the private respondents.”*

14.4. The Full Bench of this Court in a batch of cases being *IDL Industries Ltd. Vrs. State of Odisha, (2004) 134 STC 62 (Ori)* has discussed the concept of “interest” in the following manner:

*“In the Black’s Law Dictionary, interest for use of money has been explained as follows:*

*‘Interest is the compensation allowed by law or fixed by the parties for the use or forbearance of borrowed money (Jones v. Kansal Gas and Electric Co. 222 Kar 3390, 565 P.2d 597, 604). Basic cost of borrowing money or buying on instalment contract. Payments a borrower pays a lender for the use of money. Cost of using credit or funds of another. A Corporation pays interest on its bonds to the bondholders.’*

*‘Conventional interest’ and ‘legal interest’ have also been explained in the said dictionary thus:*

*Conventional interest:*

*‘Interest at the rate agreed upon and fixed by the parties themselves, as distinguished from that which the law would prescribe in the absence of an explicit agreement.’*

*Legal interest:*

*‘A rate of interest fixed by statute as either the maximum rate of interest permitted to be charged by law, or a rate of interest to be applied when the parties to a contract intend an interest to be paid but do not fix the rate in the contract. Even in the latter case, frequently this rate is the same as the statutory maximum*

*rate permitted. Term may also be used to distinguish interest in property or in claim cognizable at law in contrast to equitable interest. '...'*

14.5. This Court in aforesaid *IDL Industries Ltd. (supra)* laid down as follows:

***“53. Articles 226 and 32 provide for safeguarding the provisions of law, and give an extraordinary power to look to equitable considerations. While exercising these powers, the courts have in appropriate cases imposed conditions for payment of interest on the conditional amounts directed to be paid from the date of payment provided the assessee has got a decision in his favour. Reference may be made to *Kuil Fireworks Industries v. Collector of Central Excise, 1997 (95) ELT 3 (SC)*, wherein the court has granted interest on the amount which has been subsequently found not due from the dealer from the date of deposit till the date of refund. This exercise of power by courts cannot be faulted in view of the rigorous provision contained in the Act. Therefore, considering the facts and circumstances of the case and keeping in mind the decisions cited by the parties, we are of the opinion that when conditional amount is directed to be paid out of a disputed amount, a condition may be imposed awarding interest from the date of such payment till a favourable decision is given to a dealer, i.e., in case such payment or part of it is found refundable. For equitable and justiceable consideration, similar direction should also be given that in case of failure of the dealer in appeal or further proceeding, he would be liable to pay interest on the amount for which stay has been granted by an authority over and above the conditional amount paid by the dealer. We answer the question in the following manner :***

*‘Under the provisions of the Act, no interest is payable on the refundable amount from the date of payment till the adjudication favourable to the dealer, and Section 14 cannot be read down to provide interest for such period. We, however, hold that on conditional payments made by*

*the assessee against a disputed demand pursuant to the orders of the High Court and the apex Court, the concerned court may impose condition for payment of interest to the assessee as well as to the State, at least at the bank rate of interest on long term fixed deposits.’...”*

14.6. The Full Bench concluded *inter alia* by laying down that:

“68. *In view of the foregoing discussions, we answer the questions referred to us/formulated by us in the following manner:*

(1) to (5) \*\*\*

(6) *When a dealer is directed to deposit some amount as per the orders of the High Court and the Supreme Court, he is entitled to get compensation by way of interest on the amount of refund ultimately calculated from such date at such rate as is directed by the said Courts.”*

14.7. In the context of award of interest on delay in refund, the Honourable Supreme Court of India in the case of *Tata Refractories Ltd. Vrs. Sales Tax Officer*, (2003) 1 SCC 65 = (2003) 129 STC 506 (SC) held as follows:

*“It is to be noted that the order of the High Court in 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 direction issued by the High Court in its order dated 15.3.1995 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 no 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 15.3.1995.”*

14.8. The Hon'ble Supreme Court of India in the case of *Commissioner, Commercial and Sales Taxes and Others Vrs. Orient Paper Mills and Another*, (2004) 9 SCC 181 = (2004) 135 STC 19 (SC) observed as follows:

*“10. In our considered view, taking note of the usual rate of interest which is granted in cases involving refund of money, 12% interest in terms of the High Court's order on the sum of Rs. 50,00,000/- paid pursuant to the order dated 11.03.1996 would be appropriate in the absence of any specific rate of interest stipulated by the Court itself, as a condition of the order itself. So far as the sum of Rs 25,00,000/- is concerned, admittedly, there was no stipulation made regarding refund, much less, about the rate of interest. But the Commissioner seems to have erroneously proceeded on the basis as if it was to some extent covered by the earlier order of the High Court. As observed by this Court in *Tata Refractories Ltd. case*, (2003) 1 SCC 65 where no interest is stipulated in the High Court's order, the statutory provisions are applicable. At the same time it cannot be lost sight of that no order varying the order of the Commissioner granting interest is in operation. That being so, on the peculiar circumstances of the case, grant of interest at the rate of 9% would be appropriate. \*\*\**

14.9. In the case of *Union of India and Others Vrs. Willowood Chemicals Pvt. Ltd. and Another*, (2022) 9 SCC 341 the Hon'ble Supreme Court has held as follows:

“18. Coming back to the present cases, the relevant provision has prescribed rate of interest at 6 per cent where the case for refund is governed by the principal provision of Section 56 of the CGST Act. As has been clarified by this Court in *Modi Industries Ltd.*, (1995) 6 SCC 396 and *Godavari Sugar Mills Ltd.*, (2011) 3 SCC 501 wherever a statute specifies or regulates the interest, the interest will be payable in terms of the provisions of the statute. **Wherever a statute, on the other hand, is silent about the rate of interest and there is no express bar for payment of interest, any delay in paying the compensation or the amounts due, would attract award of interest at a reasonable rate on equitable grounds.** It is precisely for this reason that paragraph 9 of the decision in *Godavari Sugar Mills Ltd.* (*supra*) accepted the submission made by the learned counsel for the respondents and confined the rate of interest to the prescription made in the statute. **The award of interest at a rate in excess of what was prescribed by the statute was only for a period beyond 20 years where the matter was not strictly covered by the statute and as such it would be in the realm of discretion of the Court.** It must also be noted here that the inordinate delay of up to 17 years in making refunds was a special circumstance when this Court was persuaded to accept grant of interest at the rate of 9 per cent per annum in *Sandvik Asia Ltd.*, (2006) 2 SCC 508. Even while doing so, the observations made by this Court in Paragraph 48 of the decision are quite clear that “the award of interest in refund and amount must be as per the statutory provisions of law and whenever a specific provision has been made under the statute such provision has to govern the field.” The subsequent decision of the bench of three Judges in *Gujarat Fluoro Chemicals*, (2014) 1 SCC 126 noticed that the grant of interest at the rate of 9 per cent was in the facts of the case in *Sandvik Asia Ltd.* (*supra*).”

14.10. Applying the aforesaid principles for grant of interest at a rate fixed as compensation, this Court is of the considered opinion that since by virtue of interim orders of the Supreme Court of India and the orders in writ petition(s) by this Court following such interim orders, the State of Odisha was deprived of recovering 2/3<sup>rd</sup> of tax due relating to September, 2009 to February, 2017, the petitioner(s) is required to compensate the State of Odisha by making payment towards interest in the interest of justice and equity. Hence, writ of *mandamus* is liable to be issued in exercise of extraordinary power under Article 226 of the Constitution of India.

**Conclusion:**

15. So far as notice(s) issued in Form E-24 prescribed under Rule 10(6)(b) of the OET Rules read with Section sub-sections (10) and (11) of Section 7 of the OET Act is concerned, the Taxing Authority having not adhered to statutory procedure as clarified *vide Toyo Engineering India Ltd. Vrs. Sales Tax Officer, (2012) 47 VST 109 (Ori) = 2012 (I) ILR-CUT 63* wherein the Court was in seisin of notice in Form E-24 as also notice in Form E-8, the impugned notice(s) in Annexure-9 series are quashed. As a consequence thereof, the Order dated 24.06.2017 passed in revision case No. BH-30(E)/2017-18 by the Commissioner of Sales Tax, Odisha is set aside. Noteworthy here to quote the following observations made in said *Toyo Engineering (supra)*:

“15. Thus, on a conjoint reading of the above provisions, if a dealer is required to pay the tax due as per the return and he fails to make payment of the tax due as per the return

*and interest accrued thereon along with return or revised return the show cause notice is served upon the dealer to make payment of the tax due on the return. If the dealer fails to respond to such notice an order has to be issued in Form E-23 imposing penalty.*

16. *In the instant case, the petitioner-dealer has filed its nil return for the period under consideration. Since it is not the case of the assessing officer that the dealer has admitted certain amount towards its tax liability in the return and made less payment than the amount admitted to be payable by him in its return, he is not justified to issue notice in Form E-24 and consequently demand notice in Form E-8 raising demand of Rs.13,33,115/-. According to the assessing officer, as per the figures furnished in the return the tax due for the period under consideration comes to Rs.13,33,115/- as various deductions claimed by the dealer, according to the assessing authority, is not admissible/allowable. In that event, the assessing officer shall issue a show cause, asking the dealer to pay the amount due on the return in Form E-22 and E-23 as provided under Rule 10(5).*

17. *In view of the above, the notice issued in Form E-24 and demand notice in Form E-8 under annexure-3 series are quashed. Liberty is given to the assessing authority to proceed against the petitioner in accordance with law, if he is of the opinion that the tax due on the return as furnished by the petitioner is not paid by it due to wrong/excessive claim of deduction(s) in the return.”*

15.1. This Court takes note of the principle as enunciated in the case of *Chowhan Machinery Mart Vrs. State of Odisha, (2009) 19 VST 178 (Ori)*. Paragraphs 22-24 of said reported Judgment read thus:

“22. *So far as the second question is concerned, the law is well-settled that the Judgment of the High Court is binding on all concerned parties. The honourable Supreme Court in East India Commercial Co. Ltd., AIR 1962 SC 1893 held that:*

*‘\*\*\* The law declared by the highest Court in the State is binding on authorities or Tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. \*\*\*’*

23. *The Honourable Apex Court in the case of Union of India Vrs. Kamlakshi Finance Corporation Ltd., AIR 1992 SC 711, in paragraph 6 has observed as follows:*

*‘\*\*\* The High Court has , in our view, rightly criticized this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasized that it is of utmost importance that, in disposing of the quasi judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of juridical discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not ‘acceptable’ to the department— in itself an objectionable phrase— and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws.’*

24. *Therefore, the judgment of this Court in W.P.(C) No.6515 of 2006 [Reliance Industries Limited Vrs. State of Odisha, (2008) 16 VST 85 (Ori)] disposed of on February 18, 2008 is binding on all parties while special leave petition against the said judgment has been admitted in the apex Court and is pending disposal.”*

15.2. After disposal of the Appeals filed at the behest of the State of Odisha before the Honourable Supreme Court *vide* Order dated 28<sup>th</sup> March, 2017 in the cases of *State of Odisha Vrs. Reliance Industries Limited, etc., etc.* being SLP(C) Nos.14454-14778/2008 pursuant to Nine-Judge Bench decision rendered in *Jindal Stainless Ltd. Vrs. State of Haryana, 2016 AIR SCW 5617 = (2016) 11 SCALE 1 = (2017) 12 SCC 1*, the Revenue seems to be not remediless in view of provision contained in sub-section (3) of Section 10 which stands thus:

“(3) *Where any order passed by the Assessing Authority in respect of a dealer for any period is found to be erroneous or prejudicial to the interest of revenue consequent to, or in the light of, any judgment or order of any Court or Tribunal, which has become final and binding, then, notwithstanding anything contained in this Act, the Assessing Authority may proceed to reassess the tax payable by the dealer in accordance with such judgment or order, at any time within a period of three years from the date of the judgment or order.*”

15.3. However, taking cognizance of the chequered career of the OET Act, 1999 since 2002, when the Judgment in *Indian Metals & Ferro Alloys Corporation of Orissa (supra)* was delivered, it is but mete and proper to issue direction to the petitioner(s) to pay off the balance tax due as per returns furnished by way of “self-assessment” as defined in Section 2(47) of the Odisha Value Added Tax Act read with Section 2(q) of the OET Act.

16. As is clearly enunciated in *Shree Chamundi Mopeds Ltd. (supra)* that stay of operation of an order only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order

has been wiped out from existence, on the date of pronouncement of exposition of law on the subject-matter as to exigibility of entry tax on the scheduled goods being brought either from outside the State of Odisha or from abroad, irrespective of its manufacture/production within the State of Odisha, the demands raised by way of assessment(s) subsist. The issue of demand notice(s) pursuant to such assessment(s) either in connection with Section 9C or Section 10 of the OET Act is legally justifiable. The petitioner(s) is liable to discharge the tax liability subject to outcome in appellate remedies that may be availed, if so advised. It is made clear that this Court does not express any view on the merit of the assessment(s), save and except that the removal of dichotomy as regards competence of levy of entry tax on the scheduled goods brought from outside the State of Odisha and/or from outside the territory of India, whether such goods are manufactured/produced within the State, entails the assessment(s) to include the turnover which fell within ken of law declared in paragraph 30 of *Reliance Industries Ltd. (2008) 16 VST 85 (Ori)* and the petitioner-dealer(s) is required to discharge liability accordingly.

***Orders and Directions:***

17. In view of interpretation put forth by this Court in *Toyo Engineering (supra)* notice(s) in Form E-24 prescribed under Rule 10(6)(b) of the OET Rules *vide* Annexure-9 series, which was subject-matter of revision before the Commissioner of Sales Tax, Odisha, is set aside and consequently the order-in-revision is also set aside. This Court directs the petitioner(s) to pay the

balance entry tax relating to the period 2010-17 as disclosed in the returns along with interest for the delay in payment after 28<sup>th</sup> March, 2017, as has already been directed in Order dated 24<sup>th</sup> April, 2019 passed in the matters of *S.S. Steeoy Pvt. Ltd. Vrs. Commissioner of Commercial Taxes, Odisha and Others, W.P.(C) No. 21007 of 2017 and batch of matters.*

17.1. Considering the peculiar nature of the *lis*, such balance entry tax (2/3<sup>rd</sup> of tax due which remained unpaid during 2010-17) can be determined by the petitioner(s) as per definition of the term “SELF-ASSESSMENT” in Section 2(47) of the OVAT Act read with Section 2(q) of the OET Act taking into account the figures disclosed in the returns and deposited by the petitioner(s) within a period of sixty days from today, if not already deposited. In the event of difficulty in payment of such balance amount, the Commissioner of Sales Tax may grant appropriate instalment(s) on being approached by the petitioner(s).

17.2. To strike a balance between deprivation of the State of Odisha to utilize 2/3<sup>rd</sup> of the amount of tax since September, 2009 till March, 2017 at the relevant point of time and non-payment of full amount of tax liability disclosed in the return(s) during this period by the petitioner, the aforesaid unpaid entry tax, for the period during which interim Order dated 30.10.2009 as modified *vide* Order dated 03.02.2010 passed by the Supreme Court of India in I.A. Nos. 327-651 filed by the State of Odisha in its appeals being SLP(C) Nos.14454-14778/2008 was operational, is directed to be deposited along with simple interest @ 9% per annum based on the principles enunciated in *Tata Refractories*

*Ltd. Vrs. Sales Tax Officer, (2003) 129 STC 506 (SC) = (2003) 1 SCC 65; Commissioner, Commercial and Sales Taxes and Others Vrs. Orient Paper Mills and Another, (2004) 9 SCC 181 = (2004) 135 STC 19 (SC); Odisha Forest Development Corporation Ltd. Vrs. Anupam Traders and Others, 2019 SCC OnLine SC 1524; Union of India Vrs. Willowood India Pvt. Ltd., (2022) 9 SCC 341; IDL Industries Ltd. Vrs. State of Odisha, (2004) 134 STC 62 (Ori).*

17.3. As decided by the Committee formed pursuant to direction of this Court *vide* Order dated 8<sup>th</sup> December, 2017 in *M/s. Ceramic Sales Corporation Vrs. State of Odisha, W.P.(C) No.21189 of 2017*, no penalty is required to be enforced in respect of subject-matter falling within the purview of paragraph 30 of the Judgment in *Reliance Industries Ltd., (2008) 16 VST 85 (Ori)*.

17.4. It is clarified that wherever assessments have been framed either under Section 9C or Section 10, the petitioner(s) is at liberty to approach the Appellate Authority under Section 16 of the OET Act within a period of 30 days from today along with petition for condonation of delay, which shall be considered by said Authority keeping in view pendency of writ petition(s) before this Court. The appeal so filed, subject to condonation of delay, is to be disposed of keeping in mind the observations made herein above.

18. For the reasons ascribed in the foregoing paragraphs and with the aforesaid observations and directions, W.P.(C) No. 13736 of 2017 is disposed of and other connected writ petitions tagged

thereto also stand disposed of in the same terms. The parties are left to bear their own costs.

**(MURAHARI SRI RAMAN)**  
**JUDGE**

**(DR. S. MURALIDHAR)**  
**CHIEF JUSTICE**

Orissa High Court  
The 15<sup>th</sup> of March, 2023  
Aks/MRS

