WP(C)/415/2023 on 27 June, 2025

Author: Manish Choudhury

Bench: Manish Choudhury

GAHC010004982023

2025:GAU-AS:8840

THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

W.P.(C) no. 388/2023

Carbon Resources Pvt. Ltd., a private limited company having its registered office at 55B, Mirza Ghalib Street, Kolkata - 700016; and its factory at Village - Kukurmari, Dhaligaon, P.O. Dhaligaon in the District of Chirang [BTAD], Pin - 783385, Assam.

.....

-Vs-

1. The State of Assam represented by the Commissioner and Secretary to the Government of Assam, Finance [Taxation] Departmen Dispur, Guwahati.

2. Commissioner of Taxes, Assam, Bhawan, Dispur, Guwahati - 781006.

3. Joint Commissioner of State Taxes, Assam, Kar Bhawan, Dispur, Guwahati - 781006.

4. Assistant Commissioner of Ta Bongaigaon, Assam.

Page

5. Deputy Commissioner of Taxes, Dhubri Zone, Dhubri.

.....Respondents

WITH

W.P.(C) NO. 412/2023

Carbon Resources Pvt. Ltd., a private limited company having its registered office at 55B, Mirza Ghalib Street, Kolkata - 700016; and its factory at Village - Kukurmari, Dhaligaon, P.O. Dhaligaon in the District of Chirang [BTAD], Pin - 783385, Assam.

.....Petitioner

-Vs-

1. The State of Assam represented by the Commissioner and Secretary to the Government of Assam, Finance [Taxation] Department, Dispur, Guwahati.

2. Commissioner of Taxes, Assam, Kar Bhawan, Dispur, Guwahati - 781006.

3. Joint Commissioner of State Taxes, Assam, Kar Bhawan, Dispur, Guwahati - 781006.

4. Assistant Commissioner of Taxes, Bongaigaon, Assam.

5. Deputy Commissioner of Taxes, Dhubri Zone, Dhubri.

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4. Assistant Commissioner of Taxes, Bongaigaon, Assam.

5. Deputy Commissioner of Taxes, Dhubri Zone, Dhubri.

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WITH

W.P.(C) NO. 414/2023

Carbon Resources Pvt. Ltd., a private limited company having its registered office at 55B, Mirza Ghalib Street, Kolkata - 700016; and its factory at Village - Kukurmari, Dhaligaon, P.O. Dhaligaon in the District of Chirang [BTAD], Pin - 783385, Assam.

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Bongaigaon, Assam.

5. Deputy Commissioner of Taxes, Dhubri
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.....Respondents

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4. Assistant Commissioner of Taxes,
Bongaigaon, Assam.

5. Deputy Commissioner of Taxes, Dhubri Zone, Dhubri.

.....Responden

Advocates :

Petitioners	: Dr. A. Saraf, Senior Advocate; Mr. P.K. Bora, Advocate; Mr. P. Baruah; Mr. N.N. Dutta; and Mr. S.J. Saikia, Advocate.
Respondents	: Mr. B. Gogoi, Standing Counsel, Finance & Taxation Department, Assam; and Mr. Baruah, Advocate.
Date of Hearing	: 21.01.2025 & 06.03.2025
Date Judgment & Order	: 27.06.2025

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER

1. The petitioner, M/s Carbon Resources Pvt. Ltd. has preferred these six writ petitions - W.P.[C] no. 388/2023, W.P.[C] no. 412/2023, W.P.[C] no. 413/2023, W.P.[C] no. 414/2023, W.P.[C] no. 415/2023 and W.P.[C] no. 416/2023 - under Article 226 of the Constitution of India to assail six different Orders, all dated 07.11.2022, passed by the Commissioner of Taxes, Assam [the respondent no. 2].

2. For the purpose of understanding the issues raised in these six writ petitions, the writ petition, W.P.[C] no. 388/2023 is considered as the lead case and the facts stated therein are delineated hereinbelow, as the nature of assail in the other writ petitions, in essence, are substantially similar. The necessary and

relevant facts for the other writ petitions would be adverted to wherever it is found necessary.

I. Facts of the cases :-

3. The petitioner is a private limited company incorporated under the provisions of the Companies Act, 1956 and it has its Registered Office at Kolkata, West Bengal. It has an industrial unit at Village - Kukurmari, Post Office - Dhaligaon,

District - Chirang, BTAD, Assam where it is engaged in the business of manufacture of Calcined Petroleum Coke [CPC].

4. The petitioner has stated that during the period under reference, it purchased Raw Petroleum Coke [RPC] within the State of Assam on payment of local taxes and after conversion of Raw Petroleum Coke [RPC] into Calcined Petroleum Coke [CPC], different quantities of Calcined Petroleum Coke [CPC] were sold in the course of inter-State trade or commerce during the relevant Assessment Years under reference and it paid tax on such sold Calcined Petroleum Coke [CPC] as per the provisions of the Central Sales Tax Act, 1956 ['the CST Act'] and other provisions of law in force. It is the case of the petitioner that as per Section 15[b] of the CST Act, where any tax was levied under the local law on the sale or purchase of any goods referred to in Section 14 of the CST Act and such goods were subsequently sold in the course of inter-State trade or commerce and Central Sales Tax was paid thereon, the amount of tax paid under the local tax law was reimbursable to the dealer paying such taxes.

5. The petitioner has asserted that during the reference period, the petitioner purchased Raw Petroleum Coke [RPC] from various refineries by paying Value Added Tax [VAT] levied under the Assam Value Added Tax Act, 2003 ['the AVAT Act', for short] and sold the same after converting the purchased Raw Petroleum Coke [RPC] into Calcined Petroleum Coke [CPC], which was a declared commodity under the head, 'Coal, including Coke in its forms' in the

Course of inter-State trade or commerce. The petitioner had accordingly complied with the provision of paying the Central Sales Tax on such sold Calcined Petroleum Coke [CPC].

6. The petitioner has further stated that after the Judgment dated 12.01.2017 passed in Civil Appeal no[s]. 5518-5519 of 2013 [the State of Assam & others vs. M/s Guwahati Carbon Ltd. & another, etc.] by the Hon'ble Supreme Court, the petitioner submitted a Letter to the Assistant Commissioner of Taxes, Bongaigaon ['the respondent no. 4'] on 17.01.2017 seeking reimbursement of the Value Added Tax [VAT] paid along with interest thereon for the Assessment Years : 2012-2013 to 2015-2016. On receipt of the said application, the respondent no. 4 vide an Office Letter dated 13.09.2019, addressed to the Commissioner of Taxes, Assam ['the respondent no. 2'], sought clarification regarding admissibility of the reimbursement claimed by the petitioner under Section 15[b] of the CST Act read with Section 50 of the AVAT Act for the Financial Years : 2012-2013, 2013-2014, 2014-2015 and 2015-2016. The respondent no. 4 vide its Office Letter dated 13.09.2019 also requested the respondent no. 2 to issue necessary instructions in that regard stating inter-alia that the petitioner had already deposited the tax amount @ 1% [taking the benefit of remission @ 99% vide the Notification no. FTX.66/2009/117 dated 26.12.2011] on sales made by it during the reference period. The respondent no. 4 further mentioned that Section 15[b] of the CST Act provided for reimbursement of local tax paid on purchase of declared

goods subject to the condition that the Central Sales Tax had been paid on inter-State sale of such declared goods. The respondent no. 4 as the Assessing Authority had also mentioned about the dismissal of Civil Appeal no[s]. 5518-5519 of 2013, preferred by the State of Assam before the Hon'ble Supreme Court.

7. The Joint Commissioner of Taxes, Assam, Guwahati ['the respondent no. 3'], O/o the Commissioner of State Taxes, Assam addressed an Office Letter to the respondent no. 4 on 27.09.2019 in reference to the Office Letter dated

13.09.2019 of the respondent no. 4. It was informed by the Office Letter dated 27.09.2019 that the petitioner was eligible to claim refund under Section 15[b] of the CST Act of the local tax paid on purchase of declared goods subject to the condition that Central Sales Tax had been paid on inter-State sale of such declared goods. The respondent no. 3 directed the respondent no. 4 to submit the proposal through the jurisdictional Deputy Commissioner of Tax with year-wise undertaking for necessary action from the ends of the respondent no. 2 and the respondent no. 3.

8. The respondent no. 4 as the Assessing Authority had thereafter, passed an Order under Section 83 of the AVAT Act read with Section 9[2] of the CST Act for the Assessment Year : 2012-2013 and determined an amount of Rs. 39,76,187/- as the amount refundable to the petitioner subject to the claim being filed by the petitioner. The respondent no. 4 noted that Section 15[b] of the CST Act had provided for reimbursement of local tax paid on intra-State purchase of declared goods subject to the condition that Central Sales Tax had been paid on inter-State sale of such declared goods. In the Order of Assessment, the respondent no. 4 referred to the dismissal of Civil Appeal no[s]. 5518-5519 of 2013. It was further mentioned that clarification from the respondent no. 2 was sought for vide Office Letter dated 13.09.2019 regarding admissibility of refund claimed under Section 15[b] of the CST Act read with Section 50 of the AVAT Act. Reference was made to the Office Letter dated 27.09.2019 of the respondent no. 3 wherein it was stated that the dealer was eligible to claim refund under Section 15[b] of the CST Act as reimbursement of local tax paid on intra-State purchase of declared goods subject to the condition that Central Sales Tax had been paid on inter-State sale on such declared goods. With the Order of Assessment, the respondent no. 5 also issued a Demand Notice dated 21.11.2019 for the Assessment Year : 2012-2013.

9. After the Order of Assessment and Demand Notice, the petitioner stated to have submitted its claim for refund of the taxes paid on the purchase of Raw

Petroleum Coke [RPC] within the State, which after conversion into Calcined Petroleum Coke [CPC], was sold in course of inter-State trade or commerce and Central Sales Tax was paid under the CST Act. According to the petitioner,

the refund application was submitted under Section 50[1] of the AVAT Act read with Rule 29 of the Assam Value Added Tax Rules, 2003 ['the AVAT Rules', for short]. The petitioner has asserted that the refund was claimed as per Section 15[b] of the CST Act which provided that where any tax was levied under the local law on the sale or purchase of any goods covered by Section 14 of the CST Act and such goods were subsequently sold in the course of inter-State trade or commerce, then the amount of tax paid under the local tax law would be refundable to the dealer paying such taxes.

10. When after determination of the amount reimbursable under Section 15[b] of the CST Act and submission of the application seeking refund, no refund was granted to the petitioner despite making repeated approaches before the respondent authorities for early refund of the Value Added Tax paid on Raw Petroleum Coke [RPC] purchased within the State of Assam, the petitioner preferred a writ petition, W.P.[C] no. 3328/2022. The writ petition, W.P.[C] no. 3328/2022 was disposed of by an Order dated 23.05.2022 directing the respondent no. 2 to consider the petitioner's application for refund and to pass a reasoned order thereon within a period of two weeks from the date of receipt of a copy of the Order and thereafter, to make and complete further processing within a period of six weeks from the date of the reasoned order to bring the exercise to its logical end. The writ petition was preferred also in connection with the reimbursements claims of the petitioner for the five other subsequent Assessment Years, mentioned hereinbelow.

II. The Orders assailed :

11. It was on 03.12.2022, the petitioner received an Office Letter of even date from the respondent no. 4 stating that the petitioner would not be eligible to claim refund under the AVAT Act for the Assessment Years : 2012-2013, 2013-

2014, 2014-2015, 2015-2016, 2016-2017 and 2017-2018 [April, 2017 to June, 2017] in view of the Orders passed by the respondent no. 2 vide Order no. CTS-207/2019/144, Order no. CTS-852/2019/128, Order no. 853/2019/113, Order no. CTS-854/2019/115, Order no. CTS-855/2019/110 & Order no. CTS-856/2019/101, all dated 07.11.2022. The respondent no. 2 has passed the afore-mentioned six orders for six different assessment years.

12. The writ petition, W.P.[C] no. 388/2023 has been preferred assailing Order no. CTS-853/2019/113 passed in respect of refund [reimbursement] claim for the Assessment Year : 2012-2013 seeking the following reliefs :-

> In the aforesaid premises it is therefore prayed that your Lordship would graciously be pleased to admit this petition, call for the records and issue Rule, calling upon the respondents to show cause as to why writ in the nature of Certiorari and / or a writ of like nature should not be issued setting aside and / or quashing the impugned order dated

07.11.2022 passed by the Commissioner of Taxes, Assam rejecting the refund proposals of the petitioner for the Assessment Year : 2012-2013 and as to why the impugned action of the respondent authorities in not disbursing the claim of the petitioner company on account of refund under Section 15[b] of the Central Taxes Act, 1956 for Assessment Year : 2012-2013 should not be declared illegal, without jurisdiction and as to why a writ in the nature of mandamus and / or a writ of like nature should not be issued directing the respondents to forthwith disburse the claims of the petitioner along with interest on account of refund under Section 15[b] of the Act of 1956 for Assessment Year : 2012-2013 on the basis of the order passed by the Assessing Authority after hearing the parties, cause or causes that may be shown, if any, by the parties, after perusal of the records of the case, make the Rule absolute and / or pass such further order / orders as Your Lordships' may deem fit and proper.

Page

13. The other five writ petitions - W.P.[C] no. 412/2023, W.P.[C] no. 413/2023, W.P.[C] no. 414/2023, W.P.[C] no. 415/2023 and W.P.[C] no. 416/2023 - have been preferred assailing the impugned Orders passed for different Assessment Years/period. For ready reference, the details of all the six writ petitions, whi are filed seeking similar reliefs, are mentioned in the following Table-I :-

Table-I

Writ Petition	Assessment Year	Order no.	Date
W.P.[C] no. 388/2023	2012-2013	CTS-207/2019/144	07.11.2022
W.P.[C] no. 416/2023	2013-2014	CTS-852/2019/128	07.11.2022
W.P.[C] no. 415/2023	2014-2015	CTS-853/2019/113	07.11.2022
W.P.[C] no. 413/2023	2015-2016	CTS-854/2019/115	07.11.2022
W.P.[C] no. 414/2023	2016-2017	CTS-855/2019/110	07.11.2022
W.P.[C] no. 412/2023	2017-2018	CTS-856/2019/101	07.11.2022

14. I have heard Dr. A. Saraf, learned Senior Counsel assisted by Mr. P. Baruah, Mr. N.N. Dutta, Mr. P.K. Bora & Mr. S.J. Saikia, learned counsel for the petitioner; and Mr. B. Gogoi, learned Standing Counsel, Finance & Taxation Department, Assam assisted by Mr. H. Baruah, learned counsel for all the respondents.

III. Submissions of the petitioner :

15. Dr. Saraf, learned Senior Counsel appearing for the petitioner has submitted that the impugned Orders have made mention of Audit Assessment Orders passed after Audit Assessment. For the two Assessment Years : 2012-2013 and 2013-2014, the Assessment Orders were, initially, made on 12.12.2017 under Section 36[1] of the AVAT Act read with Rule 22[1][x] of the AVAT Rules. Subsequently, rectification Orders for the said two Assessment Years were passed on 01.10.2019 under Section 83 of the AVAT Act read with Section 9[2]

Page 13

of the CST Act. Assessments for the subsequent Assessment Years were completed on 01.10.2019. The assessments, completed on 01.10.2019, were undertaken after due approval of the respondent no. 2 accorded on 27.09.2019. Such approval was accorded when clarification was sought for as regards admissibility of the claim for reimbursement made by the petitioner under Section 15[b] of the CST Act. He has further contended that the Orders passed on 12.12.2017 were orders only on assessment and they were not orders on any claim for reimbursement. Therefore, there cannot arise any occasion for filing any appeal by the petitioner, at that point of time, feeling aggrieved.

15.1. He has contended that the Commissioner of Taxes has erred in taking the ground that there was no error apparent on the face of the record to deny the valid claim made by the petitioner for reimbursement of the Value Added Tax paid on purchase of Raw Petroleum Coke [RPC] intra-State. Even before the assessment proceedings for the Assessment Years under reference, the law was well settled as regards admissibility of a claim for reimbursement of the local tax paid under Section 15[b] of the CST Act on purchase of declared goods subject to the condition that the requisite Central Sales Tax had been paid on inter-State sale of such declared goods.

15.2. He has extensively referred to the related provisions of the CST Act, the AVAT Act and the AVAT Rules as well as the litigation history on the issues : whether Petroleum Coke would fall within the phrase, 'Coal, including Coke in all its forms' appearing in Section 14 of the CST Act; and whether Raw Petroleum Coke [RPC] and Calcined Petroleum Coke [CPC] which are characteristically different items, would fall within the phrase, 'Coal, including Coke in all its forms'. Then, he has submitted that it was also well settled even before the assessment proceedings that both Raw Petroleum Coke [RPC] and Calcined Petroleum Coke [CPC] were included within Coke which, in turn, falls within the ambit of the phrase, 'Coal, including Coke in all its forms'. Such a position was subsisting since 18.08.1971 when the Hon'ble Supreme Court rendered the

Page 14 of

decision in Civil Appeal no. 1612 of 1968 : India Carbon Ltd. vs. Superintendent of Taxes, reported in [1971] 3 SCC 612, and the position continued till the decision in Civil Appeal no[s]. 5518-5519 of 2013 : The State of Assam vs. M/s Guwahati Carbon Ltd. and another etc., rendered on 12.01.2017, and thereafter. The same position was clarified by this Court also on 16.12.1991 in Civil Rule no. 163 of 1987 : M/s India Carbon and others vs. State of Assam and others, reported in [1992] 1 GLR 82 [DB]. It was the State of Assam who despite the settled position of law once again took the matter to the Hon'ble Supreme Court in Civil Appeal no[s]. 5518-5519 of 2013.

15.3. By referring to a decision of the Hon'ble Supreme Court in Assistant

Commissioner, Income Tax, Rajkot vs. Saurashtra Kutch Stock Exchange Limited, [2008] 14 SCC 171, Dr. Saraf has submitted that non-consideration of a binding decision of the Hon'ble Supreme Court and the jurisdictional High Court is to be treated as a 'mistake apparent from the record' and it can be rectified under Section 83 of the AVAT Act. As such, the observation made by the respondent no. 2 in the impugned Orders that there was no mistake apparent on the face of the record is clearly unsustainable in law.

15.4. On the ground taken in the impugned Orders that the petitioner did not deposit the full amount of Central Sales Tax to be entitled for reimbursement of the local taxes paid, it is contended that all the pre-conditions required to be fulfilled for claiming reimbursement under Section 15[b] of the CST Act were fulfilled by the petitioner. In the case of the petitioners that there is no dispu that tax was levied on the purchase of Raw Petroleum Coke [RPC] within the State and after conversion, Calcined Petroleum Coke [CPC] was sold in the course of inter-State trade or commerce. Dr. Saraf has contended that whatever tax payable on the sale of Calcined Petroleum Coke [CPC] in course of inter-State trade or commerce was paid by the petitioner. In view of remission available to the extent of 99% under the Assam Industries [Tax Exemption] Scheme, 2009, the petitioner was liable to pay 1% of the Central

Sales Tax payable on the inter-State sale of Calcined Petroleum Coke [CPC]. Thus, it cannot be said by the respondent no. 2 that the petitioner would not be entitled for reimbursement on the ground that it had not paid full Central Sales Tax. It has been contended that Section 15[b] of the CST Act nowhere uses the word 'full' and the Commissioner of Taxes is not entitled to read something into the statutory provision when there is none.

15.5. It has been contended on behalf of the petitioner that the terms, 'levy' and 'payability' in taxing statutes are two different concepts. For that purpose, a decision in Whitney vs. Commissioners of Inland Revenue, [1926] A.C. 37 of the Privy Council has been referred to. The decisions of the Hon'ble Supreme Court in Assistant Collector of Central Excise, Calcutta Division vs. National Tobacco Co. of India Ltd., [1972] 2 SCC 560; Somaiya Organics [India] Ltd. and another vs. State of Uttar Pradesh and another, [2001] 5 SCC 519; Associated Cement Companies Ltd. vs. State of Bihar and others, [2004] 7 SCC 642; and Peekay Re-Rolling Mills [P] Ltd. vs. Assistant Commissioner and another, [2007] 4 SCC 13; have also been relied upon for the same point.

15.6. It is submitted that the law declared by the Supreme Court under Article 141 of the Constitution of India is binding on all in the country and when a law has been declared by the Hon'ble Supreme Court, it is duty of all the High Courts and other authorities including the taxing authorities to act in accordance with the law declared. It is immaterial whether a person was a party to a case before the Hon'ble Supreme Court or the High Court. The respondent no. 3 has also failed to consider the fact that it was the State of Assam which, despite the law declared and in force since long, had preferred the appeals, Civil

Appeal no[s]. 5518-5519 of 2013 which were finally dismissed on 12.01.2017. In support of such contentions, a decision of the Hon'ble Supreme Court in M.S.L. Patil, Assistant Commissioner of Forests, Solarpur [Maharashtra] and others vs. State of Maharashtra and others, [1996] 11 SCC 361, has been referred to.

15.7. The learned Senior Counsel for the petitioner has also referred to the decisions :- [i] K.I. Shephard and others vs. Union of India and others, [1987] 4 SCC 431; [ii] Assistant Commissioner of Commercial Taxes [Asst.] Dharwar and others vs. Dharmendra Trading Company and others, [1988] 3 SCC 570; and [iii] Civil Appeal no. 1943 of 2022 [Lt. Col. Suprita Chandel vs. Union of India and others, [2024] INSC 942], in support of his submissions.

IV. Submissions of the respondents :

16. Mr. Gogoi, learned Standing Counsel, Finance & Taxation Department for the State respondents has supported the impugned Orders on the ground that the Commissioner of Taxes has recorded the reasons rightly while exercising the jurisdiction vested in him under the AVAT Act and the CST Act.

16.1. Mr. Gogoi has contended that though the Audit Assessments were made under Section 36[1] of the AVAT Act, the Audit Assessments were, in fact, carried out for the reason[s] enumerated in clause [iii] and/or clause [iv] of sub-rule [1] o Rule 22 of the AVAT Rules. He has submitted that clause [iii] relates to a claim of refund exceeding one lakh rupees in a year whereas clause [iv] relates to a claim of sales made in the course of inter-State trade or commerce exceeding twenty five lakh rupees in a year. Such mis-quotation was only an irregularity. Admittedly, the case of the petitioner pertained to claims of refund and sales made in the course of inter-State trade or commerce exceeding twenty five lakh rupees in a year. Since the Audit Assessments did not make orders as regards the petitioner's claims for reimbursement under Section 15[b] of the CST Act, it is clear that such claims were rejected at the time of passing the Assessment Orders and the said fact has rightly been recorded by the respondent no. 2 in the impugned Orders.

16.2. Mr. Gogoi has further submitted that the power of rectification provided under Section 83 of the AVAT Act was wrongly and unauthorisedly exercised and the power of rectification is not akin to the power of review. The power exercisable

under Section 83 of the AVAT Act is circumscribed and restricted only to a mistake apparent on the face of the record. He has submitted that the Rajasthan Sales Tax Act, 1994 had a similar provision for rectification in Section 37. Regarding the scope and ambit of Section 37, the Hon'ble Supreme

Court in Assistant Commercial Taxes Officer vs. Makkad Plastic Agencies, [2011] 4 SCC 750 has held that the power of rectification cannot be equated with the power of review. Rectification implies correction of an error, which is apparent on the face of the record. The same proposition is also applicable in the cases in hand.

16.3. It is his further contention that it is not open for the petitioner to seek suppor from the decision in Civil Appeal no[s]. 5518-5519 : The State of Assam and others vs. M/s Guwahati Carbon Ltd. and others, delivered on 12.01.2017, for the reason that the petitioner was not a party therein. The petitioner cannot be permitted to re-agitate its claim for reimbursement as the petitioner had not pursued the claims for a substantial long period of time and was sitting on the fence waiting for the outcome of proceedings initiated by others. There was inordinate delay in pursuing the claims. In such view of the matter, the cases of the petitioner have suffered from delay and laches as well as from acquiescence. The decision in M/s Rup Diamonds and others vs. Union of India and others, [1989] 2 SCC 356 has been referred to and relied upon in support of such submissions.

16.4. On the point that parity cannot be claimed by a party if its claim has suffered from delay and laches and the party has acquiesced after knowing rejection of its claim, the decision in State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others, [2015] 1 SCC 347.

V. The contents of the Orders assailed :

17. In order to understand the nature of challenge, it would be beneficial to reproduce the contents of the Order no. CTS-204/2019/144 in its entirety :-

Page 18 o

Government of Assam
Office of the Commissioner of Taxes::Assam
Kar Bhawan: Dispur: Guwahati-6

ORDER

Dated: Dispur the 07 of Nov, 2022 No: CTS-207/2019/144: The Hon'ble Gauhati High Court [W.P.(C) 3328/2022] passed an Order on 23.05.2022 directing the undersigned to pass a reasoned order within a period of two weeks from the date of receipt of this order and thereafter, within a period of six weeks from the date of such order the further process be brought to its logical end.

In pursuance of such order, the refund proposal of M/s Carbon Resources Pvt. Ltd., Kukurmari, Dhaligaon, Chirang, Bongaigaon, for the year 2012-13, under the Assam Value Added Tax Act, 2003 have been perused alongwith the case records.

The findings are recorded below :

> 1. Nature of activities of the petitioner : M/s Carbon Resources Pvt. Ltd. is a Private Limited Company in status and is engaged in the manufacture of Calcined Petroleum Coke [CPC] from Raw Petroleum Coke [RPC].

The dealer purchases Raw Petroleum Coke [RCP] from Refineries in Assam and sells Calcined Petroleum Coke [CPC] mainly in course of inter-State trade and commerce.

2. Industrial Concession : The dealer claimed that his activity of conversion of RPC to CPC is a manufacturing activity and accordingly the dealer applied for tax exemption / incentives available to a manufacturing unit. The dealer was issued Eligibility Certificate [EC] by the Industries Department vide no. AIDC/US/EC/623/10/67 dated 18.06.2019. The said EC granted tax incentives for the period from 30.11.2012 to 29.11.2019 subject to a monetary ceiling of Rs. 7,38,28,517/-. On the basis of the said EC, the Certificate of Entitlement [CE] was issued by the Commissioner of Taxes, Assam, Kar Bhawan, Guwahati-06 vide no. CTS-15/2016/[414]/47 dated 29.07.2019.

3. Filing of return : The dealer filed annual return on 14.07.2014 in Annexure-XI of the Assam Industries [Tax Exemption] Scheme, 2009 for the Assessment Year : 2012-13. It appears from the annual return that the dealer paid 1% tax and claimed remission of 99% tax as per provisions of the Assam Industries [Tax Exemption] Scheme, 2009. The CA's audit report was submitted in the office on 04.07.2016. Similarly, in the return filed under the CST Act, 1956, in Form III, the dealer had paid tax @1% of the CST due and claimed 99% tax remission as per the Assam Industries [Tax Exemption] Scheme, 2009.

It is pertinent to mention that the petitioner did not claim any reimbursement of the VAT paid on RPC in terms of Section 15[b] of the CST Act. There was nowhere whisper of any claim of reimbursement due to the petitioner.

4. Refund Application : The dealer made an application under Section 50[1] of the AVAT Act, 2003 read with Rule 29 of the AVAT Rules, 2005 on 09.01.2017 claiming a refund of Rs. 39,76,187/-, being the amount of VAT paid on purchase of RPC, which is a declared goods, on the ground that CST was paid on inter-State sale of CPC, which is the same item citing the judgment of the Hon'ble Gauhati High Court in India Carbon Ltd. vs. State of Assam, [1992] 1 GLR 82.

Notably, the application claiming refund [reimbursement] was filed nearly 45 months after the end of Financial Year i.e. 2012-13.

5. Audit Assessment : The dealer was assessed both under the VAT Act and the CST Act on 12.12.2017 and Demand Notices were issued on 13.12.2017 raising a demand of Nil under the AVAT Act and Rs. 10,69,702/- under the CST Act respectively rejecting his claim for remission of 99% of the due tax because the dealer did not possess the Eligibility Certificate [EC] under the Assam Industries [Tax Exemption] Scheme, 2009 till the date of assessment.

6. Finality of audit assessment made by the Assistant Commissioner of Taxes, Bongaigaon : The audit assessment was made on 12.12.2017 and Demand Notices were issued on 13.12.2017. It is pertinent to mention that no reimbursement of VAT paid on purchase of RPC was allowed by the assessing officer. The dealer did not challenge the assessment orders passed by the ACT, Bongaigaon nor did he file any statutory appeal / revision for providing the reimbursement of tax paid on purchase of RCP. It means that the dealer had accepted the assessment orders. Resultantly, the assessment orders passed by the ACT, Bongaigaon had attained finality after expiry of the period for appeal or revision as provided in the VAT Act. It may be stated that the pendency of other proceedings cannot be ground for non-challenging the assessment orders.

7. Rectification u/s 83 of the AVAT Act, 2003 r/w Section 9[2] of the CST Act, 1956 : The ACT, Bongaigaon, based on the ruling of Hon'ble Supreme Court in a separate case namely - Brahmaputra Carbon Ltd. & Gauhati Carbon Ltd., [no. 12907-12908/2013 subsequently renumbered as 5518-5519/2013], rectified the assessment suo-moto u/s 83 of the AVAT Act, 2003 r/w Section 9[2] of the CST Act, 1956 on 01.10.2019 showing the tax paid in excess against RPC amounting to Rs. 39,76,187/-. It is specifically mentioned in the rectification order that the assessment completed on 12.12.2017 was silent about the reimbursement u/s 15[b] of the CST Act, 1956.

Pursuant to the said rectified assessment order, the dealer filed an application on 04.10.2019 claiming a refund of Rs. 39,76,187/-.

The proposal of refund was forwarded to the DCT, Dhubri vide its order dated 20.11.2019. The DCT again rectified the order and reduced it to Rs. 24,33,663/- as the reimbursement u/s 15[b] of the CST Act is not admissible on stock transfer.

From the above discussions, I do not have any hesitation to hold that :

> 1] The audit assessment of Carbon Resources Pvt. Ltd. was completed u/s 36[1] of the AVAT Act on 12.12.2017, wherein no reimbursement u/s 15[b] of the CST Act was found due and the demand notice were issued to the dealer which were not contested by the dealer. The original assessments made by the jurisdictional Assistant Commissioner of Taxes, Bongaigaon did not allow the claim of the dealer for reimbursement of VAT made under section 15[b] of the CST Act read with Section 50[1] of the Assam VAT Act, 2003 and the dealer did not challenge such assessment orders. Hence, the original assessment orders had attained finality.
>
> 2] The subsequent rectification by the assessing officer on his own u/s 83 of the AVAT Act on 01.10.2019 is not in accordance with the provisions of the Act, as the rectification can only be made for any error apparent on the face of the record. It is a settled position that 'a mistake apparent form the record' means a mistake which is obvious, patent and self-evident from the records of the case and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions. Besides the mistake must be evident from the 'record of the case'. In a proceeding of rectification, the assessing authority cannot

change his opinion.

3] It is a settled principle of law that those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after a long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such persons cannot claim the benefit of the judgement rendered in the case of similarly situated persons to be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

Needless to say that M/s Carbon Resources Pvt. Ltd. was not a party in the case before the Apex Court or High Court.

4] It is pertinent to mention that Section 15[b] of the CST Act, 1956 provides for reimbursement of local tax paid on intra-State purchase of declared goods subject to the condition that CST is paid on inter-state sale of such declared goods. The dealer did not deposit the full amount of CST, which is a condition precedent for claiming the reimbursement of VAT as per provision of Section 15[b] of the CST Act, 1956.

In view of the foregoing reasons, the refund proposal of M/s Carbon Resources Pvt. Ltd., Bongaigaon, for the year 2012-13 in respect of Rs. 24,33,663/-, under the Assam Value Added Tax Act, 2003 is hereby rejected.

Sd/- [xxxxxxxxx] Commissioner of Taxes, Assam Dispur, Guwahati-6

18. The respondent no. 2 has rejected the refund proposals for the other periods of assessment by the other impugned Orders, all dated 07.11.2022, with more or less similar grounds of rejection. The relevant excerpts from the said impugned Orders with regard to the grounds of rejection are quoted hereinbelow for ready reference :-

Year : 2013-2014 Writ Petition [C] no. 416/2023 Order no. Grounds of Rejection CTS-852/2019/128 1] The audit assessment of Carbon Resources Pvt. Ltd.

was completed u/s 36[1] of the AVAT Act on 12.12.2017, wherein no reimbursement u/s 15[b] of the CST Act was found due and the demand notice were issued to the dealer which were not contested by the dealer. The original assessments made by the jurisdictional Assistant Commissioner of Taxes, Bongaigaon did not allow the claim of the dealer for reimbursement of VAT made under Section 15[b] of the CST Act read with section 50[1] of the Assam VAT Act, 2003 and the dealer did not challenge such assessment orders. Hence, the original assessment orders had attained finality.

2] The subsequent rectification by the assessing officer on his own u/s 83 of the AVAT Act on 01.10.2019 is not in accordance with the provisions of the Act, as the rectification can only be made for any error apparent on the face of the record. It is a

settled position that 'a mistake apparent form the record' means a mistake which is obvious, patent and self-evident from the records of the case and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions. Besides the mistake must be evident from the 'record of the case'. In a proceeding of rectification, the assessing authority cannot change his opinion.

3] It is a settled principle of law that those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after a long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such persons cannot claim the benefit of the judgement rendered in the case of similarly situated persons to be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

Needless to say that M/s Carbon Resources Pvt. Ltd. was not a party in the case before the Apex Court or High Court.

4] It is pertinent to mention that Section 15[b] of the CST Act, 1956 provides for reimbursement of local tax paid on intra-State purchase of declared goods subject to the condition that CST is paid on inter-State sale of such declared goods. The dealer did not deposit the full amount of CST, which is a condition precedent for claiming the reimbursement of VAT as per provision of Section 15[b] of the CST Act, 1956.

In view of the foregoing reasons, the refund proposal of M/s Carbon Resources Pvt. Ltd., Bongaigaon, for the year 2013-14 in respect of Rs. 1,37,87,928/-, under the Assam Value Added Tax Act, 2003 is hereby rejected.

Year : 2014-2015
Writ Petition [C] no. 415/2023

Order no.	Grounds of Rejection

CTS-853/2019/113 1] It is a settled principle of law that those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after a long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such persons cannot claim the benefit of the judgement rendered in the case of similarly situated persons to be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

Needless to say that M/s Carbon Resources Pvt. Ltd. was not a party in the case before the Apex Court or High Court.

2] It is pertinent to mention that Section 15[b] of the CST Act, 1956 provides for reimbursement of local tax paid on intra-State purchase of declared goods subject to the condition that CST is paid on inter-State sale of such declared goods. The dealer did not deposit the full amount of CST, which is a condition precedent for claiming the reimbursement of VAT as per provision of Section 15[b] of the CST Act, 1956.

In view of the foregoing reasons, the refund proposal of M/s Carbon Resources Pvt. Ltd., Bongaigaon, for the year 2014-15 in respect of Rs. 23,45,905/-, under the Assam Value Added Tax Act, 2003 is hereby rejected.

Year : 2015-2016
Writ Petition [C] no. 413/2023

Order no.	Grounds of Rejection
CTS-854/2019/115	1] It is a settled principle of law that those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after a long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such persons cannot claim the benefit of the judgement rendered in the case of similarly situated persons to be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim. Needless to say that M/s Carbon Resources Pvt. Ltd. was not a party in the case before the Apex Court or High Court. 2] It is pertinent to mention that Section 15[b] of the CST Act, 1956 provides for reimbursement of local tax paid on intra-State purchase of declared goods subject to the condition that CST is paid on inter-State sale of such declared goods. The dealer did not deposit the full amount of CST, which is a condition precedent for claiming the reimbursement of VAT as per provision of Section 15[b] of the CST Act, 1956. In view of the foregoing reasons, the refund proposal of M/s Carbon Resources Pvt. Ltd., Bongaigaon, for the year 2015-16 in respect of Rs. 1,32,02,266/-, under the Assam Value Added Tax Act, 2003 is hereby rejected.

Year : 2016-2017
Writ Petition [C] no. 414/2023

Order no.	Grounds of Rejection

CTS-855/2019/110 1] It is a settled principle of law that those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after a long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such persons cannot claim the benefit of the judgement rendered in the case of similarly situated persons to be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

Needless to say that M/s Carbon Resources Pvt. Ltd. was not a party in the case before the Apex Court or High Court.

2] It is pertinent to mention that Section 15[b] of the CST Act, 1956 provides for reimbursement of local tax paid on intra-State purchase of declared goods subject to the condition that CST is paid on inter-State sale of such declared goods. The dealer did not deposit the full amount of CST, which is a condition precedent for claiming the reimbursement of VAT as per provision of Section 15[b] of the CST Act, 1956.

In view of the foregoing reasons, the refund proposal of M/s Carbon Resources Pvt. Ltd., Bongaigaon, for the year 2016-17 in respect of Rs. 98,19,739/-, under the Assam Value Added Tax Act, 2003 is hereby rejected.

Year : 2017-2018
Writ Petition [C] no. 412/2023

Order no.	Grounds of Rejection

CTS-856/2019/101 1] It is a settled principle of law that those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after a long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such persons cannot claim the benefit of the judgement rendered in the case of similarly situated persons to be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

Needless to say that M/s Carbon Resources Pvt. Ltd. was not a party in the case before the Apex Court or High Court.

2] It is pertinent to mention that Section 15[b] of the CST Act, 1956 provides for reimbursement of local tax paid on intra-State purchase of declared goods subject to the condition that CST is paid on inter-State sale of such declared goods. The dealer did not deposit the full amount of CST, which is a condition precedent for claiming the reimbursement of VAT as per provision of Section 15[b] of the CST Act, 1956.

In view of the foregoing reasons, the refund proposal of M/s Carbon Resources Pvt. Ltd., Bongaigaon, for the year 2017-18 in respect of Rs. 54,29,808/-, under the Assam Value Added Tax Act, 2003 is hereby rejected.

VI. The respondents' stand in the Affidavits-in-Opposition :

19. An affidavit-in-opposition on behalf of the respondent no. 2 has been filed through the respondent no. 5 in each of the six writ petitions taking a common stand as regards refusal of the refund proposals.

19.1. The common stand taken is to the effect that the rectification by the Assessing Officer on his own under Section 83 of the AVAT Act was not in accordance with the statutory provisions as rectification could only be made for any error apparent on the face of the record.

19.2. It has been averred that Section 15[b] of the CST Act provided for reimbursement of local tax paid on intra-State purchase of declared goods subject to the condition that Central Sales Tax had been paid on inter-State sale of such declared goods. The dealer did not deposit the full amount of Central Sales Tax, which is a condition precedent for claiming reimbursement of Value Added Tax as per the provision of Section 15[b] of the CST Act.

19.3. The refund proposals were rejected as the petitioner did not challenge the wrongful action taken in its case and acquiesced into the same. The benefits cannot be extended to a party who wakes up after a long delay because of the reason that its counterparts who had approached the Court earlier in time succeeded in their efforts. Such a party cannot claim that the benefit of the judgment rendered in case of similarly situated persons should also be extended to it. Such a party is to be treated as a fence-sitter and laches and delays, and/or acquiescence, would be a valid ground to dismiss a claim. The petitioner was not a party in any of the cases either before the Hon'ble Supreme Court or before the High Court.

19.4. Section 50 of the AVAT Act read with Rule 29[1][e] of the AVAT Rules mandates that the Prescribed Authority shall take prior approval of the Commissioner if the amount to be refunded exceeds rupees ten lakhs.

20. I have duly considered the submissions advanced by the learned counsel for the parties and have also gone through the materials brought on record by the parties through their pleadings. I have also gone through the decisions cited by the learned counsel for the parties in support of their respective submissions besides the statutory provisions referred to by them in course of their submissions.

VII. Discussion and Analysis Reasons for Decision :

21. The present batch of six writ petitions - [W.P.[C.] no. 388/2023, W.P.[C.] no. 412/2003, W.P.[C.] no. 413/2023, W.P.[C.] no. 414/2023, W.P.[C.] no. 415/2023 & W.P.[C.] no. 416/2023] - has been heard together along with another writ petition, W.P.[C.] no. 6864/2023 in view of the projection that there are common issues involved in all of them. The common issues are with regard to the matter of purchasing Raw Petroleum Coke [RPC] within the State of Assam on payment of local taxes and the validity of the claim for reimbursement if after conversion of Raw Petroleum Coke [RPC] into Calcined Petroleum Coke [CPC], the dealer sells the Calcined Petroleum Coke [CPC] in the course of inter-State trade or commerce paying taxes on such sold Calcined Petroleum Coke [CPC] as per the provisions of the CST Act and other ancillary issues. However, other than the common issues, the factual matrices leading to the passing of the impugned Orders dated 07.11.2022 in this batch of writ petitions are found to be different from the factual matrix involved in the other writ petition, W.P.[C.] no. 6864/2023. In view of the same, it is found proper to dispose of the present batch of writ petitions by a separate Judgment.

22. From the contents of the afore-mentioned impugned Orders, it has emerged that the impugned Orders were passed in deference to the direction made in the Order dated 23.05.2022 whereby the writ petition, W.P.[C.] no. 3328/2022 was disposed of. In order to pass the Orders, the respondent no. 2 stated to have perused the refund proposals along with the case records.

23. The respondent no. 2 has acknowledged about issuance of Eligibility Certificate [EC] on 18.06.2019 by the Industries Department making the petitioner eligible to avail tax incentives for the period from 30.11.2012 to 29.11.2019, subject to a ceiling of Rs. 7,38,28,517/-. The respondent no. 2 has also acknowledged about issuance of a Certificate of Entitlement [CE] on the basis of the Eligibility Certificate [EC] on 29.07.2019 by his Office. The respondent no. 2 has further acknowledged that the petitioner had submitted the annual return in formats annexed at Annexure-XI of the Assam Industries [Tax Exemption] Scheme, 2009 making payment of 1% tax and claiming remission of 99% tax as per the provisions of Assam Industries [Tax Exemption] Scheme, 2009. It is also acknowledged that in the return filed by the petitioner under the CST Act in Form-III, the petitioner had paid tax @ 1% of the CST due and claimed tax remission of @ 99% as per the Assam Industries [Tax Exemption] Scheme, 2009.

24. In the impugned Orders, the respondent no. 2 has made the following observations :-

> [i] The petitioner, a registered dealer, did not claim any reimbursement of the Value Added Tax paid on Raw Petroleum Coke [RPC] in terms of Section 15[b] of the CST Act in time.
>
> [ii] The petitioner submitted applications under Section 50[1] of the AVAT Act read with Rule 29 of the AVAT Rules on 09.01.2017 [Assessment Years :
>
> 2012-2013, 2013-2014, 2014-2015 and 2015-2016], on 05.07.2017 [Assessment Year : 2016-2017] and on 04.10.2019 [Assessment Year : 2017-2018] claiming refund of different amounts paid as Value Added Tax on purchase of Raw Petroleum Coke

[RPC] on the ground that Central Sales Tax was paid on inter-State sale of Calcined Petroleum Coke [CPC] citing a Judgment of this Court in India Carbon Ltd. vs. State of Assam, [1992] 1 GLR 82.

[iii] Some of the refund applications were belated ones being filed after fourty-five months [Assessment Year : 2012-2013], Thirty-three months [Assessment Year: 2013-2014], twenty-one months [Assessment Year : 2014-2015] and nine months [Assessment Year : 2015-2016].

[iv] The Audit Assessments of the petitioner under the AVAT Act and the CST Act for the Assessment Years : 2012-2013 and 2013-2014 were completed on 12.12.2017 and Demand Notices were issued on 13.12.2017. Similarly, for the Assessment Years : 2014-2015, 2015-2016, 2016-2017 and 2017-2018, Audit Assessments were completed on 01.10.2019 and Demand Notices were issued on 03.10.2019. At the time of Audit Assessments, the petitioner's claim for remission of 99% of the due tax was rejected for the reason that the petitioner did not possess the Eligibility Certificate [EC] under the Assam Industries [Tax Exemption] Scheme, 2009 till the date of assessment.

[v] On completion of Audit Assessments and at the time of issuance of Demand Notices, the Assessing Officer did not allow reimbursement of Value Added Tax paid on purchase of Raw Petroleum Coke [RPC]. Absence of challenge to the Audit Assessment Orders or non-preference of any statutory appeal/revision for providing reimbursement of tax paid on purchase of Raw Petroleum Coke [RPC] by the petitioner has amounted to acceptance of the Assessment Orders resulting in attainment of their finality.

[vi] The subsequent rectifications of the Assessment Orders by the Assessing Officer suo moto under Section 83 of the AVAT Act read with Section 9[2] of the CST Act were not in accordance with the statutory provisions in absence of any error apparent on the face of the records.

[vii] The action of the petitioner amounts to acquiescence and the petitioner's claim for reimbursement has suffered from delay and laches, which makes the petitioner a fence-sitter giving rise to a valid ground to dismiss its claim.

[viii] Lastly, as the petitioner did not deposit the full amount of the Central Sales Tax, which is a condition precedent for claiming reimbursement of the Value Added Tax amount as per provisions of Section 15[b] of the CST Act, the petitioner's claim for reimbursement entails rejection.

[i] The provisions in the Constitution of India, the Central Sales Tax Act, 1956 and the Assam Value Added Tax Act, 2003

25. As certain statutory provisions and decisions of this Court as well as the Hon'ble Supreme Court are at the forefront of the present lis on the basis of which the petitioner has claimed refunds [reimbursement] and the refund claims have been rejected by the State respondents, and the issue is

also simultaneously related with the treatment of Raw Petroleum Coke [RPC] and Calcined Petroleum Coke [CPC] as goods of special importance under the CST Act, reference to those provisions appears apposite at the inception.

26. Clause [3] of Article 286 of the Constitution of India was omitted by the Constitution [One Hundred and First Amendment] Act, 2016 w.e.f. 16.09.2016. Clause [3], before omission, stood as under :-

> Article 286 : Restrictions as to imposition of tax on the sale or purchase of goods -
>
> [3] Any law of a State shall, in so far as it imposes, or authorizes the imposition of, -
>
> [a] a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or [b] a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause [b], sub-clause [c] or sub-clause [d] or Clause [29A] of Article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

27. Clause [c] of Section 2 of the Central Sales Tax Act, 1956 an Act by the Parliament, prior to its omission by the Taxation Laws [Amendment] Act, 2017, provided for the definition of 'declared goods' and 'declared goods' used to mean goods declared under Section 14 to be of special importance in inter- State trade or commerce.

28. Section 14 of the Central Sales Tax Act, 1956, prior to its omission by the Taxation Laws [Amendment] Act, 2017, used to deal on the subject-matter, 'Certain goods to be of special importance in inter-State trade or commerce'. Section 15 of the Central Sales Tax Act, 1956, prior to its omission by the Taxation Laws [Amendment] Act, 2017, used to deal on the subject-matter, 'Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State'. Section 14 and Section 15 had been omitted by the Taxation Laws [Amendment] Act, 2017 w.e.f. 01.07.2017 with the introduction of the Goods and Services Tax Act, 2017. Prior to their omissions, the parts of Section 14 and Section 15 which are of relevance for the cases in hand, used to be read as under :-

> 14. Certain goods to be of special importance in inter-State trade or commerce. -

It is hereby declared that the following goods are of special importance in inter-State trade or commerce :-

> [i] * * * * *
> * * * * *

[ia] coal, including coke in all its forms, but excluding charcoal :

Provided that during the period commencing on the 23 rd day of February, 1967 and ending with the date of commencement of Section 11 of the Central Sales Tax [Amendment] Act, 1972 [61 of 1972] this clause shall have effect subject to the modification that the works 'but excluding charcoal' shall be omitted;

[ii] * * * *
* * * *

15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. -

Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :-

[a] the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed five per cent of the sale or purchase price thereof;

[b] where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State;

[c] * * * *
* * * *

29. The provisions contained in Section 50 and Section 52 of the Assam Value Added Tax Act, 2003 deal with matters of 'refund' and 'interest' respectively.

For ready reference, Section 50 and Section 52 are quoted herein below in their entirety :-

Section 50 - Refund [1] Subject to other provisions of this Act and the rules made thereunder, if it is found on the assessment or reassessment, as the case may be, that a dealer has paid tax, interest or penalty in excess of what is due from him, the Prescribed Authority shall, on the claim being made by the dealer in the prescribed manner and within the prescribed time, refund to such dealer the amount of tax, penalty and interest paid in excess by him :

Provided that, such refund shall be made after adjusting the amount of tax or penalty, interest or sum forfeited or all of them due from, and payable by the dealer on the

date of passing of order for such refund.

[2] Where the amount of input tax credit admissible to a registered dealer for a given period exceeds the tax payable by him for the period, he may, subject to such restrictions and conditions as may be prescribed, seek refund of the excess amount, by making an application in the prescribed form and manner, containing the prescribed particulars and accompanied with the prescribed documents to the Prescribed Authority, or adjust the same provisionally with his future liability to tax in the manner prescribed :

Provided that, the amount of tax or penalty, interest or sum forfeited or all of them due from, and payable by, the dealer on the date of such adjustment shall first be deducted from such refund before adjustment.

Section 52 - Interest [1] A registered dealer entitled to refund in pursuance of any order under this Act including assessment or in pursuance of any order by any Court, shall be entitled to receive, in addition to the refund, simple interest at the rate of nine percent per annum for the period commencing after ninety days of the application claiming refund in pursuance to such order till the date on which the refund is granted.

[2] The interest shall be calculated on the amount of refund due after deducting therefrom any tax, interest, penalty or any other dues under this Act.

[3] If, as a result of any order passed under this Act, the amount of such refund is enhanced or reduced such interest shall be enhanced or reduced accordingly.

[4] When a dealer is in default or is deemed to be in default in making the payment in pursuance of any assessment under this Act, he shall be liable to pay simple interest on such amount at the rate of one and half percent per month from the date of such default for so long as he continues to make default in the payment of the said tax.

[5] Where as a result of any final order the amount of tax [including any penalty] due or in default is wholly reduced, the amount of interest, if any, paid shall be refunded, or if such amount is modified, the interest due shall be calculated accordingly and any excess amount of interest paid shall be refunded.

[6] Where any amount of tax payable is enhanced by any such order, interest shall be payable on the amount by which the tax is enhanced.

[7] Where the realization of any amount remains stayed by the order of any Court or authority and such order is subsequently vacated, interest shall be payable also for any period during which such order remained in operation.

[8] The interest payable under this Act shall be deemed to be tax due under this Act.

30. Reference to the other relevant legal provisions would be made at the appropriate places of this judgment.

[ii] The previous litigation :-

31. There is a long history of litigation on the question : whether Calcined Petroleum Coke [CPC] made out of Raw Petroleum Coke [RPC] would come within the phrase, 'Coal, including Coke in all its forms'. The issue is also inter-

wined, for the purpose of this case in hand, with the Section 14 and Section 15 of the CST Act and Section 50 and Section 52 of the AVAT Act. It would, therefore, be apt to trace the litigation history on the issue and the decisions rendered thereon, at this juncture, before any deliberation on the impugned Order.

[iii] Coke in all its forms; Raw Petroleum Coke [RPC] and Calcined Petroleum Coke [CPC] :-

32. Petroleum Coke is a by-product of the oil industry. Raw Petroleum Coke, abbreviated as Coke, Pet-Coke or Petcoke, is a carbonaceous solid derived from oil refinery cooker units or other cracking processes. Calcined Petroleum Coke [CPC] as a product emerges after Raw Petroleum Coke [RPC] is subjected to the industrial process of calcination. Calcined Petroleum Coke [CPC] is created by processing Raw Petroleum Coke [RPC] into rotary kilns. Since the product of Calcined Petroleum Coke [CPC] undergoes an irreversible chemical change in the industrial process, it is chemically and physically a different item from Raw Petroleum Coke [RPC]. Calcined Petroleum Coke [CPC] is used as a feedstock for wide range of products such as aluminum, paints, coatings, etc. which are used by a number of industries.

33. An issue arose whether Petroleum Coke would come within the phrase, 'Coal, including Coke in all its forms' appearing in item [ia] of Section 14 of the CST Act. By an amendment made in the year 1964 in the Assam Sales Tax Act, 1947 w.e.f. 01.09.1964, Coke was taken out of the list of goods on which no sales tax was levied. When the Superintendent of Taxes, Assam informed the dealer/company, M/s India Carbon Limited that Petroleum Coke was taxable @ 5 paise per rupee under the Assam Sales Tax Act, 1947, after the amendment, the dealer/company, M/s India Carbon Limited moved this Court under Article 226 of the Constitution of India on the ground that such rate under the Assam Sales Tax Act, 1947, the Assam Finance Sales Tax Act, 1956 and the Assam [Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants] Taxation Act, 1955 was not payable in view of Section 15[a] of the CST Act, as it stood at that point of time, and the rate at which the tax would be payable was @ 2 paise per rupee under the CST Act. By an Amending Act, 1966, 3 per cent was substituted for 2 per cent w.e.f. 01.07.1966.

[iv] Civil Appeal no. 1612 of 1988 : India Carbon Ltd. vs. Superintendent of Taxes, Gauhati and others : [1971] 3 SCC 612 :-

> 34. The matter was finally carried to the Hon'ble Supreme Court in a civil appeal, Civil Appeal no. 1612 of 1968. In the Judgment rendered in the case titled India Carbon Limited vs. Superintendent of Taxes, Gauhati and others , reported in [1971] 3 SCC 612, on 18.08.1971, the Hon'ble Supreme Court had observed that if it was not disputed that Petroleum Coke was covered within the phrase, 'Coal, including Coke in all its forms' under Section 14 of the CST Act, the State was not competent to levy tax at a rate exceeding the one given in Section 15[a] of the CST Act.
>
> 34.1. The Hon'ble Supreme Court had also observed as under :-
>
> 6. .....The language is clearly wide and Coal has been stated to include Coke in all its forms. It is not denied that Petroleum Coke is one of the forms of Coke. Therefore on a plain reading of the aforesaid clause it is incomprehensible how Petroleum Coke can be excluded from its ambit. It may be that the clause mentions Coal only and then declares that that word shall include Coke in all its forms.

That shows that the object of the words which follow Coal is to extend its meaning....

* * * * * .... We do not consider that when the Parliament used the word 'Coke' in Section 14[i] of the Central Act it had any intention to give it a meaning other than the ordinary dictionary meaning which would cover Petroleum Coke. At any rate, the language employed is so wide viz., 'Coke in all its forms' that Petroleum Coke which is a form of Coke cannot possibly be excluded merely by reference to the word 'Coal'.

35. It has been authoritatively held in India Carbon Limited [supra] that Coal includes Coke in all its forms and Petroleum Coke is one of the forms of Coke. Thus, Petroleum Coke was included within the declared goods of special importance in inter-State trade or commerce, as per Section 14 of the CST Act.

[v] The Assam [Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants] Taxation Act, 1955 :-

36. The Assam [Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants] Taxation Act, 1955 ['the Act, 1955' and/or 'the 1955 Act', for short] was an Act passed by the State of Assam for imposition of tax on sales of Petroleum and Petroleum Products including Motor Spirit and Lubricants for the purpose of making an addition to the public revenue. Section 3 of the said Act was the charging provision.

37. By an amendment of 1986, sub-section [1] of Section 3 of the 1955 Act which provided for the rate of tax, was amended. Prior to amendment, sub-section [1] of Section 3 had provided for levy and collection from every dealer a tax on his turnover or sales of Petroleum Coke @ 3 paise in the

rupee. With the amendment by the Assam [Sales of Petroleum and Petroleum Products including Motor Spirit and Lubricants] Taxation [Amendment] Act, 1986, the following were inter alia inserted :-

> [vi] Petroleum Coke ..... Four paise in the rupee.
>
> Explanation. - Petroleum coke means Raw Petroleum Coke only and does not include Calcined Petroleum Coke.
>
> [vii] Calcined Petroleum Coke ... Four paise in the rupee By the said amendment, Petroleum Coke was classified into two commercial commodities - [i] Raw Petroleum Coke [RPC] and [ii] Calcined Petroleum Coke [CPC].
>
> [vi] Civil Rule no. 163 of 1987: M/s India Carbon and others vs. State of Assam and others, [1992] 1 GLR 82 [DB]

38. The Division Bench Judgment of this Court in M/s India Carbon and others vs. State of Assam and others , reported in [1992] 1 GLR 82 [DB], was in respect of a challenge to the vires of Section 3 of the 1955 Act. The petitioners therein in Civil Rule no. 163 of 1987 had challenged the vires of Section 3 of the Act, 1955 in so far as it related to the classification of Petroleum Coke into two commercial commodities, that is, [i] Raw Petroleum Coke [RPC] and [ii] Calcined Petroleum Coke [CPC], for the purpose of taxation on the ground that it violated Article 286[3] of the Constitution of India and the CST Act.

38.1. The petitioners therein were in the business of purchase and sale of Petroleum Coke and used to purchase Raw Petroleum Coke [RPC] and pay tax under the provisions of the 1955 Act. Out of the Raw Petroleum Coke [RPC], the petitioner companies used to manufacture Calcined Petroleum Coke [CPC] and used to sell most of the Calcined Petroleum Coke [CPC] so manufactured, in the course of inter-State trade or commerce. The petitioner companies had asserted that they paid tax under the CST Act and in view of Section 15[b] of the CST Act, the State of Assam was required to refund the tax levied under the State Act. The Superintendent of Taxes, Assam refused the claims for refund made by the petitioner companies on the ground that Raw Petroleum Coke [RPC] and Calcined Petroleum Coke [CPC] were different commercial commodities.

38.2. The Division Bench considered the provisions of Article 286[3], Section 14 and Section 15 of the CST Act and the decision of the Hon'ble Supreme Court of India in India Carbon Limited [supra]. The Division Bench had held that Raw Petroleum Coke [RPC] and/or Calcined Petroleum Coke [CPC] would come within the ambit of 'Coke in all its forms' and therefore, Raw Petroleum Coke [RPC] and Calcined Petroleum Coke [CPC] were to be treated as one and the same for the purpose of item [ia] of Section 14 of the CST Act although the commodities were different physically. After analyzing the restrictions dealt by Section 15 of the CST Act, as it stood then, on sales tax law of the State, the Division Bench had held that though the Assam Act had treated Raw Petroleum Coke [RPC] and Calcined Petroleum Coke [CPC], which were goods declared, as different commodities, for the purposes of sales tax law of the State, such treatment as two different

commodities could not prevail over Section 14 of the CST Act. The Division Bench had gone on to hold that if Raw Petroleum Coke [RPC] was purchased inside the State and Calcined Petroleum Coke [CPC] was also sold inside the State, after calcination, and if the State law would impose tax on Raw Petroleum Coke as well as on Calcined Petroleum Coke [CPC], it would amount to imposition of tax on a sale or purchase inside the State of goods declared at more than one stage, which was not permissible under Section 15 of the CST Act. It was, thus, held that the State Act could not impose tax on Raw Petroleum Coke [RPC] as well as on Calcined Petroleum Coke [CPC] if a sale or purchase of both Raw Petroleum Coke [RPC] and Calcined Petroleum Coke [CPC] took place within the State of Assam as such imposition of tax would be unconstitutional in view of Article 286[3] of the Constitution read with the CST Act. Finding that the doctrine of 'reading down' would be attracted in the case in order to save unconstitutionality due to arising out of the situation stated, Entry [vii] of Clause [1] of Section 3 of the 1955 Act, was read down as 'Calcined Petroleum Coke [which was not subjected to tax as Raw Petroleum Coke]'.

38.3. The Division Bench had further observed that as Clause [b] of Section 15 of the CST Act had provided that if the same declared goods were subsequently the subject-matter of inter-State sale and tax was paid on such transaction under the CST Act the dealer would be entitled to refund of tax paid under the State law, the petitioners therein would be entitled to get refund in those cases where the tax was paid on a sale or purchase of Raw Petroleum Coke [RPC] under the State Act and tax had been paid on sale or purchase of Calcined Petroleum Coke [CPC] under the CST Act. By the Judgment and Order dated 16.12.1991, the orders passed by the State authorities refusing to refund tax paid in respect of Raw Petroleum Coke [RPC] were quashed.

38.4. Aggrieved by the Judgment and Order dated 16.12.1991 rendered by the Division Bench of this Court in Civil Rule no. 163 of 1987, M/s India Carbon vs. the State of Assam, reported in [1992] 1 GLR 82[DB], the State of Assam carried the matter to the Hon'ble Supreme Court of India by way of an appeal, which was registered and numbered as Civil Appeal no. 3802 of 1992.

[vii] Civil Appeal no. 6073-74 of 1994 : State of Bihar and others vs. Universal Hydrocarbons Co. Ltd. and another, 1994 Supp [3] SCC 621

39. In State of Bihar and others vs. Universal Hydrocarbons Co. Ltd. and another, reported in 1994 Supp [3] SCC 621, the case of the respondent company was that it purchased Raw Petroleum Coke [RPC] and after subjecting the same to a manufacturing process produced Calcined Petroleum Coke [CPC]. In view of payment of sales tax required under the CST Act, the respondent company claimed refund of the sales tax paid by it under the State law on purchase of raw material. By a Common Order dated 10.04.1992 passed in two writ petitions, the claim was allowed by the Patna High Court. In Civil Appeal nos. 6073-74 of 1994, the State of Bihar, as contended before the High Court, contended also before the Hon'ble Supreme Court that though the Entry under Section 14[ia] of the CST Act provided for 'Coal, including Coke in all its forms, but excluding Charcoal', if the Raw Petroleum Coke [RPC] had undergone a process of manufacture which ultimately resulted in Calcined Petroleum Coke [CPC], it was a different product for the purpose of taxation. It was contended that in the field of taxation, the State would have a wide choice in choosing the object of taxation.

39.1. The Hon'ble Supreme Court had held that when the Entry in Section 14[ia] of the CST Act had said 'Coke in all its forms', there was no possibility of bringing Coke of different forms except under Entry [ia] in Section 14, by observing as under :-

> 18. We are totally unable to accept this line of reasoning. Once the entry is 'Coke in all its forms' irrespective of the fact Raw Petroleum Coke loses its original identity or in the process of manufacture Calcined Petroleum Coke is produced, cannot take Calcined Petroleum Coke out of the purview of this entry. In more or less identical situation, this Court held in India Carbon case, [1971] 3 SCC 612, that Petroleum Coke is one form of Coal governed by the expression 'Coal' within Section 14[i-a]. The relevant extract of the judgment is as under :
>
> It is not disputed that if Petroleum Coke is covered by clause [i] of Section 14 which reads 'Coal including Coke in all its forms' the State was not competent to levy tax at a rate exceeding the one given in Section 15[a] of the Central Act.
>
> * * * * * The High Court was of the view that the word 'Coal' includes Coke in all its forms in clause [i] of Section 14 of the Central Act and must be taken to mean Coke derived from Coal. In other words it must be Coke which had been derived or acquired from Coal by following the usual process of heating or burning. The contention, therefore, of the appellant was negatived that Petroleum Coke was covered by the aforesaid provision of the Central Act.
>
> 19. This decision fully supports the respondent. The fact that Calcined Petroleum Coke is a different commodity is of little consequence.

[viii] Final Outcome of Civil Appeal no. 3802 of 1992

40. In view of the Judgment rendered in Civil Appeal nos. 6073-74 of 1994 :

> State of Bihar and others vs. Universal Hydrocarbons Co. Ltd. and another, reported in 1994 Supp [3] SCC 621, the appeal preferred by the State of Assam against the Judgment and Order dated 16.12.1991 of the Division Bench of this Court in Civil Rule no. 1630 of 1887 [M/s India Carbon vs. the State of Assam], reported in [1992] 1 GLR 82, Civil Appeal no. 3802 of 1992 came to be dismissed vide an Order dated 22.09.1995.
>
> [ix] W.P.[C] no. 4586 of 2008 [M/s Guwahati Carbon Limited vs. the State of Assam] & W.P.[C] no. 6646 of 2010 [M/s Brahmaputra Carbon Limited vs. the State of Assam]

41. When despite the aforesaid pronouncements the refunds were not granted to the industrial units engaged in the process of conversion of Raw Petroleum Coke [RPC] to Calcined Petroleum Coke [CPC] in terms of Section 15[b] of the CST Act, one writ petition, W.P.[C] no. 4586 of 2008 [M/s

Guwahati Carbon Limited vs. the State of Assam] was preferred by M/s Guwahati Carbon Limited. The writ petition was preferred as the said petitioner's application for refund of taxes was rejected by the State authorities. Another writ petition, W.P.[C] no. 6646 of 2010 [M/s Brahmaputra Carbon Limited vs. the State of Assam] was preferred on similar grounds. Both the writ petitions - W.P.[C] no. 4586 of 2008 & W.P.[C] no. 6646 of 2010 - were allowed by the Division Bench of this Court by a common Judgment and Order dated 12.12.2012 by following the decision in Universal Hydrocarbons Co. Ltd [supra]. The Division Bench had also set aside the impugned orders whereby the applications for refund were rejected and directed the State respondents to take a fresh decision in the matter within a period of 3 [three] months.

[x] Civil Appeal no[s]. 5518-5519 of 2013 : The State of Assam & others vs. M/s Guwahati Carbon Ltd. & another etc.

42. Against the common Judgment and Order dated 12.12.2012 passed in W.P.[C] no. 4586 of 2008 & W.P.[C] no. 6646 of 2010, the State of Assam preferred two Special Leave Petitions [SLPs] before the Hon'ble Supreme Court. The SLPs were initially registered and numbered as SLP [Civil] no[s]. 12907- 12908/2013 and the same were subsequently registered as Civil Appeal no[s]. 5518-5519 of 2013 [the State of Assam & others vs. M/s Guwahati Carbon Ltd. & another etc.] after grant of leave.

42.1. While granting leave on 04.10.2013, the Hon'ble Supreme Court stayed the operation of the Judgment and Order dated 12.12.2012, subject to the following conditions :-

> [i] 50% of the refund amount pursuant to the impugned order shall be kept separately in a separate account by the appellants.
>
> [ii] Remaining 50% of the refund amount shall be deposited by the appellants with the Registry of this Court within two months from today. The amount to deposited may be withdrawn by the respondents on furnishing suitable bank guarantee with the satisfaction of the Registrar [J-I] and also an undertaking that in event of Appeals being allowed the amount so withdrawn shall be restituted to the appellants along with 10% simple interest from the date of withdrawal.
>
> [iii] In the event of Appeals being dismissed, the appellants shall pay to the respondents 50% of the amount which has been kept in separate account along with 10% simple interest from today.
>
> 42.2. The State of Assam deposited 50% of the refund amount due to the respondents in the SLPs in terms of the Order dated 04.10.2013 before the Registry of the Hon'ble Supreme Court.
>
> 43. During the pendency of Civil Appeal no[s]. 5518-5519 of 2013 before the Hon'ble Supreme Court, one of the dealers claiming to be similarly situated like the respondents in those two civil appeals, preferred a writ petition, W.P.[C] no. 761/2014 [India Carbon Limited and another vs. the State of Assam and others]

before this Court claiming refund of the taxes paid on purchase of the Raw Petroleum Coke [RPC] which after conversion into Calcined Petroleum Coke [CPC], was sold in the course of inter-State trade or commerce by paying taxes under the CST Act. The said writ petition was disposed of by this Court by an Order dated 11.03.2015 in the following terms :-

Heard the petitioner and the respondent.

The Supreme Court in a similar matter [Special Leave to Appeal (Civil) 12907-12908/2013] involving similar facts and circumstances passed the following interim order.

[i] 50% of the refund amount pursuant to the impugned order shall be kept separately in a separate account by the appellants.

[ii] Remaining 50% of the refund amount shall be deposited by the appellants with the Registry of this Court within two months from today. The amount so deposited may be withdrawn by the respondents on furnishing suitable bank guarantee with the satisfaction of the Registrar [J-I] and also an undertaking that in the event of Appeals being allowed the amount so withdrawn shall be restituted to the appellants along with 10% simple interest from the date of withdrawal.

[iii] In the event of Appeals being dismissed, the appellants shall pay to the respondents 50% of the amount which has been kept in separate account along with 10% simple interest from today.

In this case also the similar interim order is passed and the petition is disposed of subject to the result of the Civil Appeal 12907- 12908/2013.

[xi] Final Outcome of Civil Appeal no[s]. 5518-5519 of 2013 : The State of Assam & others vs. M/s Guwahati Carbon Ltd. & another etc.

44. The Hon'ble Supreme Court of India found the issue involved in the civil appeals squarely covered by the Judgment in Universal Hydrocarbons Co.

Ltd [supra] and had further observed that the decision in Universal Hydrocarbons Co. Ltd [supra] was rightly relied upon by the Division Bench of this Court in the Judgment under appeals. Finding no reason to interfere with the Judgment under appeal, the appeals were dismissed by an Order dated 12.01.2017. While dismissing the appeals it had observed also as follows :-

However, we are informed that pursuant to an interim order dated 04.10.2013, an amount of Rs. 2,52,20,840/- [Rupees Two Crores Fifty Two Lakhs Twenty Thousand Eight Hundred and Forty only] is lying in a fixed deposit amount. In view of the dismissal of the appeals, the first respondent would be at liberty to withdraw the

same along with the accrued interest on making an appropriate application to the Registry in this regard.

If any further amounts are due under the order of the High Court to the first respondent, the first respondent would be at liberty to take appropriate steps for the recovery of the same.

45. It is a settled proposition of law that a judicial decision acts retrospectively. It has been held in Saurashtra Kutch Stock Exchange Limited [supra] that it is not the function of the court to pronounce a new rule but to maintain and expound the old one. The courts do not make the law. The courts only discover or find the correct law. If a subsequent decision alters the earlier one, it [the later decision] does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. In other words, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood. The decision in Saurashtra Kutch Stock Exchange Limited [supra] has been referred recently by the Hon'ble Supreme Court in Directorate of Revenue Intelligence vs. Raj Kumar and others, 2025 INSC 498 to reiterate the principle.

46. It is also settled by the decision in M.S.L. Patil [supra] that if the courts have laid down a general principle of law, then the general principle of law stands applicable to every person irrespective of the fact whether he is a party to the earlier proceedings or not. The general principle of law is also extended to a situation that if a person is not a party in a lis then also the general principle of law laid down by the superior courts is applicable to him whether or not he is a party to any earlier proceeding.

47. From the above precedents, it is evidently clear that the general principles of law which are laid down are that Petroleum Coke is one of the forms of Coke and it is covered within the phrase, 'Coal, including Coke in all its forms' under Section 14 of the CST Act and it was declared as a good of special importance in inter-State trade or commerce. A good declared as a good of special importance is also referred to as 'declared good'. Though Petroleum Coke can be classified into two commercial commodities, that is, [i] Raw Petroleum Coke [RPC], and [ii] Calcined Petroleum Coke [CPC], both of them are treated to be within the ambit of the phrase, 'Coke in all its forms' and they were treated as one and the same for the purpose of Section 14 of the CST Act although the two were different chemically and physically. The general principle of law is also laid down to the effect that if a dealer purchased Raw Petroleum Coke [RPC] within the State by paying tax levied under the local tax law and the dealer after converting the purchased Raw Petroleum Coke [RPC] into Calcined Petroleum Coke [CPC], sold the Calcined Petroleum Coke [CPC] outside the State in the course of inter-State trade or commerce and the dealer had paid the Central Sales Tax under the CST Act on such sold Calcined Petroleum Coke [CPC], then the dealer would be entitled for reimbursement of the local tax amount paid on the purchase of Raw Petroleum Coke [RPC] as per Section 15[b] of the CST Act. On the issues involved in the above precedents, this Court has not found any later judgment overruling any previous judgment. Meaning thereby, the above general principles of law laid down have been consistent all throughout. Therefore, the petitioner as a dealer under the AVAT Act has a valid claim for reimbursement of the Value Added Tax [VAT] paid on purchase of Raw Petroleum Coke [RPC] in the State.

48. From the materials on record, more particularly, from the Assessment Order Sheets, it has emerged that the assessments of the dealer, that is, the petitioner for the Assessment Years : 2012-2013 and 2013-2014 were completed on 12.12.2017.

49. For ready reference, the contents of the Assessment Order passed in respect of the petitioner for the Assessment Year : 2012-2013 are extracted hereinbelow :

The Assam Value Added Tax Rules, 2005 Assessment Order Sheet

1. Name of the dealer : M/s. Carbon Resources Pvt.

Ltd. [with complete address] Ltd. Kukurmari, Dhaligaon, Chirang.

2. Unit and Circle : Bongaigaon & Circle : 01

3. Registration No. [TIN] : 18190111736

4. Period of Assessment : 2012-2013

5. Sub-Division : Kajalgaon.

6. Aggregate amount returned : Rs. 8,82,68,223.00 [exc. Tax].

9. Books of accounts produced : Purchase invoice, sales invoice, cash book, ledger, stock register, etc.

10. Section/Rule under which assessment is made : u/s 36[1] of the AVAT Act, 2003, read with Rule 22[1][x] of the AVAT Rules, 2005.

Date of Assessment : 12.12.2017 Assessment Order Shri M. Sharma authorized representative of the firm attended with accounts which were examined. The dealer is a manufacturer of Calcined Petroleum Coke [CPC] out of Raw Petroleum Coke [RPC] and trading the same.

Verification of accounts also reveals that the dealer has made no intra-State sales during the year and the dealer has paid tax @ 1% of total tax payable under the CST Act, 1956 as per Notification No. FTX.66/2009/117 dtd. 26.12.2011.

The Gross Turnover are summarized as under :

Inter-State Sales	Rs. 5,40,25,409/-
CST @ 2%	Rs. 10,80,508/-
Stock transfer	Rs. 3,42,42,814/-
GTO Total	Rs. 8,93,48,731/-

Hence, in the absence of any other finding the accounts are accepted and assessment is done as shown as under :

Particulars	Amount [Rs.]
	5%
G.T.O.	Rs. 8,82,68,223/-
Less :	
Sale [export sale] U/S 5[1]	0.00
Sale [export sale] U/S 5[3]	0.00
U/s 6A Stock Transfer against 'F' Form	Rs. 3,42,42,814/-

Less : CST Sales	Rs. 5,40,25,409/-
Net VAT	0.00
Tax Payable	0.00
Interest Payable	0.00
Total tax paid	0.00
Balance due	0.00

Sd/-
Assessing Officer

50. A bare look at the Assessment Order would reveal that the Assessment Order was made under Section 36[1] of the AVAT Act read with Rule 22[1][x] of the AVAT Rules. Section 36 of the AVAT Act has provided for Audit Assessment. In sub-section [1] of the Section 36, the reasons for which Audit Assessment can be undertaken are mentioned in sub-clauses [a], [b], [c] and [d]. As per sub-clause [a] of sub-section [1] of Section 36, a registered dealer can be selected for Audit Assessment by the prescribed authority on the basis of any criteria or on random basis. Sub-rule [1] of Rule 22 : 'Audit Assessment' of the AVAT Rules has enumerated the categories of cases from sub-rule [i] to sub-rule [xi] in respect of which Audit Assessment can be taken up under Section 36 of the AVAT Act. Under sub-clause [x] of Rule 22[1], the Commissioner has been given the discretion to select the cases of any particular trade or trades for Audit Assessment. As the Audit Assessment Orders of the petitioners were made specifically under Section 36[1] of the AVAT Act read with Rule 22[1][x] of the AVAT Rules, there is no room for doubt to treat those Assessment Orders to be either under sub-clause [iii] or sub-clause [iv] of Rule 22[1] of the AVAT Rules, as contended on behalf of the respondents. Even in the impugned Orders, the respondent no. 2 has not made any remark on the Assessment Orders passed under Section 36[1] of the AVAT Act read with Rule 22[1][x] of the AVAT Rules, save and except observing that the Assessment Orders were silent on the issue of reimbursement under Section 15[b] of the CST Act for the period. Therefore, the contention advanced on behalf of the respondents that the Assessment Orders mis-quoted the provisions of law is clearly untenable and deserves to be rejected.

51. From the Assessment Order Sheets available on record, it has emerged that the assessments of the dealer, that is, the petitioner under Section 36[1] of the AVAT Act read with Rule 22[1][x] of the AVAT Rules for the subsequent Assessment Years were completed on the following date :-

Assessment Year	Date of Completion of Assessment
2014-2015	
2015-2016	01.10.2019
2016-2017	
2017-2018 [April, 2017 to June, 2017]	

52. It has further emerged from the materials on record, more particularly, from the Assessment Order Sheets, the Assessment Orders by way of rectification were passed subsequent to the Assessment Orders for two Assessment Years. The subsequent Assessment Orders were passed under Section 83 of the AVAT Act read with Section 9[2] of the CST Act. The subsequent Assessment Orders which by way of rectifications, were passed on the following date :-

Assessment Year	Date of Assessment
2012-2013	01.10.2019
2013-2014	

53. Section 83 of the AVAT Act is with the nominal heading, 'Power to rectify error apparent on the record'. As per sub-section [1] of Section 83, any authority including the Appellate Authority, Revisional Authority and Appellate Tribunal may, on an application or otherwise at any time within three years from the date of any order passed by it, rectify any error apparent on the face of the record. The proviso to sub-section [1] has provided that no such rectification which has the effect of enhancing the liability to pay tax or penalty or penal interest shall be made unless such authority has given notice to the person affected and has allowed him a reasonable opportunity being heard. The proviso to sub-section [1] of Section 83 of the AVAT Act is not found applicable in the case in hand.

54. Section 9[2] of the CST Act has provided that subject to the other provisions of the CST Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under the CST Act as if the tax or interest of penalty by such a dealer under the CST Act is a tax or interest or penalty payable under the general sales tax law of the State; and for the said purpose the State authorities may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, refunds, rebates, penalties etc. as mentioned therein.

55. Indubitably, the general sales tax law of the State referred to in Section 9[2] of the CST Act for the case in hand is the AVAT Act. By the enabling provision of Section 9[2] of the CST Act, the

authorities under the AVAT Act have been dealing with matters of refund under Section 15[b] of the CST Act. Apart from the Commissioner of Taxes, Assam the other taxing authorities who assist the Commissioner for carrying out the purposes of the AVAT Act, are mentioned in Section 3[2] thereof. As per the power of rectification provided in Section 83[1] of the AVAT Act, any authority may rectify any error apparent on the face of the record within three years from the date of any order passed by it. Such rectification can be either on the basis of an application or even suo moto.

56. The Audit Assessments for the Assessment Years : 2012-2013 and 2013-2014 under Section 36[1] of the AVAT Act, as mentioned above, were completed on 12.12.2017. The Judgment in Civil Appeal no[s]. 5518-5519 of 2013 : the State of Assam & others vs. M/s Guwahati Carbon Ltd. & another etc. was delivered by the Hon'ble Supreme Court on 12.01.2017. The petitioner submitted its Letter to the respondent no. 4 on 17.01.2017 seeking refund of the Value Added Tax [VAT] paid along with interest thereon for the Assessment Years : 2012-2013 to 2015-2016. After not doing anything on the said refund application for more than two and half years, it was only on 13.09.2019, the respondent no. 4 vide its Office Letter of even date sought clarification from the respondent no. 2 regarding admissibility of the refund claimed by the petitioner under Section 15[b] of the CST Act read with Section 50 of the AVAT Act for the Assessment Years : 2012-2013 to 2015-2016. The clarification so sought for from the respondent no. 2, was responded by the respondent no. 2 through the respondent no. 3 on 27.09.2019. By the Office Letter dated 13.09.2019, instructions were also sought for in the matter of petitioner's claim for refund taking into account that the petitioner had already deposited tax amount @ 1% on sales and made a claim for remission of 99% of the tax amount under the Assam Industries [Tax Exemption] Scheme, 2009. In its Office Letter dated 27.09.2019, it was made clear that the petitioner would be eligible to claim refund under Section 15[b] of the CST Act of the local tax paid on purchase of declared goods subject to the condition that Central Sales Tax had been paid on inter-State sale on such declared goods. The respondent no. 4 was also directed to submit the proposal, albeit for refund, through the jurisdictional Deputy Commissioner of Tax with year-wise undertaking for necessary action from the respondent no. 2. Having regard to the dates of passing of the Assessment Orders under Section 36[1] of the AVAT Act on 12.12.2017, as referred above, and the dates of passing of the Assessment Orders by way of rectification on 01.10.2019, it is clear that the Orders by way of rectification were passed within the limitation period of three years from the dates of passing the Assessment Orders.

57. In such backdrop, it does not lie on the part of the respondent no. 2 to make any adverse observation either regarding belated submission of refund applications by the petitioners for reimbursement of Value Added Tax paid on purchase of Raw Petroleum Coke [RPC] or regarding attainment of finality of the Assessment Orders.

58. Under Section 83 of the AVAT Act, it is permissible to rectify any order where there is any error apparent on the face of the record. Section 83 covers two situations, firstly, it enables the authority at any time, within three years from the date of the order, to rectify any order passed by it if there is any error apparent on the record; and, secondly, it requires the authority to make such rectification if the error is brought to its notice either on an application which includes an application from the assessee, or otherwise suo moto if the error comes to the notice of Assessing Authority.

59. It is submitted at the Bar that there is no specific provision in the AVAT Act to process a claim for reimbursement of the tax levied under the Sales Tax Law of a State under Section 15[b] of the CST Act. It has been submitted, in unison, to the effect that a claim for such reimbursement is processed under Section 50 of the AVAT Act read with Section 29 of the AVAT Rules, which provisions are already extracted hereinabove.

60. Sub-clause [c] of sub-rule [1] of Rule 29 of the AVAT Rules provided that the Prescribed Authority may reject, any claim for refund if the claim filed appears to involve any mistake apparent on the record or appears to be incorrect or incomplete, based on any information available on the record, after giving the dealer the opportunity to show cause in writing against such rejection. As per sub-clause [d] of sub-rule [1] of Rule 29, when the Prescribed Authority is satisfied that the refund claimed is due, he shall record an order sanctioning the refund. As per Clause [e] of sub-rule [1] of Rule 29 of the AVAT Rules, when the amount to be refunded is more than rupees three lakh, the Prescribed Authority shall take prior approval of Deputy Commissioner before sanctioning such refund. The Deputy Commissioner shall not approve the refund if the amount to be refunded exceeds rupees ten lakh but forward such cases to the Commissioner for approval. If the amount to be refunded is more than rupees fifty lakh, the Commissioner shall take prior approval of the Government before sanctioning such refund.

61. 'Prescribed Authority', as per Section 2[37] of the AVAT Act, means any person appointed to assist the Commissioner under sub-section [1] of Section 3 to whom all or any of the powers of the Commissioner for the levy and collection of tax conferred by or under the AVAT Act or the AVAT Rules has been delegated by the Commissioner under sub-section [9] of Section 3. It may be stated that the taxing authorities under Section 3[1] of the AVAT Act are those authorities which the Government can appoint to assist the Commissioner for carrying out the purposes of the statute, about which it would be adverted to in the paragraph 69 below. In the case in hand, no dispute has been raised as regards competence of the Assessing Authority / Prescribed Authority involved here to deal and process with an application for claiming reimbursement under Section 15[b] of the CST Act.

62. In so far as the Assessment Orders for the Assessment Years : 2012-2013 and 2013-2014 are concerned, the power under Section 83 of the AVAT Act is found to have been exercised coupled with the power vested under Section 9[2] of the CST Act. The respondent no. 2 is right in observing that a mistake apparent on the record means a mistake which is obvious, patent and self- evident and not something which can be established by long-drawn process of reason on points on which there may be conceivably be two opinions. The respondent no. 2 has also observed that assessments completed on 12.12.2017 were silent about the matter of reimbursement under Section 15[b] of the CST Act.

63. From the afore-stated procedure laid down in Rule 29 of the AVAT Rules it is evident that if the Prescribed Authority decides to reject any claim for refund filed before it by the dealer then the dealer is to be provided with a prior opportunity to show-cause in writing against such rejection. On the other hand, when the Prescribed Authority is satisfied that the refund claim is due, he shall record an order sanctioning the refund. When the audit assessment for the Assessment Year :

2012-2013 was completed on 12.12.2017, the assessment order was silent as regards reimbursement under Section 15[b] of the CST Act. The Assessing Authority / Prescribed Authority was statutorily obligated to record an order sanctioning a refund if he was satisfied that the refund claimed was due. At the same time, he was also statutorily obligated to provide a prior opportunity of being heard to the dealer if he was satisfied that the refund claimed was not due. In the face of such statutory obligation, silence on an important issue like reimbursement of the local tax paid on the purchase of Raw Petroleum Coke [RPC] within the State in the statutory order, that is, the audit assessment order cannot amount to rejection of the claim for reimbursement under Section 15[b] of the CST Act, as observed by the Commissioner in the impugned order.

64. Simply not dealing with a claim within a statutory order does not constitute rejection. For rejection of a claim permissible to be made under a statute, specific reasons are to be assigned in a statutory order. Absence of a decision or maintaining silence on a claim within a statutory order cannot amount to rejection of a claim. Just because there was no mention in the assessments made on 12.12.2017 about reimbursement of Value Added Tax [VAT] paid on purchase on Raw Petroleum Coke [RPC] by the Assessing Officer despite the petitioner's application dated 09.01.2017 claiming refund on the said count, it cannot be said that such silence on the part of the Assessing Officer would require preference of an appeal by the petitioner.

65. In Makkad Plastic Agencies [supra], the respondent assessee filed a rectification / amendment application purportedly under Section 37 of the Rajasthan Sales Tax Act, 1994 ['the 1994 Act', for short] after an order passed in appeal by the Rajasthan Taxation Board. The rectification / amendment application was decided by the Rajasthan Taxation Board by modifying its earlier order passed in appeal. Being aggrieved by the order passed in rectification / amendment application, a revision petition was preferred by the appellant therein before the High Court under Section 87 of the 1994 Act. The High Court dismissed the revision petition. Thereafter, the appellant preferred the appeal before the Hon'ble Supreme Court. The appeal was preferred on the ground that the subsequent order passed by the Taxation Board on the rectification / amendment application was in excess of jurisdiction provided under Section 37 of the 1994 Act.

65.1. Section 37 of the 1994 Act had provided for rectification of a mistake, which mistake had to be a mistake apparent from the record and any officer or any authority constituted under the 1994 Act was empowered to rectify any order passed by him suo moto or otherwise. It was found out that the Taxation Board in its appellate order had found the conclusion arrived at by the Assessing Officer well-considered and reasonable. It was in the backdrop of such observation, the Hon'ble Supreme Court had considered the question whether the Taxation Board while exercising the purported powers under Section 37 of the 1994 Act could re-appreciate the evidence on record and review its earlier order. It was held that the scope and ambit of the power which could be exercised under Section 37 of the 1994 Act for 'rectification of the mistake' was circumscribed and restricted by the said section. Such a power was neither a power of review nor was akin to the power of revision but was only a power to rectify a mistake apparent on the face of the record. Elucidating the issue further, the Hon'ble Supreme Court had held that rectification implies correction of an error or a removal of defects or imperfections. It implies an error, mistake or defect which after rectification can be made right.

66. While admitting to the afore-stated proposition laid down as regards the scope and ambit of rectification, it is deemed proper to examine the issue whether the rectification carried out under Section 83 of the AVAT Act read with Section 9[2] of the CST Act in the present case would fall within such scope and ambit of rectification or not.

67. In Saurashtra Kutch Stock Exchange Ltd. [supra], the Income Tax Appellate Tribunal ['the Tribunal', for short] had earlier dismissed an appeal of the assessee under the Income Tax Act, 1961 ['the IT Act'] holding that the assessee was not entitled to exemption. When the assessee subsequently filed an application, the Tribunal allowed the application holding that there was a 'mistake apparent from the record' which required rectification and recalled its earlier order relying upon decisions of the jurisdictional High Court. Dissatisfied with the order passed by the Tribunal rectifying a 'mistake apparent from record' and recalling its earlier order, the Revenue filed a writ petition which was dismissed by the jurisdictional High Court. Thereafter, the Revenue preferred the appeal before the Hon'ble Supreme Court. It was argued by the Revenue that even if the earlier order passed was incorrect or wrong in law, it would not fall within the connotation 'mistake apparent on record' and if the assessee was aggrieved by the said order, it could have challenged the order by taking appropriate proceedings.

67.1. Under Section 254[2] of the IT Act, the Tribunal has a power to rectify its order on any 'mistake apparent from the record' at any time within four years from the date of the order if the mistake is brought to its notice by the assessee or the Assessing Officer. The Hon'ble Court has considered what is a 'mistake apparent from the record' and also the similar expression, 'error apparent on the face of the record'. The core issue taken up for consideration is whether non-consideration of a decision of jurisdictional High Court or the Supreme Court can be said to be a 'mistake apparent from the record'.

67.2. The Hon'ble Supreme Court has observed that non-consideration of a decision of the jurisdictional High Court or the Supreme Court is such a mistake, which can be said to be a 'mistake apparent from the record' and the same can be rectified under Section 254[2] of the IT Act. If the point is covered by a decision of the jurisdictional court rendered prior or even subsequent to the order of rectification, it can be said to be 'mistake apparent from the record' and can be corrected. It is held as well settled that a judicial decision acts retrospectively. The Hon'ble Court has gone to observe that according to Blackstonian theory, it is not the function of the court to pronounce a 'new rule' but to maintain and expound the 'old one'. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it [the later decision] does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

68. From the above exposition of law, it is clear that the rectification carried out by the Assessing Officer in the case in hand, be it on an application by the petitioner or on suo moto, is of an error apparent on the face of the record. Following the law laid down by the High Court and the Hon'ble Supreme Court, as alluded in Paragraph 47 above. The rectification has been carried out on the basis

of the settled position of law as regards validity of a claim of reimbursement of the Central Sale Tax paid for inter-State sale of Calcined Petroleum Coke [CPC], manufactured out of Raw Petroleum Coke [RPC] paying taxes under the AVAT Act, as both Calcined Petroleum Coke [CPC] and Raw Petroleum Coke [RPC] are declared goods.

69. In the impugned Orders, it is inter-alia mentioned that the Assessing Authority subsequent to the Rectification Order dated 01.10.2019 again rectified the Order on 20.11.2019 to reduce the amount of reimbursement under Section 15[b] of the CST Act. In this connection, it can be said that once the original assessment order is rectified, the original order of assessment ceases to be operative and the rectification order stands substituted in its place. The subsequent order of assessment can again be rectified exercising the power of rectification if there appears an error apparent from the record. This view is fortified from the decision in Hind Wire Industries Ltd. vs. Commissioner of Income Tax, W.B.-V, [1995] 3 SCC 136.

70. One of the common grounds, cited in the impugned Orders, for rejection of the claim for reimbursement by the Commissioner of Taxes, Assam, that is, the respondent no. 2 is that the petitioner had not deposited the full amount of the Central Tax Act which, according to the respondent no. 2, is a condition precedent for claiming reimbursement of the Value Added Tax as per Section 15 [b] of the CST Act.

70.1. From a reading of Section 15[b] of the CST Act, quoted above, it would appear that there were certain pre-conditions which were required to be fulfilled for claiming reimbursement of the tax under Section 15[b] of the CST Act. The conditions were - [i] that the tax had been levied under the State law, that is, the AVAT Act in respect of sale or purchase inside the State of any declared goods; [ii] that such declared goods were sold in the course of inter-State trade or commerce; and [iii] that the tax had been paid under the CST Act in respect of the sale of the declared goods in the course of inter-State trade or commerce. If the above conditions were fulfilled then the tax levied under the State law would be liable to be reimbursed to the person making such sale of the declared goods in the course of inter-State trade or commerce.

71. In the present case, there is no dispute that tax was levied on the purchase of Raw Petroleum Coke [RPC] within the State. As per the materials on record, the petitioner purchased Raw Petroleum Coke [RPC] from Indian Oil Corporation Ltd. [IOCL] at Dhaligaon, Assam and Numaligarh Refinery Ltd. [NRL] at Numaligarh, Assam during the Assessment Years under reference. There is also no dispute that the petitioner after converting the purchased Raw Petroleum Coke [RPC] to Calcined Petroleum Coke [CPC], which remained to be declared goods under Section 14 of the CST Act, was sold in the course of inter-State trade or commerce.

72. At this juncture, it is relevant to mention that the Government of Assam in the Finance [Taxation] Department vide a Notification no. FTX.66/2009/2 dated 03.11.2009 which was published in the Assam Gazette in its Issue no. 353 dated 03.11.2009, notified a Scheme, 'the Assam Industries [Tax Exemption] Scheme, 2009 [hereinafter referred to as 'the Scheme, 2009' or 'the 2009 Scheme', for short] for granting exemption partially to such units, which manufacture goods in Assam in a manner provided therein. The Scheme, 2009 has been framed to give effect to the

Industrial and Investment Policy of Assam, 2008 adopted by the Government of Assam wherein 99% remission would be granted to new industries and the industries undertaking substantial expansion. Para 3, Clause [1] of the Scheme has provided that where an eligible unit registered under the Assam Value Added Tax [AVAT] Act, who has received Certificate of Entitlement [CE] under the 2009 Scheme, manufactures any goods in Assam, other than those declared as not eligible, 99% of the tax payable by such unit according to its return in respect of sales of such goods manufactured in such unit shall be entitled for partial exemption until the amount of such tax payable exceeds the quantum of monetary ceiling or the period of entitlement, whichever is earlier.

72.1. Clause [3] of Para 3 of the Scheme, 2009 has provided the formula for calculation of the tax payable during the return period by an eligible unit. As per sub-clause [b] of Clause [3] of Para 3, the amount of tax available for partial exemption to an eligible unit possessing valid Certificate of Entitlement [CE] shall be 99% of the amount of tax payable in accordance with tax return and the balance 1% of the tax payable shall be deposited into the Government Account, It is, however, made clear that the eligible unit shall be eligible to charge the tax amount in the tax invoice / bill / cash memorandum issued.

72.2. Clause [3] of Para 3 of the Scheme, 2009 reads as under :-

> 3. Tax payable during the return period by an eligible unit shall be calculated according to the following formula :-
>
> [a] Tax payable = Output Tax plus actual or notional tax liability under the Central Sales Tax Act, 1956 [Central Act 74 of 1956] minus Input Tax:
>
> Provided that in a case where the unit is engaged in manufacture of goods taxable at the first point of sale in the Fourth Schedule of the Act, the amount of tax payable during the return period shall be the tax liability on intra-State sale and sales in course of inter-State trade or commerce :
>
> [b] The amount of tax available for partial exemption to an eligible unit possessing valid Certificate of Entitlement shall be ninety nine percent of the amount of tax payable in accordance with tax return and the balance one percent of the tax payable shall be deposited into the Government Account. It is, however, made clear that the eligible unit shall be eligible to charge the tax amount in the tax invoice / bill / cash memorandum issued. [c] Notwithstanding anything contained in this Scheme, an eligible unit engaged in manufacture of goods taxable at the first point of sale in the Fourth Scheme of the Act, shall not be entitled for availment of any input tax credit [ITC] while computing the amount of 'Tax Payable' by it for any return period under the Act.

73. The Scheme, 2009 has also provided for the procedure for grant of Eligibility Certificate [EC], issuance of Certificate of Entitlement [CE] and filing of Tax Returns. The Eligibility Certificate [EC] is to be granted after due verification of the application submitted, supported by all the required

documents, and if after verification by the Competent Authority, as per the category in which the unit falls, Eligibility Certificate [EC] is to be issued if the Competent Authority is satisfied that all the required conditions and norms are fulfilled by the Unit for being declared as an Eligible Unit for the purposes of the Scheme, 2009. The Scheme, 2009 has inter alia provided that an application for the grant of Certificate of Entitlement [CE] in case of small / medium / large unit is to be submitted to the Commissioner of Taxes in the prescribed format. On receipt of an application for the grant of Certificate of Entitlement [CE] from an eligible unit holding an Eligibility Certificate [EC] granted under the 2009 Scheme by a Competent Authority, the Commissioner of Taxes himself or through an Officer subordinate to him is to examine as to the correctness of the particulars furnished in the application and the documents accompanying therewith. If after making necessary checks, the Commissioner of Taxes reaches the satisfaction that the information furnished in the application are based on the information contained in the Eligibility Certificate [EC] granted to the Unit and any further information furnished in the application or in connection with it are correct, he grants a Certificate of Entitlement [CE] to the Eligible Unit.

73.1. As per Para 6 of the Scheme, 2009, an eligible unit is required to file tax return and annual return within the prescribed time to the jurisdictional Assistant Commissioner of Taxes / Superintendent of Taxes in accordance with the provisions with the AVAT Act and the rules framed thereunder. The formats for filing such tax return and annual return are also prescribed in the Scheme, 2009. It has been provided that the eligible unit has to submit such tax return and annual return in the prescribed formats annexed to the AVAT Rules till the grant of Certificate of Entitlement [CE]. The eligible unit has to furnish the tax return and annual return in the formats annexed to the Scheme, 2009 after receipt of the Certificate of Entitlement [CE] under the Scheme, 2009.

74. There is no dispute to the facts that the petitioner unit has been granted Eligibility Certificate [EC] and the Certificate of Entitlement [CE] required under the Scheme, 2009 for seeking tax exemption. It is mentioned in the impugned Orders that the petitioner has been issued Eligibility Certificate [EC] by the Industries Department, Government of Assam vide EC no.

AIDC/US/EC/623/10/67 on 18.06.2019. By the said Eligibility Certificate [EC], tax incentives were granted for the period from 30.11.2012 to 29.11.2019, subject to a monetary ceiling of Rs. 7,38,28,517/-. The Commissioner of Taxes, Assam has also mentioned that on the basis of the Eligibility Certificate [EC] dated 18.06.2019, his Office has issued a Certificate of Entitlement [CE] vide CE no. CTS-15/2016/[414]/47 on 29.07.2019.

75. Thus, there is no dispute on the point that the petitioner unit would be eligible to seek tax incentives under the Scheme, 2009 for the period from 30.11.2012 to 29.11.2019, subject to a monetary ceiling of Rs. 7,38,28,517/-, on the strength of the Eligibility Certificate [EC] dated 18.06.2019 and the Certificate of Entitlement [CE] dated 29.07.2019. It is true that when Audit Assessments for the Assessment Years : 2012-2013 & 2013-2014 were completed on 12.12.2017, the Eligibility Certificate [EC] were not issued. It is also found out that Assessing Authority did not process the claims under Section 15[b] of the CST Act. Subsequently, when rectification orders were passed, the Eligibility Certificate [EC] and the Certificate of Entitlement [CE] were in existence. It

has emerged that as per the 2009 Scheme, the petitioner was liable to deposit 1% of the Central Sales Tax payable on the inter-State sale of Calcined Petroliam Coke [CPC] though it had to charge the tax amount in the tax invoices / bills / cash memoranda issued by it for such sales. At the same time, the petitioner as an eligible unit could claim exemption of 99% of the tax payable by it according to its returns for sales affected in the course of inter-State.

76. It is mentioned in the impugned Orders that the petitioner unit would not be entitled to reimbursement of the local tax paid under Section 15[b] of the CST Act as it had not paid the Central Sales Tax Act in full. In the counter affidavits filed by the State respondents in this batch of writ petitions, it has been contended that Section 15[b] of the CST Act has provided for reimbursement of local tax paid on intra-State purchase of declared goods subject to the condition that the Central Sales Tax is paid on inter-State Sale of such declared goods. It is further contended that the dealer did not deposit the full amount of Central Sales Tax Act, which is a condition precedent for claiming reimbursement of the local tax, that is, Value Added Tax [VAT] as per the provision of Section 15[b] of the CST Act.

77. The Assessing Officer in the Assessment Order dated 01.10.2019 made mention of a Notification bearing no. FTX.66/2009/117 dated 26.12.2011 of the State Government issued under sub-section [7] of Section 14 of the AVAT Act. The said notification was published in the Assam Gazette in its Issue no. 525 dated 30.12.2011. Vide the said notification, it has been notified that a registered dealer, who purchases goods specified in the Second, Third and Fifth Schedule appended to the AVAT Act within the State of Assam, manufactured by an industrial unit eligible under the Scheme, 2009 and sells such goods in the course of inter-State trade or commerce or in the course of export out of the territory of India, shall not be entitled to input tax credit for the amount of tax shown to have been charged in the corresponding tax Invoice issued by the eligible industrial unit in respect of such sale.

78. The object and purpose of the Notification dated 26.12.2011 is non-entitlement of a registered dealer who purchases goods from an industrial unit eligible under the Scheme, 2009 and sells such goods in the course of inter-State trade or commerce or in the course of export out of the territory of India, to claim Input Tax Credit for the amount of tax shown to have been charged in the corresponding tax invoice issued by the eligible industrial unit in respect of such sale. In so far as the eligible industrial units are concerned, the Preamble of the Notification dated 26.12.2011 has stated as under :-

> And whereas, an eligible industrial unit, under the tax exemption scheme, is required to charge tax as per the applicable rates of taxes to ensure smooth continuity of the VAT chain but 99% of the tax so charged does not actually accrue to the Government exchequer as the eligible industrial unit is required to deposit only 1% of such tax into Government exchequer as per the provisions of the said tax exemption Scheme.

79. It is evident from the Preamble of the Notification dated 26.12.2011 that an eligible industrial unit was required to deposit only 1% of tax into the Government exchequer as per the provisions of the 2009 Scheme. It has been elucidated in Associated Cement Companies Ltd. [supra] to the effect

that literally, exemption is freedom from liability, tax or duty. In fact, an exemption provision is like an exception. It has been observed that if there is no ambiguity on the question whether the subject falls within the exemption clause then full play should be given to it. As per the Scheme, 2009, amount of tax available for partial exemption to an eligible unit possessing a valid Certificate of Entitlement [CE] shall be 99% of the amount of tax payable.

80. The Privy Council decision in Whitney [supra] has explained the three stages in the imposition of a tax in the following manner :-

> Now, there are three stages in the imposition of a tax : where is the declaration of liability, that is, the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly comes the methods of recovery, if the person taxes does not voluntarily pay.

81. On the aspects of liability to pay tax and actual payment of tax, the Hon'ble Supreme Court in Associated Cement Companies Ltd. [supra] has observed in the following works :-

> 17. Crucial question, therefore, is whether the appellant had any 'liability' under the Act. The answer to this lies in Section 3 of the Act which is extracted above and is the charging section. In sub-section [1], subject to the provisions of the part [i.e. Part I], sales tax or purchase tax, as the case may be, shall be paid by every dealer as provided in the section itself. Section 7 speaks of exemption. Sub-

section [3] of Section 7 stipulates that the State Government may, by notification and subject to such conditions or restrictions as it may impose, exempt from sales tax or purchase tax certain sales or purchases as the case may be. The question of exemption arises only when there is a liability. Exigibility to tax is not the same as liability to pay tax. The former depends on charge created by the statute and the latter on computation in accordance with the provisions of the statute and rules framed thereunder if any. It is to be noted that liability to pay tax chargeable under Section 3 of the Act is different from quantification of tax payable on assessment. Liability to pay tax and actual payment of tax are conceptually different. But for the exemption the dealer would be required to pay tax in terms of Section 3. In other words, exemption presupposes a liability. Unless there is liability, question of exemption does not arise. Liability arises in terms of Section 3 and tax becomes payable at the rate as provided in Section

12. Section 11 deals with the point of levy and rate and concessional rate.

82. As regards the meanings which can be ascribed to levy and assessment, the Hon'ble Supreme Court in National Tobacco Co. of India Limited [supra] has expounded in the following manner :-

> 19. The term 'levy' appears to us to be wider in its import than the term 'assessment'. It may include both 'imposition' of a tax as well as assessment. The term 'imposition'

> is generally used for the levy of a tax or duty by legislative provisions indicating the subject-matter of the tax and the rates at which it has to be taxed. The term 'assessment', on the other hand, is generally used in this country for the actual procedure adopted in fixing the liability to pay a tax on account of particular goods or property or whatever may be the object of the tax in a particular case and determining its amount. The Division Bench appeared to equate 'levy' with an 'assessment' as well as with the collection of a tax when it held that 'when the payment of tax is enforced, there is a levy'. We think that, although the connotation of the term 'levy' seems wider than that of 'assessment', which it includes, yet, it does not seem to us to extend to 'collection'. Article 265 of the Constitution makes a distinction between 'levy' and 'collection'.....

83. The distinction between leviability and payability has been brought out in decision in Somaiya Organics [India] Ltd. [supra] in the following words :-

> 29..... The words used in Article 265 are 'levy' and 'collect'. In taxing statute the words 'levy' and 'collect' are not synonymous terms [refer to CCE v. National Tobacco Co. of India Ltd. [(1972) 2 SCC 560] at p.

572], while 'levy' would mean the assessment or charging or imposing tax, 'collect' in Article 265 would mean the physical realisation of the tax which is levied or imposed. Collection of tax is normally a stage subsequent to the levy of the same.....

84. The distinction between levy and collection has been pointed out by the Hon'ble Supreme Court in Peekay Re-Rolling Mills [P] Ltd. [supra]. The distinction has been brought out in the following manner :-

> 45. In the light of the above two cases, it is evident that collection and levy are distinct and that collection is not an essential facet of levy. It is true that collection of a tax may sometimes be indicative of a lawful levy of tax, but in our opinion it does not logically follow that absence of collection means an absence of liability. We are also of the opinion that the reliance on Town Municipal Committee [AIR 1964 SC 1166] by the Division Bench which involved an interpretation of 'continued to be levied' and 'to be applied to the same purposes' in Article 277 of the Constitution was misplaced. While that case did hold that in the circumstances before them 'levy' was intended to include 'collection', in our opinion the logic or ratio of that case cannot be extended so far as to say that every 'levy' must include collection and without such collection no levy can be said to have been made.

85. Having regard to the various provisions of the Scheme, 2009 and the propositions of law expounded in the above decisions, it can be said that the liability of payment of the Central Sales Tax by an industrial unit eligible for the benefits under the Scheme, 2009 was that 1% of the Central Sales Tax Act was to be deposited by an eligible industrial unit like the petitioner and it could take the benefit of 99% remission extended by the Scheme, 2009.

86. Thus, this Court finds force in the submission advanced on behalf of the petitioner to the effect that the respondent no. 2 has erred in holding that since the 'full' Central Sales Tax was not paid by the petitioner on the inter- State sale made by it the petitioner would not be entitled for reimbursement under Section 15[b] of the CST Act. The expression 'tax has been paid' appearing in Section 15[b] of the CST Act cannot always be read as 'full tax has been paid' under the CST Act, if the full tax under the CST Act is not required to be paid in view of incentives / exemptions available to an assessee under any statutory scheme. The 2009 Scheme was notified in exercise of powers conferred by sub-section [1] of Section 54 of the AVAT Act and sub-

section [5] of Section 8 of the CST Act for granting exemption partially to such units, which manufacture goods in Assam in the manner provided therein. In view of issuance of the Eligibility Certificate [EC] on 18.06.2019 and the Certificate of Entitlement [CE] on 29.07.2019 extending tax incentives for the period from 30.11.2012 to 29.11.2019, subject to the monetary ceiling stated therein, there is no denial to the fact that the petitioner is an eligible unit entitled to exemption from paying Central Sales Tax to the extent of 99% by depositing the balance 1% and therefore, it cannot be said that it would not be entitled for reimbursement because it did not deposit the full amount of Central Sales Tax. In view of eligibility to get exemption during the reference period of assessment, deposit of the full amount of Central Sales Tax cannot be termed as a condition precedent for claiming reimbursement of the Value Added Tax paid by the petitioner. The decision made in this connection by the respondent no. 2 in the impugned orders is clearly erroneous and is not sustainable.

87. The impugned orders have also mentioned about 'acquiescence' and 'delay and laches'. There is a distinction between 'acquiescence' and 'delay and laches'.

88. A survey of the other decisions, placed before the Court, is found necessary at this stage.

89. The decision in Arvind Kumar Srivastava [supra] is primarily on the doctrine of parity. Ordinarily, when a party is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. Elucidating further, it has been observed that the principle is, however, subject to well-recognised exception in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the courts earlier in time succeeded in their efforts, then such persons cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

89.1. However, an exception is carved out from the above exception by stating that the exception will not apply in those cases where the judgment pronounced by the court was a judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all situated persons. Such a situation can occur when the subject-matter of the decision

touches upon the policy matters. On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall approve to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

90. In the present cases, both the principle and the exception carved out from the exception are clearly applicable in view of the facts and circumstances of the case, already discussed. The exception is not applicable because there was no wrongful action with regard to the petitioner's claim for reimbursement during the time of original assessments as the Assessing Authority had neither denied the claim of the petitioner.

91. In M/s Rup Diamonds [supra], the petitioners preferred the petition under Article 32 of the Constitution of India in 1987 to assail the validity of two decisions of the respondent authorities passed in April & August of 1986 whereby request to re-validate and endorse six Imprest Licences for Import of Open General Licence [OGL] items upon the fulfillment of the petitioners' export obligations under Imprest Licences was declined. The petitioner was a recognized Export House for the purposes of Import-Export Policy, 1982-83.

Each of the six Imprest Licences had a validity period and a monetary limit, for the import of uncut and unset diamonds with the obligation to fulfill certain export commitment for the export, out of India. The petitioners claimed that they had imported uncut and unset diamonds and had also discharged their export obligation. The petitioners claimed that they were entitled to the facility for the import of OGL items as per the Import-Export Policy, 1982-83 after discharge of their export obligations under the Imprest Licences, as evidenced by the redemption certificates issued in their favour. There were, however, certain time limits to remain eligible for availing such facility. The petitioners sought re-validation after a lapse of several years from the completion of their export obligations. The impugned decisions were passed on such claim for re- validation. The grounds for rejection were inordinate delay in seeking re- validation and also the merits and permissibility of the claim.

91.1. The petitioners alleged that their claims were similar to two other Export Houses, who had filed writ petitions in the year 1984 before the High Court for issuance of appropriate writs to the authorities to re-validate the Imprest Licences. Those writ petitions were initially allowed by the learned Single Judge of the High Court and the Division Bench, later on, affirmed the decision of the learned Single Judge. The Special Leave Petitions, preferred by the Union of India in 1985 and 1986, were dismissed by the Hon'ble Supreme Court. The petitioners said that they made the demand for re-validation immediately after the decision of the High Court and claimed that the rejection of their claims was wholly discriminatory, as there was no basis on any distinction.

91.2. Dismissing the petitioners' writ petition, the Hon'ble Supreme Court had held that the petitioners were re-agitating which they had not pursued for several years. The petitioners were found not vigilant but were content to be dormant choosing to sit on the fence till somebody else's case came to be decided. There was an unexplained and inordinate delay in preferring the writ

petition which was brought after almost a year after the first rejection. In the two cases, claimed by the petitioners to be similar, the applications for re-validation were made within three-four months from the date of the redemption certificates.

91.3. The above decision is found of no assistance to the cause of the respondents.

92. As per the Oxford Dictionary of English, 3rd Edition, 'acquiesce' means 'to accept something reluctantly but without protest' and 'acquiescence' means 'the reluctant acceptance of something without protest'. In the Black's Law Dictionary, 9th Edition, the meaning ascribed to 'acquiesce' is 'to accept tacitly or passively; to give implied consent to [an act]' and to 'acquiescence' is 'a person's tacit or passive acceptance; implied consent to an act'.

93. The distinction between 'acquiescence' and 'delay and laches' has been explained succinctly by the Hon'ble Supreme Court in the case tilted State Bank of India vs. M.J. James, [2022] 2 SCC 301,

39. Before proceeding further, it is important to clarify distinction between 'acquiescence' and 'delay and laches'. Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. [See : Prabhakar v. Sericulture Deptt., (2015) 15 SCC 1]. Also, see Gobinda Ramanuj Das Mohanta v. Ram Charan Das, AIR 1925 Cal 1107. In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, [See : Vidyavathi Kapoor Trust v. CIT, (1992) 194 ITR 584] which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. [See :

> Krishan Dev v. Ram Piari, AIR 1964 HP 34] Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. [See :
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> 'Introduction', U.N. Mitra, Tagore Law Lectures -- Law of Limitation and Prescription, Vol. I, 14th Edn., 2016.] However, acquiescence will not apply if lapse of time is of no importance or consequence.

40. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. [See : Vidyavathi Kapoor Trust v. CIT, (1992) 194 ITR 584]. Given the aforesaid legal position, inactive

acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation.

94. Acquiescence does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the person has become aware of it. The petitioner's claim for reimbursement under Section 15[b] of the CST Act was not finalized in a manner prejudicial to it at the time when the audit assessments were made as no specific order was passed refusing to entertain the claim. Therefore, it is not the case of the petitioner that the petitioner had witnessed the Assessing Authority dealing with its claim for reimbursement in a manner inconsistent with and in violation of its right. Any delay in processing a refund application, on the other hand, entails statutory interest, which cannot be said to be prejudicial to the petitioner. In such view of the matter, the Commissioner was not justified to deny the valid claim, on the ground of acquiescence. In the obtaining fact situation, the valid claim of the petitioner cannot be defeated taking resort to the ground of delay and laches, which are not found on the part of the petitioner.

95. In the light of the above discussion and the propositions of law which are found to be settled, when the reasons assigned by the respondent no. 2 in the impugned orders are examined, the findings reached by this Court can be summed up as under :-

> [i] The rectifications of the Assessment Orders by the Assessing Officer, be it on an application by the petitioner as the assessee or by the Assessing Officer suo moto, in exercise of the powers under Section 83 of the AVAT Act read with Section 9[2] of the CST Act are found to be in accordance with the statutory provisions in presence of an error on the face of the records;
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> [ii] The action of the petitioner cannot be brought within the purview of the doctrine of acquiescence. In the same breath, the petitioner's claim for reimbursement cannot be negated by taking resort to the plea of delay and laches and the petitioner, by no stretch, can be termed as a fence- sitter for negating its claim which the petitioner is entitled to claim under Section 15[b] of the CST Act read with Section 50 and Section 52 of the AVAT Act; and [iii] Deposit of full amount of the Central Sales Tax is not a condition precedent for claiming reimbursement of the Value Added Tax amount as per the provisions of Section 15[b] of the CST Act in view of the distinct concepts of leviability and payability and the entitlement of the petitioner to seek exemption from depositing 99% of the tax payable as per the Scheme, 2009.

96. The power of judicial review under Article 226 of the Constitution of India to issue a writ in the nature of certiorari is exercisable when a statutory authority vested with a power to decide a matter within the four corners of the law, decides the matter taking into account irrelevant factors and leaving out relevant factors, as such procedural errors impact the legality and validity of the decision, to the prejudice of a party, like the petitioner in the case in hand, which has a right for consideration of its valid claim for reimbursement of the Central Sales Tax paid on Calcined Petroleum Coke [CPC], manufactured out of Raw Petroleum Coke [RPC] paying Value Added Tax

[VAT], sold in the course of inter-State trade and commerce as per the provisions of Section 15[b] of the CST Act read with Section 50 and Section 52 of the AVAT Act as both Calcined Petroleum Coke [CPC] and Raw Petroleum Coke [RPC] were in the category of goods of special importance, that is, declared goods.

97. For the observations made, the reasons assigned and the findings reached at as above, the Orders, dated 07.11.2022, passed by the respondent no. 2 and assailed in this batch of six writ petitions, have been found to be unsustainable in law as the decision is based on clear ignorance and disregard of the provisions of law, which is a manifest error apparent on the face of the proceedings and are, therefore, liable to be set aside. Therefore, the impugned Orders, dated 07.11.2022 are hereby set aside. Resultantly, all the writ petitions are allowed to the said extent.

98. With the setting aside of the impugned Orders, a direction is called for directing the respondent authorities to process the petitioner's claim for reimbursement of the Value Added Tax paid on Raw Petroleum Coke [RPC] purchased within the State of Assam. Accordingly, the respondent authorities are directed to process the petitioner's claim for reimbursement of the Value Added Tax paid on Raw Petroleum Coke [RPC] so purchased, in accordance with the provisions of Section 15[b] of the CST Act read with Section 50 and Section 52 of the AVAT Act for the Assessment Years under reference and to bring the entire process to its logical conclusion within a period of six weeks from today. There shall, however, be no order as to cost.

JUDGE Comparing Assistant