Reserved On : 07/01/2026
Pronounced On : 23/01/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 11025 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 11029 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 11030 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 11033 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 11034 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 11035 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 11043 of 2025

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA **Sd/-**

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI **Sd/-**

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Approved for Reporting	Yes	No
	✔	

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M/S ALSTOM TRANSPORT INDIA LIMITED THROUGH ITS AUTHORISED SIGNATORY SHAH DIPTEJ HARSHADKUMAR
Versus
ADDITIONAL COMMISSIONER, CGST AND CENTRAL EXCISE (APPEALS) & ORS.

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Appearance:
MR. SUJIT GHOSH, SENIOR ADVOCATE WITH MS. MANNAT WARAICH, MS. ANSHIKA AGARWAL, MR. SHREY BHATT WITH MR. ADITYA J PANDYA, Advocates for the Petitioner(s) No. 1
PARAM V SHAH(9473) for the Respondent(s) No. 1,2,3,4

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

COMMON CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

(1) The present group of petitions involves a common question of law and, therefore, they have been

heard together and are being decided analogously by this common judgment.

FACTS:

(2) Special Civil Application No.11025 of 2025 is taken as a lead matter.

(3) The captioned writ petitions are filed by the the petitioner - Alstom Transport India Ltd. (ATIL), seeking quashing and setting aside the Orders-in-Appeal dated 08.01.2025 passed by respondent No.1-Additional Commissioner, CGST & Central Excise (Appeals), Vadodara, passed under Section 107(11) of the Central Goods and Service Tax, 2017 (hereinafter referred to as "the CGST, Act, 2017") allowing the appeal filed by respondent No.2 - Assistant Commissioner, CGST & Central Excise, Division-V, Vadodara-II, against the Refund Sanction Orders dated 28.02.2024 passed by respondent No.3, Deputy Commissioner, CGST & Central Excise, Division-V, Vadodara-II, in FORM RFD-06.

(4) The identity of the petitioner - Company emanates from the order dated 10.08.2023, passed by the National Company Law Tribunal (NCLT) dissolving three entities - (i) Alstom Rail Transportation India Pvt. Ltd. (ARTIPL), (ii) Alstom Manufacturing India Pvt. Ltd. (AMIPL), and (iii) Alstom System India Pvt. Ltd. (ASIPL),

and sanctioning their amalgamation into the petitioner. The certified copy of the said order was issued on 28.08.2023 and was thereafter filed with the Registrar of Companies (RoC) on 22.09.2023.

(5) In terms of the Scheme of Amalgamation, the entire business of the three dissolved entities, including, *inter alia*, all assets, liabilities, rights, title, interests, obligations, and immovable properties, one of them being ARTIPL, stood transferred to and vested in the petitioner upon the Scheme coming into effect from the appointed date. As per the Scheme, the "effective date" was the date on which the certified copy of the NCLT order was last filed with the Registrar of Companies, which, in the present case, is 22.09.2023.

(6) The aforesaid arrangement and development were duly intimated by ARTIPL to the Superintendent, Range-II, Division-V, Vadodara-II, vide letter dated 10.10.2023 i.e. within two weeks from the effective date.

(7) The erstwhile ARTIPL, having exported goods in April 2023, filed an application dated 04.01.2024 seeking refund of unutilized Input Tax Credit (ITC) in terms of Section 16 of the

Integrated Goods and Services Tax Act, 2017 (IGST Act, 2017) read with Section 54(3) of the CGST Act, 2017.

(8) It appears that on 20.10.2023, FORM GST ITC-02 was filed by erstwhile ARTIPL Ltd. in terms of Section 18(3) of the CGST Act, 2017 read with Rule 41 of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as "the CGST Rules, 2017") for transfer of part amount of unutilized ITC of Rs.192,87,53,211/- out of total available unutilized ITC of Rs.242,02,00,000/-. However, the amount in question of Rs.49,14,00,000/- remained in the Electronic Credit Ledger of ARTIPL, and was not sought to be transferred. Thereafter, it appears that from 04.01.2024 to 28.02.2024, the ARTIPL filed various refund claim (month-wise) for different amounts totaling to unutilized ITC of Rs.49,14,00,000/-. Adjudication took place at various levels in respect of aforesaid various refund applications.

(9) Accordingly, a show cause notice dated 22.02.2024 was issued to the ARTIPL, and upon submission of objections on 28.02.2024, a Refund Sanction Order came to be passed in favour of ARTIPL, and the refund amount of Rs.2,56,75,437/- has been encashed.

(10) Subsequently, on 29.07.2024, respondent No.4 reviewed the Refund Order under Section 107(2) of the CGST Act, 2017, and passed an Order-in-Review Order on 29.07.2024, directing the Respondent no.3, to file an appeal in FORM GST APL-03 for the period from 01.04.2023 to 30.04.2023.

(11) Accordingly, respondent No.3 preferred an appeal against the ARTIPL, which came to be allowed vide order dated 08.01.2025 setting aside the order granting refund, which has giving a cause to file the captioned writ petitions.

(12) It appears that, during the aforesaid proceedings of refund, a show cause notice dated 07.11.2024 was issued to the ARTIPL proposing cancellation of its GST registration. The said show cause notice was adjudicated by an order dated 29.11.2024, whereby the GST registration of the ARTIPL came to be cancelled. In the said order, it was specifically provided that the effective date of cancellation of registration would be 29.11.2024.

(13) Thus, from a perusal of the aforementioned key dates, it can be noticed that even though the ARTIPL was dissolved and amalgamated into the petitioner vide order of the NCLT dated 10.08.2023, certified copy of which was filed

with the RoC on 22.09.2023, and intimation of which was given to the respondents on 10.10.2023, until 29.11.2024 the ARTIPL existed as a registered person under the GST and was recognized so by the respondent authorities.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONER:

(14) Learned Senior Advocate Mr.Ghosh has made the following submissions :

(15) All the proceedings were initiated in the name of the ARTIPL all throughout. However, on and from 29.11.2024 i.e. the date of the cancellation of the registration, the ARTIPL cannot be said to exist for the purpose of the GST Laws.

(16) Reference is made to Clause 8.1 of the Scheme of Amalgamation, and is contended that the Transferee Company is obliged to bear both the burdens and benefits of all legal, taxation, and other claims or investigations of whatsoever nature pertaining to the transferor companies. He has also referred to the contents of Paragraph No.13 of the NCLT order, which records that any claim against the Transferor Companies in respect of direct and indirect taxes shall be settled by the Transferee Company, hence accordingly, in terms of the NCLT order and the

undertakings furnished thereunder, in respect of the GST proceedings initiated against the Transferor Company i.e. the ARTIPL, the Transferee Company i.e. the petitioner, is obligated to prosecute and / or defend the same.

(17) It is contended that once the GST registration of the ARTIPL stood cancelled, the ARTIPL cannot be said to have had any legal existence, either under the Company Law or under the GST law, so as to be capable of instituting or prosecuting any legal proceedings.

(18) A refund, being in the nature of a State largesse, can be claimed only in strict accordance with the statutory framework governing the same. Under the GST regime, persons effecting zero-rated supplies constitute one of the categories entitled to claim refund. In terms of Section 16(1) of the IGST Act, 2017, “zero-rated supply” includes exports of goods and services. Section 16(3) of the IGST Act, 2017 is the provision which creates the statutory right to claim refund of unutilized input tax credit in respect of exports of goods and services. However, the claim for refund must be made in accordance with Section 54 of the CGST Act, 2017 and is subject to such conditions, safeguards, and procedures as may be

prescribed. Reference is made to Section 54(3) of the CGST Act, 2017, which further imposes restrictions, *inter alia*, that refund of unutilized ITC shall not be admissible where the export of goods is subject to export duty, or where the claimant has availed drawback in respect of such goods. Thus, it is submitted that the statutory and substantive right to claim refund flows from Section 16(3) of the IGST Act, 2017, and a fundamental precondition for the accrual of such right is that the zero-rated supply must be made by a registered person. Section 16(3) clearly postulates that, on the date of making the zero-rated supply, the claimant of the refund must be a registered person.

(19) It is contended that in the present case, the ARTIPL had effected exports in the month of April 2023, at which point in time it had neither undergone amalgamation nor had its registration been cancelled. It had, therefore, fulfilled all the substantive preconditions for claiming refund of unutilized ITC. Consequently, upon effecting such exports, a vested and enforceable right to claim refund accrued in favour of the ARTIPL under Section 16(3) of the IGST Act, 2017.

(20) With regard to the Legislative policy underlying special treatment to exports by grant of refunds (particularly refund of unutilized ITC) and its relevance to the present case, it is contended that such refunds of unutilized ITC are denied to exporters, and the embedded input taxes would either inflate the cost of the exported product or would have to be absorbed by the exporter, both of which would defeat the underlying policy objective.

(21) Reliance is placed on Paragraphs No.29 and 30 of the decision of this Court in the case of Macrowagon Retail Pvt. Ltd. and Anr. vs. Union of India and Ors., 2025 S.C.C. OnLine Guj. 3644 and decision of the Supreme Court in the case of Union of India and Ors. vs. VKC Footsteps India Pvt. Ltd., (2022) 2 S.C.C. 603, and on the judgment rendered by the learned Single Judge of the Karnataka High Court in the case of Tonbo Imaging India Pvt. Ltd. vs. Union of India and Ors., 2023 (73) GSTL 200 (Kar.).

(22) While placing reliance on the decision of the Supreme Court in the case of Government of Kerala and Anr. vs. Mother Superior, (2021) 5 S.C.C. 602 it is contended that any ambiguity in the interpretation of such beneficial provisions must enure to the benefit of the taxpayer.

(23) The respondents have denied the refund by alleging that there is violation of Section 18(3) of the CGST Act, 2017 read with Rule 41 of the CGST Rules, 2017 inasmuch as, out of the total unutilized ITC, it retained a sum of Rs.49.14 crore, which was thereafter sought to be utilized for claiming refund. It is contended that it is manifest from the reason assigned that the respondents are neither disputing the fulfillment of the substantive conditions for eligibility to avail the ITC and to claim refund of unutilized ITC in respect of exports effected by the ARTIPL, nor is there any dispute with regard to the factual position that the ARTIPL qualifies as an exporter and had in fact effected exports, since there is no finding in the impugned appellate order alleging violation of Section 16(3) of the IGST Act, 2017 or Section 54(3) of the CGST Act, 2017.

(24) It is the contended that the interpretation adopted by the respondents on the aforesaid provisions is wholly misconceived since Section 18(3) of the CGST Act, 2017 is a permissive provision and not mandatory which enables a registered person to transfer unutilized ITC to the transferee in the event of amalgamation, and the said provision does not mandate that the Transferor Company must transfer its unutilized

ITC, nor does it contain any stipulation that, if such transfer is effected, the entire quantum of unutilized ITC must necessarily be transferred.

(25) It is submitted that the expression "transfer of the entire unutilized ITC" is conspicuously absent both in Section 18(3) of the CGST Act, 2017 as well as in Rule 41 of the CGST Rules, 2017. Hence, in such circumstances, to read into Section 18(3) of the CGST Act, 2017 a requirement of compulsory transfer of the entire unutilized ITC would amount to judicial legislation, which is impermissible in law in view of settled principles of statutory interpretation. In this regard, reliance is placed on the decision of the Supreme Court in the case of Padmasundara Rao & Ors. vs. State of T.N. & Ors., (2002) 3 S.C.C. 533.

(26) In a situation where a transferor chooses not to transfer any part of its unutilized ITC to the transferee company pursuant to an amalgamation, there exists no provision under the CGST Act, 2017 which empowers the authorities to compel such transfer or to take any punitive action for non-transfer, which itself, demonstrates that both the decision to transfer ITC and the quantum of ITC to be transferred lie entirely

within the domain of the transferor, and the Revenue has no role to play in this regard.

(27) That a fair reading of Section 18(3) of the CGST Act, 2017 read with Rule 41 of the CGST Rules, 2017 indicates that the respondents have no regulatory role in such transfer, except to prescribe the form, provide access to the portal, and require furnishing of a Chartered Accountant's certificate. Significantly, under Rule 41(3) of the CGST Rules, 2017, the acceptance of the transfer is to be given by the transferee and not by the Department.

(28) Thus, it is submitted that, in these circumstances, Section 18(3) of the CGST Act, 2017 read with Rule 41 of the CGST Rules, 2017 is nothing but a permissive and enabling provision, which is directory in nature and devoid of any mandatory character. Substantial compliance with such a permissive and directory provision is sufficient. Reliance is placed on the decision in the case of Administrator Municipal Committee Charkhi Dadari & Anr. vs. Ramji Lal Bagla & Ors. (1995) 5 S.C.C. 272. While placing reliance on the decision of Hari Vishnu Kamath vs. Syed Ahmad Ishaque & Ors., (1954) 2 S.C.C. 881 (Constitution Bench), it is submitted that it is well established that an

enactment in form mandatory might in substance be directory, and that the use of the word "shall" does not conclude the matter and the practical bearing of the distinction between a provision which is mandatory and one which is directory is that while the former must be strictly observed, in the case of the latter it is sufficient that it is substantially complied with.

(29) In so far as violation of Rule 41 of the CGST Rules, 2017 is concerned, the submission of the petitioner is that even the said Rule does not mandate that the entire unutilized credit needs to be transferred in the case of an amalgamation. No doubt, in the case of demerger, a certain restrictive covenant has been incorporated by providing that the ITC shall be apportioned in the ratio of value of assets of the new unit, however, even this restrictive covenant has no application in the present case, since the present case is a case of amalgamation and not a demerger. It is contended that wherever the legislature wanted to use the word "entire", it has done so, as can be discerned from perusal of Explanation to Rule 41(1) of the CGST Rules, 2017 where the phrase "entire asset of business" has been used. If the intention of the Legislature was to require a Transferor

Company to transfer its entire unutilized credit, then nothing stopped the Legislature in incorporating the word "transfer of entire unutilized credit" in Rule 41(1) of the CGST Rules, 2017 or Section 18(3) of the CGST Act, 2017.

(30) While dealing with the objections raised by the revenue, for the alleged violation of Section 87(2) of the CGST Act, 2017, it is contended that in so far as Section 87(2) of the CGST Act, 2017 is concerned, the said provision contemplates that from the date of the NCLT order, the registration certificate of the amalgamating company is liable to be cancelled. However, since the power and responsibility to cancel registration is statutorily vested in the respondent Department and not in the petitioner, the provision does not mandate that the transferor must necessarily apply for cancellation of registration prior to or upon the effective date of the NCLT order. Hence, no such obligation can be foisted upon the transferor in the present case, and that apart, considering the fact that the respondent-Department was duly intimated of the amalgamation as early as on 10.10.2023, the authorities ought to have initiated proceedings for cancellation of registration forthwith under

Section 29 of the CGST Act, 2017 read with Rule 22 of the CGST Rules, 2017, which empowers the proper officer to cancel registration *suo motu*, even with retrospective effect.

(31) It is submitted that even when the respondent authorities eventually exercised such power by issuing show cause notice dated 07.11.2024 and passing the cancellation order dated 29.11.2024, they consciously chose to cancel the registration only prospectively i.e. w.e.f. 29.11.2024, and not retrospectively. In these circumstances, the petitioner cannot be accused of having violated Section 87(2) of the CGST Act, 2017. In any event, unlike Section 29(4) of the CGST Act, 2017, which provides for deemed cancellation of registration in certain circumstances, Section 87(2), read with Sections 29(1) and 29(2) of the CGST Act, 2017, does not contemplate any deemed cancellation in cases of amalgamation. On the contrary, Section 29 of the CGST Act, 2017, in its opening part itself, makes it clear that cancellation is to be effected by the proper officer either on his own motion or upon an application filed by the registered person. The respondent authorities, if aggrieved by the prospective nature of the cancellation or believed the same to be legally

untenable, they ought to have challenged the cancellation order in appeal. Having failed to do so, the said order has attained finality *inter se* between the parties.

(32) In the alternative, it is contended that without prejudice to the above, and in order to safeguard the vested right to refund which accrued to the ARTIPL and now stands vested in the petitioner by virtue of amalgamation, it is submitted that even if this Court is not inclined to accept the methodology adopted in the present case, this Court may be pleased to mould the relief by directing the respondent authorities to permit the petitioner to file a fresh refund application manually and to process the same notionally, without raising objections relating to non-compliance of Section 16(3) of the IGST Act, 2017 in the hands of the petitioner,portal-related technical impediments, or limitation. In such an event, the amount already disbursed may be directed not to be recovered, and while passing the fresh refund order, the amount earlier paid may be adjusted. Such an approach would be both equitable and consistent with the purpose of the law governing the zero-rated supplies.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

(33) Learned Senior Standing Counsel Mr.Param Shah has made the following submissions.

(34) It is a settled principle of law that a taxing statute must be construed strictly on the basis of what is expressly provided therein, and that neither any addition or subtraction, nor any presumption or assumption, can be made beyond the clear language of the statute. In support of the said submission, the respondents have placed reliance upon the judgment of the Supreme Court in the case of Chief Commissioner of Central Goods and Service Tax & Ors. vs. M/s.Safari Retreats Private Limited & Ors., 2024 INSC 756, wherein the Supreme Court has succinctly reiterated the settled principles governing the interpretation of taxing statutes.

(35) Reference is made to the provisions of Sections 18 and 87 of the CGST Act, 2017 read with Rule 41 of the CGST Rules, 2017, and it is submitted that a conjoint and harmonious reading of the said provisions leaves no manner of doubt that, in the event of amalgamation, the unutilized Input Tax Credit of the erstwhile company can be transferred to the transferee company only by filing Form GST ITC-02 electronically in the prescribed manner.

(36) There exists no statutory provision enabling the transferee company to seek encashment of such unutilized ITC in any form, including by way of a refund application. Furthermore, there is also no provision permitting partial transfer of the unutilized ITC of the transferor company in the case of amalgamation. In the present case, the ARTIPL, by acting contrary to law and on its own volition, filed Form ITC-02 for only a part of the ITC and thereafter proceeded to file refund applications for the remaining amount, which course of action is wholly impermissible in law.

(37) It is further submitted that the erstwhile ARTIPL, despite having ceased to exist with effect from 22.09.2023, addressed an intimation letter dated 10.10.2023 stating that it was in the process of undertaking all compliance under the GST Law. This clearly demonstrates that it was the obligation of the transferor company to apply for cancellation of its GST registration on account of amalgamation. However, no such application was ever made, and the said company continued to file returns until 06.02.2025.

(38) Even after the lapse of more than one year from the effective date of amalgamation, no application for cancellation of GST registration was filed, which could very well have been done

by the officers of the Transferee Company i.e. the petitioner. The respondent Department was, therefore, constrained to issue a show cause notice dated 07.11.2024, which ultimately culminated in the cancellation order dated 29.11.2024.

(39) From the conduct of the petitioner, it is manifest that the application for cancellation of registration was deliberately not filed with a *mala fide* intention to encash the unutilized ITC by way of refund applications, which is otherwise impermissible under the statute. The petitioner, therefore, cannot be permitted to take advantage of its own wrong.

ANALYSIS AND OPINION

The facts established from the pleadings

(40) The following events emerge from the facts and pleadings:

a) The order of the NCLT approving scheme of amalgamation of the erstwhile ARTIPL and two other entities into ATIL vide order dated 10.08.2023.

b) Certified copy of NCLT order issued on 28.08.2023.

c) The RoC Certification of the ATIL is dated 22.09.2023.

d) ATIL filed FORM GST REG-1 under Rule 8 of the CGST Rules, 2017 on 10.05.2023 in anticipation of the NCLT order.

e) It was registered w.e.f 25.5.2023 vide certificate issued on 21.12.2025.

f) Intimation by ARTIPL of amalgamation on 10.10.23 to authorized officer.

g) Show-cause notice for cancellation of registration of the ARTIPL issued on 07.11.2024.

h) The ARTIPL registration cancelled w.e.f 29.11.2024 from the said date.

i) Amount of Rs.192.88 Cr. was claimed through FORM GST ITC-02 by the ARTIPL on 20.10.2023 of unutilized ITC.

j) Refund Sanctioned Order FORM GST RFD-06 passed on 28.02.2024 of Rs.2,56,75,437/- of granting the ITC in favour of the ARTIPL.

k) Order dated 08.01.2025 passed in Appeal under Section 107(11) of the CGST Act, 2017 cancelling the refund sanction order dated 28.02.2024.

ISSUE OF REGISTRATION OF THE PETITIONER-ATIL AND ERSTWHILE ARTIPL ON AMALGAMATION :

(41) Keeping in mind the aforementioned dates, registration / cancellation of respective ARTIPL and

AITL respectively and in order to appreciate the rival contentions, it will be necessary to have a closer look to the statutory provisions of CGST ACT, 2017 and Rules, which are as below:

> **"SECTION 22 : Persons liable for registration**
>
> (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:
>
> Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.
>
> [PROVIDED FURTHER that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified:]
>
> [PROVIDED FURTHER that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified.
>
> Explanation : For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances insofar as the consideration is represented by way of interest or discount.]
>
> (2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be

registered under this Act with effect from the appointed day.

(3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

(4) *Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal*.

Explanation : For the purposes of this section, -

(i) the expression "aggregate turnover" shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;

(ii) the supply of goods, after completion of jobwork, by a registered jobworker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered jobworker;

(iii) the expression "special category States" shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution [except the State of Jammu and Kashmir] [and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand].

SECTION 25 : Procedure for registration

(1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

xxx xxx xxx

> (8) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed."

(42) As per the provisions of Section 22(1) of the CGST Act, 2017, every supplier is liable to be registered under the Act. Sub-section (4) to Section 22 of the CGST Act, 2017 starts with a non-obstante clause and mandates that "*in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal*." Thus, as per Section 22(4) of the CGST Act, 2017, the petitioner-ATIL was required to register itself from the date on which the RoC issues certificate of incorporation, which is 22.09.2023, within a period of 30 days as prescribed under Section 25 of the CGST Act, 2017. ATIL will fall within the expression "liable to be registered" found in both the provisions.

(43) However, it appears that the ATIL filed the application for getting itself registered on 10.05.2023, prior to the order dated 10.08.2023 in anticipation, and thereafter it was registered retrospectively w.e.f. from 25.05.2023 by issuing the certificate on 21.12.2025, whereas the RoC certificate is dated 22.09.2023. Thus, the filing of the application by the ATIL before acquiring its statutory identity itself was *de hors* the provision of Section 25 of the CGST Act, 2017, since the ATIL became liable to be registered only after the order passed by the NCLT and issuance of certificate by the RoC.

(44) Sub-section (8) to Section 25 of the CGST Act, 2017 confers *suo motu* powers to the authorized officer to register such person, who becomes liable to be registered under the Act, but fails to do so, without prejudice to any action which may be taken under the Act. The consequence of not registering is prescribed in Section 122(xi) of the CGST Act, 2017, which is payment of penalty of ten thousand.

(45) Now, for examining the facet of cancellation of transferor - ARTIPL, the relevant provisions which are to be kept in mind are Section 29 of

the CGST Act, 2017, and Rules 20 and 22 of the CGST Rules, 2017. The same are as under:

> "**SECTION 29 : Cancellation "or suspension" of registration :**
>
> (1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,
>
> (a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
>
> (b) there is any change in the constitution of the business; or
>
> (c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24.
>
> "Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.";
>
> (2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,
>
> (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
>
> (b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or
>
> (c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
>
> (d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced

business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

"Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.".

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

RULE 20 : Application for cancellation of registration

A registered person, other than a person to whom a registration has been granted under rule 12 or a person to whom a Unique Identity Number has been granted under rule 17, seeking cancellation of his registration under sub-section (1) of section 29 shall electronically submit an application in FORM GST REG-16, including therein the details of inputs held in stock or inputs contained in semi-finished or finished goods held in stock and of capital goods held in stock on the date from which the cancellation of registration is sought, liability thereon, the details of the payment, if any, made against such liability and may furnish, along with the application, relevant documents in support thereof, at the common portal within a period of thirty days of the occurrence of the event warranting the cancellation, either directly or through a Facilitation Centre notified by the Commissioner:

RULE 22 : Cancellation of registration

(1) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled."

(46) Section 29 of the CGST Act, 2017 empowers the proper officer to cancel the registration on his own motion or on an application filed by the registered person for various reasons prescribed therein. One of the reason assigned in Clause(a) of sub-section (1) to Section 20 of the CGST Act, 2017 is the discontinuation of business due to amalgamation, which is applicable in the instant case. In this context, Rule 20 of the CGST Rules, 2017 requires filing of an application for cancellation of registration in FORM GST REG-16 *"within a period of thirty days of the occurrence of the event warranting the cancellation"*. FORM-GST REG-16 contains Instructions for filing of Application for Cancellation. The instruction explicitly provides that *"The new entity in which the applicant proposes to amalgamate itself shall register with the tax authority before submission of the application for cancellation. This application shall be made only after the new entity is registered"*. Thus, FORM REG-16 will only operate on the eventuality of

registration of the new entity i.e. the ATIL. Thus, if the provisions of Section 29(1)(a) of the CGST Act, 2017 are read with Rule 20 of the CGST Rules, 2017, the event warranting the cancellation in the instant case would be the amalgamation of transferor-ARTIPL and ATIL, vide order of NCLT dated 10.08.2023, and as per the Scheme the effective date is 22.09.2023, which is the filing of the certified copy of the order of NCLT before the RoC. Thus, the ARTIPL was supposed to file the GST REG-16 for cancellation of its registration within a period of 30 days in FORM GST-REG-16 from 22.09.2023, as per the provision of Section 29(1) of the CGST Act, 2017 read with Rule 20 of the CGST Rules, 2017, after the registration of ATIL, which it did choose to do so, but chose to apply for refund of part of amount of unutilized ITC, probably on apprehension that its communication to the authorized officer informing about the amalgamation vide communication dated 10.10.2023 would satisfy the requirements of statutory provision of Section 29 of the CGST Act, 2017 read with Rule 20 of the CGST Act, 2017.

(47) Thereafter, a show cause notice dated 07.11.2024 was issued for cancellation of registration to ARTIPL by the Superintendent by citing the provision of Section 29(1)(a) of the CGST Act,

2017. From the contents of FORM GST REG-19, it appears that in response to the show cause notice, the erstwhile - ATIPL, vide letter dated 19.11.2024, informed the authority stating specifically that the ARTIPL has amalgamated into the ATIL and it would like to contest the proposed cancellation, and sought 30 days time and the refund application was under process. Thereafter, it appears that after affording personal hearing to the representatives of the petitioner, the Superintendent passed an order FORM GST REG-19 dated 29.11.2024, cancelling the registration of the ARTIPL, making it effective from the even date. Thus, the GST registration of ARTIPL was cancelled w.e.f. 29.11.2024.

(48) The petitioner has attempted to take shelter under the expression used in Section 29(1) of the CGST Act, 2017 assigning power to proper officer to take *suo motu* action of cancellation of registration of the ARTIPL since it had intimated the Jurisdictional Officer vide communication dated 10.10.2023 about the details of amalgamation and the effective date of 22.09.2023. It is pertinent to note that in this communication the transferor - ARTIPL has categorically made the following statement:

> *"Kindly consider this letter as an intimation regarding the NCLT sanctioned amalgamation and to*

inform your goodselves that the transferor company ARTIPL having GSTIN 24AAACA5584C1Z1 falling under the jurisdiction of your goodselves is in the process of undertaking and ensuring the fulfillment of all relevant compliances and procedures applicable under GST laws accordingly."

Thus, the transferor-ARTIPL had given an assurance to the Jurisdictional Officer that it is in the process of undertaking and ensuring the fulfillment of all relevant compliance and procedures applicable under the GST laws, which indubitably include the compliance of statutory provisions relating to cancellation of registration. In wake of the specific assurance given by the ARTIPL, the Jurisdictional Officer was not required to exercise his power *suo motu*. However, if such officer had the knowledge or was aware of the details of amalgamation, its effective date, the date of certificate of the RoC issued in the name of new entity, he / she on having knowledge of such details was required to form an opinion relating to cancellation of registration under Rule 22 of the CGST Rules, 2017. Rule 22 starts with the sentence *"Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled"*. Thus, if the authorized officer is having the requisite information relating to amalgamation, which he had in the instant case, such information can supply/satisfy the reasons

qualifying him to believe that the registration is liable to be cancelled, hence he / she is required to issue notice to such person in FORM GST REG-17 calling upon to show cause about the cancellation of registration within seven days.

(49) It is also contended on behalf of the petitioner that it was always open for the Jurisdictional Officer to cancel the registration of ARTIPL retrospectively, as per the provisions of Section 29(2) of the CGST Act, 2017 i.e. from the effective date of 22.09.2023, however, since the registration is cancelled prospectively from 29.11.2024, the ARTIPL can be said to be in existence. We do not subscribe to the submission of retrospective cancellation of the ARTIPL on reading of the provision of sub-section (2) of Section 29 of the CGST Act, 2017. Sub-section (2) thereof empowers the proper officer to cancel the registration from such date, including any retrospective date as he may deem fit in those circumstances as mentioned from clauses (a) to (e) such as contravention of provisions of the Act, commission of fraud etc, since the sub-section (2) of Section 29 of the CGST Act, 2017 ends with the word *"where"* which prescribe the eventuality of clauses prescribed from (a) to (e), which is not the case of the petitioner.

(50) At this stage, it would be apposite to refer to Section 87 of the CGST Act, 2017, which reads thus:

> **"SECTION 87 : Liability in case of amalgamation or merger of companies :**
>
> (1) When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.
>
> (2) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order."

(51) Section 87 of the CGST Act, 2017 prescribes the liability in case of amalgamation or merger of companies. For the purpose of registration of effect of amalgamation on the registration of the ARTIPL, the provision of sub-section (2) to section 87 of the CGST Act, 2017 bears relevance. Sub-section (2) to section 87 of the CGST Act, 2017 begins with non-obstante clause and also has an added expression *"for the purpose of this Act"*. Non-obstante clause has been inserted with reference to the *"said order"*

which is in context with sub-section (1), which again is in context with the order passed by the Court or Tribunal sanctioning amalgamation or merger. Sub-section(2) directs that two or more companies are to be treated as *"distinct companies"* for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from *"the date of the said order"*. Thus, the statutory provision of sub-section (2) to Section 87 of the CGST Act, 2017 overrides the intention of treating two or more companies as distinct companies for the purpose of the Act, and the registration certificate of such companies is required to be cancelled from the "date of the order" passed by the Court or Tribunal sanctioning amalgamation or merger of the companies.

(52) In the present case, the registration of ARTIPL has been cancelled on 29.11.2024, which again does not reconcile with the provision of Section 87(2) of the CGST Act, 2017. In the instant case, the NCLT dissolved 'three' entities (1) Alstom Rail Transportation India Pvt. Ltd., (2) Alstom Manufacturing India Pvt. Ltd., and (3) Alstom System India Pvt. Ltd. and amalgamated into the petitioner - ATIL. Thus, the identity of transferor - ARTIPL as distinct company will

exist till the date of order of NCLT, and its registration is required to be cancelled with effect from the date of order of NCLT i.e. 10.08.2023.

ILLEGALITY/IRREGULARITY NOTICED FROM THE FACTS OF REGISTRATION AND CANCELLATION OF REGISTRATION OF ATIL & ARTIPL RESPECTIVELY

a) Non-filing of application by erstwhile ARTIPL seeking cancellation of its registration despite having lost its identity w.e.f. 10.08.2023 under Rule 20 of the CGST Rules, 2017 within a period of 30 days from the date of passing of the NCLT order or receipt of certified copy or from the issuance of certificate by RoC.

b) Cancellation of registration on 29.11.2024 of ARTIPL before the registration of ATIL. (vide order dated 21.12.2025 w.e.f 25.05.2023) in violation of instructions in FORM REG-16.

c) Action of the Jurisdictional Officer in ignoring the communication dated 10.10.2023 written by erstwhile ARTIPL, and not initiating proceedings under Rule 22 of the CGST Rules, 2017.

d) Issuance of the show cause notice dated 07.11.2024 to ARTIPL after one year by the Jurisdictional Officer.

e) Cancellation of registration of erstwhile ARTIPL on and w.e.f. 29.11.2024, instead of date of

order of NCLT or from the date of issuance of certificate by RoC.

f) Filing of FORM GST-REG-1 under Rule 8(5) of the CGST Rules, 2017 by transferee-ATIL for its registration on 10.05.2023 before the order passed by NCLT on 10.08.2023, and issuance of its incorporation by RoC on 22.09.2023 resulting into violation of provisions of Section 25.

g) Failure to take steps for registration of ATIL as per the provision of sub-section (8) of section 25 of the CGST Act, 2017 despite having known the status of ATIL and ARTIPL vide communication dated 10.10.2023. No steps taken under Section 122(xi) of the CGST Act, 2017.

h) Conferral of the GST Registration of transferee-ATIL retrospectively w.e.f. 25.05.2023 vide certificate issued on 21.12.2025 in violation of Section 22(4) of the CGST Act, 2017 on an application filed before the effective date of 22.09.2023.

i) Thus, on an overall appreciation of facts, it is evident that both the transferor - ARTIPL and transferee - ATIL have violated the statutory provisions. The provisions regulating registration of the ATIL and cancellation of registration by the erstwhile - ARTIPL after amalgamation, are blatantly disregarded, by both

the entities and also by the respondent officers, and rather it is noticed the Jurisdictional Officer has facilitated the irregularity. If the aforementioned dates are closely analyzed both ARTIL and ATIL would be existing and their entities will be recognized after the order passed by the NCLT and issuance of RoC despite failure to act as per the Act and Rules. The GST registration of the transferee - ATIL is from 25.05.2023, (before the order of NCLT), and the cancellation of transferor - ARTIPL is from 29.11.2024. Thus, ARTIPL, though lost its identity after the effective date 22.09.2023 continued to retain it till 29.11.2024, simultaneously with the existence of identity of ATIL w.e.f. 25.05.2023, and claimed refund of unutilized ITC lying in the electronic ledger. It is true that there is no provision in the GST Act which enables the cancellation of the registration by deeming fiction, but the same is reliant on the statutory provisions, which are required to be followed scrupulously, more particularly in case of amalgamation. The respective entities cannot be allowed to carry out business function simultaneously after effective date, except to the extent it is permissible within the contours governing the relevant provisions of the Act and Rules.

ASPECT OF CLAIM OF UNUTILIZED ITC LYING IN ECL

(53) In the instant case, the relevant provisions governing the transfer and refund of the ITC are Sections 54 and 18 of the CGST Act, 2017 and Rule 41 of the CGST Rules, 2017, which are as follows:

> "**SECTION 54 : Refund of tax**
>
> (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:
>
> Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.
>
> xxx xxx xxx
>
> (3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:
>
> Provided that no refund of unutilised input tax credit shall be allowed in cases other than
>
> (i) zero rated supplies made without payment of tax;
>
> (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:
>
> Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:
>
> Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

SECTION 18 : Availability of credit in special circumstances :

(1) Subject to such conditions and restrictions as may be prescribed

(a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

(b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

(c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

(2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of

any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

RULE 41 : Transfer of credit on sale, merger, amalgamation, lease or transfer of a business

(1) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

(2) The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

(3) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account."

(54) The petitioner - ATIL is claiming refund of unutilized tax credit under Section 54(3) of the CGST Act, 2017 for making exports falling under zero rated supplies by erstwhile ARTIPL. As per the provision of Section 18(3) of the CGST Act, 2017 read with Rule 41 of the CGST Rules, 2017, the erstwhile ARTIPL in FORM GST ITC-02 on 20.10.2023 applied for transfer of unutilized ITC to the tune of Rs.192,87,53,211/- out of Rs.242,02,00,000/- to the petitioner ATIL, keeping remainder of the amount of Rs.49,14,00,000/- in the Electronic Credit Ledger of erstwhile ARTIPL. Thereafter, the ARTIPL filed refund application under Section 54(3) of the CGST Act, 2017 amounting to Rs.2,56,75,437/- on 04.01.2024 under the category of "*ITC accumulated due to Exports of Goods / Services-without payment of Tax*" for a period of 01.04.2023 to 30.04.2023, which was allowed by the competent authority vide order dated 28.02.2024, which was subsequently set aside by the impugned order.

(55) With reference to the provision of Section 54(3) of the CGST Act, 2017, assertion of the Supreme Court in the case of Union of India vs. VKC Footsteps (India) (P) Ltd., (2022) 2 S.C.C. 603 : (2021) 93 GSTR 160, needs to be referred, which reads thus:

> *"**99.** We must be cognizant of the fact that no constitutional right is being asserted to claim a refund, as there cannot be. Refund is a matter of a statutory prescription. Parliament was within its legislative authority in determining whether refunds should be allowed of unutilised ITC tracing its origin both to input goods and input services or, as it has legislated, input goods alone. By its clear stipulation that a refund would be admissible only where the unutilised ITC has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies, Parliament has confined the refund in the manner which we have described above. While recognising an entitlement to refund, it is open to the legislature to define the circumstances in which a refund can be claimed. The proviso to Section 54(3) is not a condition of eligibility (as the assessees' the counsel submitted) but a restriction which must govern the grant of refund under Section 54(3). We, therefore, accept the submission which has been urged by Mr N. Venkataraman, learned ASG."*

(56) Thus, the Supreme Court has held that the claim of refund cannot be asserted as a constitutional right, since refund is a statutory prescription. We may at this stage refer that FORM GST-ITC-02 under Rule 41(1) of the CGST Rules, 2017 enables the transfer of unutilized ITC in the case of amalgamation. The condition precedent is that the entities being acquired or transferred must have ITC available in its electronic credit ledger from the date of merger, acquisition, combination, lease, or transfer. Both the transferee and the transferor must be registered under the GST. All pending transactions related to the merger must be accepted, rejected, or modified, and all liabilities of transferor's filed returns must be paid. The transfer of

business must include the transfer of liabilities, including any unpaid taxes, litigation, or recovery cases. This transfer must be accompanied by a Chartered or Cost Accountant's certificate.

(57) Though, there is no time limit prescribed for filing FORM GST-02, however, keeping in mind the above statutory time limits, it is mandatory that the same are observed and followed. As held by us there is violation and disregard to the statutory provisions. All the formalities of transfer of unutilized ITC are required to be completed within the time specified in order to avoid further complications on amalgamations of the entities. In the instant case, the action of registration and cancellation of registration is at odds on with the settled legal precedent that the amalgamating entity ceases to exist upon the approved scheme of amalgamation.

(58) Pertinently, FORM ITC-02 requires to mention the GSTIN of both the transferor-company and transferee-company. In other words, the Transferor Company should have a valid registration on the date of transfer of unutilized Input Tax Credit. The petitioner-ATIL has obtained Registration No.24AAJCA1167G1ZX (for Gujarat) on 21.12.2025 w.e.f. 25.05.2023.

The registration of ARTIPL was cancelled on 29.11.2024. FORM GST ITC-2 was transferred on 20.10.2023 by the ARTIPL for unutilized credit. All pending liabilities, interests etc., were required to be addressed and settled by the transferor-ARTIPL during the transition period.

(59) The Supreme Court in the case of **Safari Retreats Private Limited & Ors.** ***(supra)*** has prescribed the parameters in interpretation of the taxing statutes. They are as below:

> **"RULES REGARDING THE INTERPRETATION OF TAXING STATUTES**
>
> 25. Regarding the interpretation of taxation statutes, the parties have relied on several decisions. The law laid down on this aspect is fairly well-settled. The principles governing the interpretation of the taxation statutes can be summarised as follows:
>
> a. ***A taxing statute must be read as it is with no additions and no subtractions on the grounds of legislative intendment or otherwise;***
>
> b. If the language of a taxing provision is plain, the consequence of giving effect to it may lead to some absurd result is not a factor to be considered when interpreting the provisions. It is for the legislature to step in and remove the absurdity;
>
> c. ***While dealing with a taxing provision, the principle of strict interpretation should be applied;***
>
> d. If two interpretations of a statutory provision are possible, the Court ordinarily would interpret the provision in favour of a taxpayer and against the revenue;
>
> e. ***In interpreting a taxing statute, equitable considerations are entirely out of place;***
>
> f. ***A taxing provision cannot be interpreted on any presumption or assumption***;

> g. ***A taxing statute has to be interpreted in the light of what is clearly expressed. The Court cannot imply anything which is not expressed. Moreover, the Court cannot import provisions in the statute to supply any deficiency;***
>
> h. There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the legislatures failure to express itself clearly;
>
> i. If literal interpretation is manifestly unjust, which produces a result not intended by the legislature, only in such a case can the Court modify the language;
>
> j. Equity and taxation are strangers. But if construction results in equity rather than injustice, such construction should be preferred;
>
> k. It is not a function of the Court in the fiscal arena to compel the Parliament to go further and do more;
>
> l. When a word used in a taxing statute is to be construed and has not been specifically defined, it should not be interpreted in accordance with its definition in another statute that does not deal with a cognate subject. It should be understood in its commercial sense. Unless defined in the statute itself, the words and expressions in a taxing statute have to be construed in the sense in which the persons dealing with them understand, that is, as per the trade understanding, commercial and technical practice and usage."

(60) The principles enunciated in paragraph Nos.**'a', 'c', 'e', 'f' and 'g'** will apply in the present case. The Apex Court has cautioned that while dealing with a taxing provision, the principle of strict interpretation should be applied; and in interpreting a taxing statute, equitable considerations are entirely out of place. Further, it is held that a taxing provision cannot be interpreted on any presumption or

assumption; and a taxing statute has to be interpreted in the light of what is clearly expressed, and the Court cannot imply anything which is not expressed, and finally, the Court cannot import provisions in the statute to supply any deficiency.

(61) In the instant case, the petitioner-ATIL, which is a new identity wants to claim refund of remainder / part of unutilized tax credit under Section 54(3) of the CGST Act, 2017 for making exports falling under zero rated supplies by erstwhile ARTIPL. It is pertinent to note that the erstwhile ARTIPL in FORM GST ITC-02 on 20.10.2023 transferred the ITC in part while keeping remainder of unutilized ITC. Thereafter, erstwhile ARTIPL filed refund application under Section 54(3) of the CGST Act, 2017 on 04.01.2024 under the category of "ITC accumulated due to Exports of Goods / Services- without payment of Tax", which was allowed by the competent authority vide order dated 28.02.2024. It is the case of the petitioner-transferee ATIL, that since ARTIPL has amalgamated, the remainder of unutilized credit of zero rated export under Section 54(3) of the CGST Act, 2017 of goods may be allowed, as all the rights and liability of ARTIPL are now of ATIL.

(62) The fate of the writ petitions primarily hinges on the submissions of the petitioner ATIL on twin grounds, (a) That the ARTIPL was in existence till 29.11.2024 (date of cancellation of its registration), and (b) The ATIL got registered w.e.f 25.03.2023 vide certificate dated 21.12.2025. It is true that on amalgamation of three entities into the petitioner – ATIL, the business and the adventure of ARTIPL will not seize to exist, and it would get transferred to ATIL as per the sanctioned scheme, despite its (ARTIPL) existence as an entity seizes to exist, but ARTIPL while applying for transfer of unutilized credit FORM GST ITC-02 on 20.10.2023, only transferred it in part, and later on sought to seek refund. It is contended that since the provision of Section 18(3) of the CGST Act, 2017 and Rule 41 of the CGST Rules, 2017, the words “transfer” and “unutilized input tax credit”, gives discretion to transfer part of it in electronic credit ledger, hence it only transferred in part(approx.80%) to the transferee - ATIL, to be claimed as refund later on for the remaining. We do not agree with the interpretation canvassed by the petitioner, since the erstwhile ARTIPL was never restricted

in transferring the entire unutilized ITC through FORM GST ITC-02. Section 18(3) of the CGST Act, 2017 uses the line *"shall be allowed to transfer the input tax credit which remains unutilized"* and in Rule 41(1) of the CGST Rules, 2017, it is stated as *"a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee which remains unutilized in his electronic credit ledger"*, is required to be construed in its fundamental sense, when the transfer of unutilized ITC relates from an amalgamated entity to new business entity. Principle '**a**' of the decision in the case of **Safari Retreats Private Limited & Ors.** ***(supra)*** does not permit the interpretation of the statutory provision as canvassed. It is directed by the Apex Court vide principle 'a' that "***A taxing statute must be read as it is with no additions and no subtractions on the grounds of legislative intendment or otherwise***". In the cases of amalgamation, when a new entity is formed, and a mechanism is prescribed by the statute for transferring the unutilized ITC vide FORM GST ITC-02 in the business interest of the new entity, the intention of such enabling provision cannot be used in a manner, which frustrates the transfer of unutilized credit of ITC on

amalgamation as done by the transferor-ARTIPL and as pursued by petitioner, transferee-ATIL.

(63) Principle (b) laid down by the the Apex Court in the case of **Safari Retreats Private Limited & Ors.** ***(supra)*** decision directs that *"If the language of a taxing provision is plain, the consequence of giving effect to it may lead to some absurd result is not a factor to be considered when interpreting the provisions. It is for the legislature to step in and remove the absurdity;"*. Thus, the said principle squarely applies to the facts of the instant case. The transfer of partial unutilized ITC by transferor-ARTIPL to ATIL has resulted to an absurd result. After partial transfer of unutilized ITC on zero rated supply of exports by erstwhile ARTIPL, which was accepted by ATIL; ARTIPL applied for refund of ITC, on 04.01.2024, after effective date of 22.09.2023. The reason assigned by ARTIPL and as recorded in the impugned order, is that *"ARTIPL has not transferred the ITC of Rs.49.14 Cr. out of ITC of Rs.242.02 Cr. to the transferee-ATIL as they have to claim the refund of accumulated ITC which would not have been allowed to them in M/s Altsom Transport India Ltd."* The reason assigned by ARTIPL falls in line with the statutory provisions, since the zero rated

supply of exports was done by erstwhile ARTIPL, and the benefits of such exports in the form of ITC can be reaped by ATIL only in the manner as provided under the statute. Thus, after the amalgamation, erstwhile entity ARTIPL continued filing their GSTR-3B returns and availed ITC, albeit its entity existed till the effective date as per Section 87(2) of the CGST Act, 2017.

(64) The consequences and effect of amalgamation on the transferor and transferee of corporate entity has been crystallized by the Supreme Court in the case of Principal Commissioner of Income Tax [CENTRAL]-2 vs. Mahagun Realtors (P) Ltd., (2022) 19 S.C.C. 1, wherein the Apex Court has held thus:

> *"**19**. Amalgamation, thus, is unlike the winding up of a corporate entity. In the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed; it ceases to exist. Yet, in every other sense of the term, the corporate venture continues — enfolded within the new or the existing transferee entity. In other words, the business and the adventure lives on but within a new corporate residence i.e. the transferee company. It is, therefore, essential to look beyond the mere concept of destruction of corporate entity which brings to an end or terminates any assessment proceedings. There are analogies in civil law and procedure where upon amalgamation, the cause of action or the complaint does not per se cease — depending of course, upon the structure and objective of enactment. Broadly, the quest of legal systems and courts has been to locate if a successor or representative exists in relation to the particular cause or action, upon whom the assets might have devolved or upon whom the liability in the event it is adjudicated, would fall.*

xxx xxx xxx

> ***31.*** *The combined effect, therefore, of Section 394(2) of the Companies Act, 1956, Section 2(1-A) and various other provisions of the Income Tax Act, is that despite amalgamation, the business, enterprise and undertaking of the transferee or amalgamated company, which ceases to exist, after amalgamation, is treated as a continuing one, and any benefits, by way of carry forward of losses (of the transferor company), depreciation, etc., are allowed to the transferee. Therefore, unlike a winding up, there is no end to the enterprise, with the entity. The enterprise in the case of amalgamation, continues."*

(65) Thus, only if the issue of registrations of both the entities, was undertaken as prescribed by the statutory provisions, there was no impediment to claim the refund of unutilized ITC by ATIL, in which the rights, interest, liabilities of ARTIPL got transferred. The rights and liabilities of ITC of ARTIPL got crystallized on the zero rated export of goods resulting into the ITC in its electronic ledger. Indubitably, on amalgamation and formation of ATIL, the only and exclusive manner to transfer the unutilized ITC from its electronic ledger was through FORM GST ITC-02, which it resorted to, but only in substantial part, i.e, almost 80%. The petitioner ATIL was entitled to claim the entire unutilized ITC of ARTIPL and also encash it, if it was transferred by following the statute, since ATIL could not

have claimed it any manner since, it never exported the goods. Hence, we do not find that respondent No.1, while passing the Order-in-Appeal dated 08.01.2025, has committed any patent illegality in exercising his power under section 107 of the CGST Act, 2017.

(66) As noticed by us, hereinabove, the action of both the entities and the Jurisdictional Officer is pernicious to the statutory provisions, and this Court cannot turn a blind eye to the illegality/irregularity committed by them, which ultimately abetted the amalgamated entities. In view of the Doctrine of *Pari Delicto* (in equal fault), the law aids neither party. Thus, erstwhile ARTIPL cannot seek any benefit of refund from the fault of the Jurisdictional Officer when it is equally at fault. Correspondingly, at this stage, ATIL cannot be allowed to claim refund of unutilized credit which was lying in the electronic ledger of ARTIPL since the statute does not permit the course suggested by petitioner-ATIL.

(67) Though various citations are referred to this Court, we find that the same are either

irrelevant or repetitive and hence, we are dealing with few of them as under:

(68) The reliance placed in the judgement of the Apex Court in the case of **Mother Superior *(supra)*** by the petitioner is misconceived since the Apex Court was dealing with the provisions of exemptions contained in the Kerala Building Tax Act, 1975 and the Apex Court in this regard has held that beneficiary exemptions are to be considered in light of the object sought to be achieved by the provision and such statute has to be construed in accordance with such object.

(69) Reliance is also placed on the judgement of this Court in the cases of **Macrowagon Retail Pvt. Ltd. And Anr. *(supra)*** and **VKC Footsteps India Pvt. Ltd. *(supra)*** as well the judgement of the Karnataka High Court in the case of **Tonbo Imaging India Pvt. Ltd. *(supra)*.** The ratio laid down by the judgement in the case of **Ramji Lal Bagla and Ors. *(supra)*** and in the case of ***Hari Vishnu Kamath (supra)*** will not apply in contest of the specific rules in the present case, which prescribe the limitation. The Apex Court, in light of the provisions of the Representation of the

People (Conduct of Elections and Election Petitions) Rules, 1951. In the case of **Hari Vishnu Kamath *(supra)***, the Apex Court has held that enactment in form mandatory might in substance to be directory and use of word 'shall' does not conclude the matter. The relevant rule has been interpreted by the Apex Court with regard to rejection of the ballet paper.

(70) Similarly in the case of **Ramji Lal Bagla and Ors. *(supra)***, the Apex Court while considering the provisions of Punjab Town Improvement Act, 1992 relating to the acquisition of land and while dealing with the provisions of Section 44A of the said Act, has held that absence of resultant consequences of non-compliance with the statute will only conclusively make such statute as directory notwithstanding the use of expression "shall". The ratio of the cited judgements will not apply to the foregoing issue and the statutory provisions since they mention and use the word "shall" and also mandate and direct to take necessary steps within limitation period/time limit prescribed therein. Thus, none of the case

laws cited by the petitioner will come to its rescue in light of the peculiar facts and the statutory provisions governing the issue raised in the instant writ petitions.

:: FINAL ORDER ::

(71) As we have already noticed the flawed approach by the Jurisdictional Officer/s in dealing the cancellation of registration of the transferee - ARTIPL and the registration of the transferor ATIL; we direct the Revenue to issue appropriate directions / instructions for scrupulously following the mandate of statutory provisions while dealing with the registrations of both the entities in case of amalgamation in order to avoid future complication. Appropriate instructions are also required to be issued for taking prompt steps within the time frame as soon as the Jurisdictional Officer comes to know about the fact of amalgamation of the entities.

(72) On an overall analysis of the facts, statutory provisions and the case laws, the writ petitions fail legal scrutiny, hence we restrain ourselves from interfering with the impugned orders. The writ petitions stand

dismissed. Rule ***discharged***. No order as to costs.

Sd/- .
(A. S. SUPEHIA, J)

Sd/- .
(PRANAV TRIVEDI,J)

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Bhavesh-[PPS]* / Sr. No.1-7