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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS.1533, 1534, 1535, 1536, 1538, 1540, 1541, 1542 & 1546 OF 2025 (Filing No.)

South West Port Limited,
having its registered office at
Berth 5A & 6A, Mormugao
Harbour, Goa – 403803
Represented by its Lawful Attorney
Mr. Anthony Fernandes
Son of Leo Fernandes,
aged about 59 years,
resident of Flat No. 604,
Prime Complex Mundvel,
Vasco, Goa, 403802 …Petitioner

Versus

1.The State of Goa
Through the Chief Secretary,
Goa Legislature Secretariat,
Goa Legislative Assembly, Assembly Complex,
Alto Porvorim, Bardez, Penha de Franc,
Goa - 403521.

2. State Tax Officer / Commercial Tax Officer
Commercial Tax Office,
Vasco Ward,
Vasco-da-Gama,
Goa - 403802.

3. Commissioner of State Tax
Altinho, Panaji,
Goa - 403001. …Respondents

WITH
WRIT PETITION NOS.1547, 1548, 1549, 1550, 1551, 1554, 1556, 1557 & 1559 OF 2025 (Filing No.)

JSW Infrastructure Limited,
having its registered office at
First floor, Port User Complex,
Harbour, Mormugao, Goa.
Represented by its Lawful Attorney
Mr. Anthony Fernandes,
Son of Leo Fernandes,
aged about 59 years,
resident of Flat No. 604,
Prime Complex Mundvel,
Vasco, Goa, 403802, …Petitioners

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Altinho, Panaji,
Goa - 403001. …Respondents

Mr. Ravi Kadam and Mr. Tarun Gulati, Senior Advocates with Mr. Parag Rao, Mr. Kumar Visalaksh, Mr. Arihant Tater, Mr. Ajitesh Dayal Singh (through VC), Ms. Shruti Kulkarni, Mr. Akhil Parrikar,

Mr. Shulin Singbal and Mr. Aadush Ramadorai (through VC), Advocates for the Petitioners in all the Petitions.

Mr. Devidas J. Pangam, Advocate General with Mr. Amogh Arlekar, Mr. Amogh Arlekar, Mr. Neehal Vernekar, Mr. Prashil Arolkar, Ms. Sulekha Kamat, Mr. Siddharth Samant, Mr. Suhas Parab, Mr. Geetesh Shetye, Mr. Shubham Priolkar, Ms Amira Razaq, Mr Deep Shirodkar, Mr Manish Salkar, Ms Maria Correia, Ms Sapna Mordekar, Mr Shivdatt Munj, Mr Vishwadh Sardessai, Ms Maria Correia, and Ms Susan Linhares, Govt. Advocates for the respondents in the respective petitions.

CORAM:	**BHARATI DANGRE & NIVEDITA P. MEHTA, JJ**
Reserved on :	**28th JULY 2025**
Pronounced on:	**29th SEPTEMBER 2025**

JUDGMENT (Per Bharati Dangre, J.)

1. The group of writ petitions before us raise a challenge to Rule 4(2) of the Goa Cess on Products and Substances Causing Pollution (Green Cess) (Functions and Duties of the Competent Authority, Assessment, Levy and Collection of Cess) Rules 2014, framed in exercise of power conferred by the Goa Cess on Products and Substances causing pollution (Green Cess) Act, 2013, as unconstitutional, ultra vires the provisions of Green Cess Act of 2013.

Pursuant to the declaration of the said provision to be ultra vires of the provisions of the Green Cess Act of 2013, the writ

petitions also seek issuance of writ in the nature of prohibition or any other appropriate writ, restraining the respondents and their subordinates from proceeding with the show cause notices issued on 13.02.2025 and 23.05.2025 including passing of any order/directions pursuant thereto and for quashing and setting aside the show cause notices.

2. In the nine petitions filed by JSW Infrastructure Ltd.,(JSWIL), the Petitioner is a company engaged in the business of construction and operation of Port/jetty and allied infrastructure and other port related services and it has entered into Cargo Handling Agreement South West Port Limited, a subsidiary of the petitioner and it is the case of the petitioner that the company acts as a service provider at Berth No.5A and 6A, licensed to South West Port Limited (SWPL) at Marmugao Goa, in providing cargo related services.

In another set of nine petitions filed by the South West Port Limited, the petitioner is also a company incorporated under the Companies Act, 1956 and it plead that it operates two Multipurpose Bulk Cargo Berths bearing Nos. 5A and 6A at Mormugao Port and handles different varieties of dry bulk cargo at the Mormugao Port in the State of Goa.

The common cause for filing of the petitions, is the issuance of the show cause notice dated 13.02.2025 by the State Tax Officer/the Appropriate Assessing Authority/Competent Authority, addressed to both sets of petitioners, pursuant to the enactment of Goa Cess on Products and Substances Causing Pollution (Green Cess) Act, 2013, which came into force on its notification in the Official Gazette and the Government of Goa appointed officers under Section 13 of the Goa Value Added Tax Act, 2005 (in short "the GVAT Act, 2005") to be the Competent Authorities under the said Act for collection and overall supervision of revenue.

The show cause notices make reference to a group of writ petitions, South Port Limited, challenging the constitutional validity of the Green Cess Act of 2013, restraining the State from taking any coercive action as a result of which there was no payment of Green Cess and the Department did not assess the Dealers or take any coercive action against them. However, in the wake of the fact that the petition was disposed of on 14.09.2023, when the High Court upheld the validity of the Act of 2013 and vacated all interim orders which has restrained the Government from taking action, thereafter, a detailed assessment was taken up and notice was issued to every Dealer asking for production of books of accounts for verification but since there was

no compliance, the Assessing Authority completed the assessment resulting in passing of Assessment orders under Section 29 of the GVAT Act, 2005 read with Section 4 of the Green Cess Act of 2013.

In substance, the show cause notice dated 13.02.2025 read thus:-

> *"Since the Dealer failed to produce books of accounts for verification, and there were no documents available on record to calculate the quantity of products and substances causing pollution imported by the Dealer, the same was taken as NIL and the assessment was completed.*
>
> *And whereas, now it is revealed that the Dealer has indeed imported huge quantities of products and substances liable for green cess into the State of Goa during the period and was thus liable to make timely payment of green cess.*
>
> *Hence, it is now clear that the entire turnover of your business assessable to the Green Cess for the assessment period from 01.04.2021 to 31.03.2022 has escaped while doing assessment and has not been assessed to green cess.*
>
> *I, therefore, propose to re-assess you for the aforesaid period under Section 31 of the Goa Value Added Tax Act, 2005 read with Section 4 of the Goa Cess on Products and Substances Causing Pollution (Green Cess) Act, 2013 (Goa Act 15 of 2013) and Rules as mentioned above".*

The notice therefore required the noticee to appear in person or through any authorised representative and show cause as to why it should not be reassessed as proposed or produce or cause to be produced necessary evidence for determining the correct amount of Green Cess payable for the period mentioned in the notice or

prefer such objection as it may in relation to the proceedings.

The impugned notice also contain the following Note:

> *"NOTE:-Some of the Petitioners have approached the Honourable Supreme Court of India and vide interim Order dated 07/12/2023 passed by Hon'ble Supreme Court of India in SLP(C) No. 21643/2023; SLP(C) No. 22289/2023; SLP(C) No. 22558/2023; SLP(C) No. 259123/2023; SLP(C) No. 26624/2023; and SLP(C) No. 26191/2023 it is directed by way of an interim arrangement, to allow the State to proceed to make the assessments and issue a formal demand to the Petitioner and the Petitioner shall pay to the State an extent of 50% of the said demand. There shall be stay on payment of balance 50% of the demand pending further Orders by Hon'ble Supreme Court."*

3. With reference to the distinct show cause notices dated 13.02.2025, a further notice was issued by the State Tax Officer, in form of final reminder and it has a reference to letters addressed by the SWPL to the State Tax Officer (Competent Authority), in form of 'Preliminary Jurisdictional Objections to the initiation of the proceedings under the Green Cess Act of 2013'.

The said notices, with specific reference to the statutory provision, refuted the objections raised by reiterating that the Dealer was initially assessed under Section 29 of the GVAT Act, 2005, read with Section 4 of the Green Cess Act and Rule 3 of the Goa Green Cess Rules, 2014, and it record that it has come to the attention of the Assessing Authority, that the Dealer turnover has

escaped assessment and the show cause notice was issued to ascertain the liability under the provisions of the Green Cess Act of 2013.

The notice mentions thus:-

> *"And whereas this is to inform you that the points mentioned in the letter containing preliminary jurisdictional objections to the initiation of proceedings under the Goa Cess on Products and Substances Causing Pollution (Green Cess) Act, 2013 are denied and you are given an opportunity to attend and produce books of accounts."*

4. At this Juncture, we must mention that the show cause notice dated 13.02.2025 and the show cause notice dated 23.05.2025 are identically worded in each petition addressed to the petitioners and relate to different Financial Years, right from the FY 2014-15 to the FY 2022 -23. But the basis for the levy and imposition of the Cess in each notice remains the same i.e. the provisions of the Goa Cess on Products and Substances Causing Pollution (Green Cess) Act, 2013 and Rules made thereunder.

5. Before we appreciate the submissions advanced on behalf of the parties, it is necessary to make reference to the statutory scheme comprised in the Green Cess Act of 2013 and Rules made thereunder.

The Goa Cess on Products and Substances Causing Pollution (Green Cess) Act, 2013, applicable in the State of Goa, provide for levy and collection of Cess on the products and

substances including hazardous substances, which upon their handling or consumption or utilization or combustion or movement or transportation causes pollution of the lithosphere, atmosphere, biosphere, hydrosphere and other environmental resources of the State of Goa, under the concept of 'polluter pays principle", and also to provide for measures to reduce the carbon footprint left due to such activities and for matters connected therewith or incidental thereto.

Section 4 of the Act, the charging Section reads as below:-

> *"**Section 4: Levy and collection of cess.** -*
> *(1) There shall be levied and collected a cess at such rates as may be specified by the Government by a notification in the Official Gazette, not exceeding two percent of the sale value of the products and/or substances, the handling, utilization, consumption, combustion, transportation or movement, of which, by any means, causes pollution within the State of Goa, from every person carrying out any of the above activities.*
> *(2) The cess shall be assessed, levied and collected in such manner, as may be prescribed.*
> *(3) The cess levied under this Act shall be in addition to any other cess, taxes, charges, duties, permission fees, license fees or any other fees payable under any other law for the time being in force."*

Section 8 of the Act is the power of the Government to exempt or reduce Cess, which reads thus:-

> *"8. Power of the Government to exempt or reduce cess.- The Government may, if in its opinion, it is necessary in public interest so to do, by notification in the Official Gazette and subject to such restrictions and conditions and for such period as may be specified in such notification, exempt or reduce, either prospectively or retrospectively, the cess payable under this Act, by any specified class of persons or in respect of any products or substances."*

Section 14 of the statute, is the power to make Rules and it permit the Government, by Notification in the Official Gazette to make rules for carrying out the purposes of the Act, every rule being laid as soon as may be after it is made before the Legislative Assembly of Goa.

6. In exercise of the power conferred by sub section (1) of Section 14 read with sub section (2) of Section 3 and sub section (2) of Section 4 of the Act 2013, the State of Goa has brought into force the Goa Cess on Products and Substances Causing Pollution (Green Cess) (Functions and Duties of the Competent Authority, Assessment, Levy and Collection of Cess) Rules, 2014 (referred to as "Rules of 2014").

Rule 3 of the said Rules sets out the functions and duties of the competent authority and assessment of levy and collection of Cess, and the relevant portion of the said Rules reads thus:-

> *"3. Functions and duties of the competent authority and the assessment, levy and collection of cess. -*
>
> *(1) The competent authority shall levy and collect cess under section 4 from every person who brings or causes to be brought within the State any products and/or substances at the entry point of the State: Provided that the Government may, extend such levy at any other point or points in addition to the entry point, by Notification published in the Official Gazette.*
>
> *(2) The person who is liable to pay the cess shall pay the same immediately and not later than thirty days, from acquisition of the products and/or substances and file the monthly returns to the*

competent authority who shall issue a Certificate in Form-I hereto to such person granting him permission to sell or transport or move the products and/or substances.

(3) The person liable to pay cess shall apply on plain paper to, and obtain a registration from the competent authority, within a period of thirty days from the date of coming into force of these Rules or from the date of accrual of his liability to pay such cess as the case may be.

(4) The person registered under sub-rule (3) shall pay the cess payable under section 4 for every month into the Government treasury or by way of e-payments through the authorized bank on monthly basis, under the challan in quadruplicate in Form II hereto."

The Rules of 2014 also contain a provision of appeal to the Appellate Authority as prescribed under the Goa Value Added Tax Act, 2005, and state that the provisions of Section 35 of the VAT Act and Rules made thereunder shall mutatis mutandis apply to such appeal. It also prescribe that the provisions of VAT Act and Rules shall apply for the purpose of assessment, levy and collection of Cess in absence of any provision made to that effect.

7. In two groups of petitions, the SWPL is represented by the learned Senior Counsel Mr Ravi Kadam, who has argued Writ Petition No.1533 of 2025 (F) as a lead petition and the learned Senior Counsel Mr Tarun Gulati represented the JSW Infrastructure Limited.

The State of Goa is represented by Mr Devidas Pangam, the learned Advocate General, being assisted by respective Government

Advocates.

By consent of the respective counsel, we have heard the petitions finally by issuing Rule, which is made returnable forthwith.

Mr Kadam, the learned Senior Counsel on taking us through the scheme of the Act of 2013 would submit that the enactment impose a levy and provide for collection of Cess on the products and substances including hazardous substances, which upon their handling or consumption or utilization or combustion or movement or transportation causes pollution of the lithosphere, atmosphere, biosphere, hydrosphere and other environmental resources in the State of Goa and such product or substance is subject of Act of 2013. He has also invited our attention to the definition of the term 'product' upon whose handling, consumption, utilization etc., result into a pollution and he would emphasis upon the definition of the term 'product' as defined in Section 2(e) and 'substance' as defined in Section 2(g).

He would submit that Section 4 has failed to prescribe the incidence of tax, though it is specified that the Cess shall be collected from every person carrying out any of the activities specified therein. Inviting our attention to sub-section (2) of Section 4, which has prescribed that the Cess shall be assessed, levied and collected as may be prescribed, it is his submission that

the petitioner (SWPL) is merely operating multipurpose bulk cargo berths at Mormugao Port and is not an importer and therefore, liability to pay Green Cess cannot be imposed on it. Apart from this, it is the contention of the learned Senior Counsel that the petitioner was assessed 'NIL' for Financial Year 2014-2015 to Financial Year 2023-2024 before the initiation of reassessment proceedings for prior years.

Mr Kadam would submit that the petitioner commenced operations in Goa in the year 2004 and is involved in handling of different varieties of dry bulk cargo at the Port, where the goods arrive in vessel loads at the berth which is operated by the petitioner and discharged using mobile cranes and grabs into mechanical hoppers that are conveyed by the conveyor belts to stock yard and are stacked by stacker-reclaimer. According to him, the petitioner has deployed highly mechanized and modern environmental friendly material handling systems, which involve latest dust entrapment systems, efficient material handling systems like Grap Ship Unloader (GSU), Stacker-cum-Reclaimer (ScR), Closed/Pipe Conveyor, In-motion Wagon Loading System etc., along site of construction covered sheds is in process.

8. Being extremely critical about reopening of the assessment, Mr Kadam would submit that the assessment order of the

petitioner for the assessment period from 01.04.2014 onwards i.e. for the subsequent Financial Years, record that the appropriate assessing authority has assessed to the best of judgment and pursuant thereto the gross sale value of the hazardous products/substances brought/handled by the petitioner is determined as 'NIL' turnover and Green Cess is determined as NIL, by declaring that no dues are payable. He would invite our attention to the order of assessment for M/s SWPL dated 12.03.2025, for the year 2023-24, the period of assessment being 01.04.2023 to 31.03.2024, where the appropriate assessment authority has noted as below:-

> *"Thus after verification of the books of accounts produced during the assessment proceedings it is determined that the dealer has not purchased any substance which is hazardous causing pollution. Accordingly, the gross sale value of the hazardous products/substances brought handled by the dealer is determined to NIL, turnover and NIL Green Cess. Thus, the green cess liability under the Goa Cess on Products and Substances Causing Pollution (Green Cess) Act, 2013 (Goa Act 15 of 2013) is NIL."*

9. Despite the aforesaid noting according to Mr Kadam, the impugned notices are issued to the petitioners under Section 29 of the GVAT Act 2005 read with Section 4 of the Act of 2013 on 12.10.2013, asking the petitioner to show cause as to why it should be reassessed for determining the correct amount of Green Cess and also as to why penalty should not be imposed upon it, by recording that the petitioner is liable for registration, and filing of

the returns under the Green Cess Act, 2013 and since the petitioner has not applied for registration nor made payment of tax/cess, therefore, it is necessary to make assessment order under clause (d) of sub section (2) of Section 29 of the GVAT Act, 2005 from 01.04.2004 to 31.03.2015 and also for the subsequent period of 01.04.2015 to 31.03.2016, 01.04.2016 to 31.03.2017, 01.04.2017 to 31.03.2018, 01.4.2018 to 31.03.2019, 01.04.2019 to 31.03.2020, 01.04.2020 to 31.03.2021, 01.04.2021 to 31.03.2022, 01.04.2022 to 31.03.2023. The show cause notices are identical covering different Assessment Years.

According to Mr Kadam, when the previous assessment orders were passed, the Assessing Authority had concluded that there is no sale, no turnover and therefore, no Cess was liable to be paid but all of a sudden the respondents adopted U-turn approach and held the petitioner liable for being assessed under the Act of 2013, when it issued show cause notices to the petitioner by reopening the assessment, for past years which are already put to rest.

10. Upon receipt of the show cause notices, according to Mr Kadam, a detailed response was addressed to the State Tax Officer, where it is clarified that the petitioner is not the owner nor the importer of the cargo and therefore, notices issued are without jurisdiction as from the plain reading of the provisions of Act 2013

along with Rules of 2014, it was evidently clear that the SWPL do not fall within the purview of the Act and Rules of 2014 and this issue of jurisdiction goes to the root of the matter and therefore, the proceedings cannot move ahead.

Another objection raised is in respect of the assessment being reopened after the expiry of the period of five years as, going by provisions of the GVAT Act 2005, in terms of Section 29(3), it bar the assessment of period exceeding five years and therefore, the notice issued is otherwise barred by limitation and no reassessment could be initiated.

11. Mr Kadam has urged that the assessment order passed for FY 2023-24 confirming 'NIL' liability on SWPL and JSWIL was based on their activities, which did not attract charging provision and this was categorically recorded after verification of the books of accounts produced during the assessment proceedings, which establish that the Dealer has not purchased any substance of hazardous nature, causing pollution. However, issuance of new notice proposing to 'reassess' of SWPL and JSWIL, according to Mr Kadam, suffers from lack of jurisdiction and it is an attempt by respondent No.2, in conducting a fishing and roving inquiry in absence of any tangible material, which would satisfy the test of "reasons to believe" when the petitioners are sought to be reassessed. Therefore, it is prayed that the show cause notices be

quashed and set aside.

12. The learned Senior Counsel Mr Tarun Gulati adopted the arguments of Mr Kadam, but he would further add by submitting that JSW Infrastructure Limited (hereinafter referred to as 'JSWIL') is the second largest private port operator in the Country, inter alia engaged in the business of construction and operation of port/jetty and allied infrastructure and offer port related services. He would submit that the JSW Steel, brought the goods on the port and the petitioner which has entered into cargo handling agreement with SWPL, acting as a service provider at Berth No.5A and 6A provide it Mormugao Port, provided cargo related services at the berths. Pursuant to the cargo handling agreement, SWPL has engaged JSWIL as sub-contractor for the provision of inter alia cargo handling services, and the petitioner is discharging its contractual obligation as service provider at the designated berths. According to the learned Senior Counsel, JSW Steel, which has already brought the goods at the port, is levied with the Cess under the Act of 2013, and since Rule 3 contemplates levy at the entry point of the State i.e. at one point, JSWIL cannot be again fastened with the said liability.

By taking us through the scheme of the Act and Rules framed thereunder and in particular Rule 3, which clearly specify that levy

and collection of Cess under Section 4 of the Act, to be from 'every person who brings or causes to be brought within the State any product and/or substance at the entry point of the State' and hence according to him, if the petitioner cannot be brought within the fold of Rule 3, which prescribe the manner in which the Cess shall be levied and collected, as imposed under Section 4, then by no stretch of imagination, can the Assessing Authority bring the JSWIL within its sweep and therefore, the show cause notices are wholly without jurisdiction and premised on an incorrect presumption that the petitioner is subject of the levy of Green Cess, despite it merely being a service provider.

Another point which the learned Senior Counsel would emphasis upon is the lack of jurisdictional pre-condition for invocation of Section 31 of the GVAT Act, which permit the exercise of the power, only if the Commissioner has "reason to believe" that the whole or any part of the turnover of the Dealer in respect of any period escaped the assessment to tax or he has been under assessed or turnover is assessed at a lower rate, than within the prescribed timeline the Commissioner is empowered to assess or reassess the tax payable by the Dealer.

Therefore, according to him, the existence of "reasons" is a must for holding a belief that any turnover has escaped assessment.

It is submitted by Mr Gulati that respondent No.2 has

neither communicated any new material nor has he discovered any set of facts, that were unknown earlier, when the original assessment in respect of the petitioner was concluded. He would place reliance upon the decision of the Apex Court in the case of ***State of Uttar Pradesh Vs Aryaberth Chawal Udyog and others***[1] and ***Binani Industries Limited Vs Bank of Baroda and Another***[2]**.** It is his specific submission that if the power under Section 31 is premised on "reasons to believe", which necessarily postulate the existence of "tangible material" to come to the conclusion that some income has escaped assessment but review of earlier assessment in the absence of any tangible material, according to him, would amount to abuse of the process of law. Apart from this, it is his submission that the extra-ordinary power of reassessment should also be subject to the period of limitation, as the limitation for undertaking the ordinary scrutiny assessment has already lapsed and extending this timeline would render the said time limit for assessment redundant.

He would also place upon the decision of the Apex Court in case of ***Commissioner of Sales Tax Vs Bhagwan Industries (P) Ltd***[3], and the decision of the Patna High Court in ***Samsung India***

[1] (2015) 7 SCC 324

[2] (2007) 15 SCC 435

[3] (1973) 31 STC 293 (SC)

Electronics Pvt. Ltd. Vs Union of India[4] and the judgment of the Allahabad High Court in case of ***Bharat Heavy Electricals Limited Vs State of UP***[5].

The law laid down in the aforesaid decisions being applied to the impugned show cause notices, the learned Senior Counsel has submitted that the impugned notices are evidently deficient and issued without specifying or existence of "reasons to believe" and since the notices are without jurisdiction, they are liable to be quashed and set aside.

13. Without prejudice to the aforesaid contention, it is also urged by the learned Senior Counsel Mr Gulati that the impugned show cause notices are without jurisdiction in so far as they are issued under Section 31 of the GVAT Act,2005 which is completely inapplicable to the proceedings under the Green Cess Act. It is his submission that Section 4(2) of the Act of 2013 has delegated to the executive, the framing of Rules on levy, assessment and collection of Cess and Rule 3 of the Green Cess Rules, set out the process and manner of assessment and Rule 3(7) postulates the situation that no return is filed and then the best judgment on assessment is permitted. Further relying upon Rule 4(1) and Rule

[4] (2016) 12 TMI 1897- Patna SC

[5] (2017) 3 TMT 155 – Allh. SC

4(2), he would submit that though no time limit is provided in completion of assessment, in the wake of the Rule 4(2), the time limit for assessment specified in Section 29(3) of the GVAT Act will apply and this has prescribed a period of five years from the end of the year in respect of which or part of the assessment is to be made. It is his specific contention that no substantive power of reassessment akin to Section 31 of the GVAT Act is reserved in favour of the competent authority under the Green Cess Act or the Rules and the same cannot be imported as it sought to be done by the impugned show cause notices, which are therefore without any force of law.

Mr Gulati has also urged before us that in the Assessment Order passed on 09.05.2025 under the Act of 2013 by the Commercial Tax Office, where the books of accounts were produced and financial statements, cargo handling receipts were also looked into, it is recorded that the assessment is taken up by issuing assessment notice to the dealer in Form VAT-VIII and calling dealer on 19.02.2025 with books of accounts for verification and determination of green tax liability and books of accounts were accordingly produced for verification along with the agreement of services cargo handling, tax invoices, statement of services rendered along with the name of the party to whom the services are rendered, quantity, invoice value etc. The cargo

handling agreement was verified and it was found that it has specified the services to be provided by the party and the terms and conditions of the same. It is with this background the appropriate Assessing Authority recorded that the green tax liability upon the petitioner as NIL. Thus, according to the learned Senior Counsel that the order is well well-reasoned one and it postulates that respondent No.2 has accepted the stand that the petitioner/dealer has not purchased any substance which is causing pollution and hence, there is no reason as to why it should be opened again.

It is also urged by the learned Senior Counsel that when the stay was operating before this Court, directing that no coercive steps to be taken, but which never prevented respondent No.2 from assessing the dealer within the period prescribed but now when an attempt is made to reassess them, the said action falls clearly within beyond period of limitation when the dealer could be assessed.

14. The learned Advocate General Mr Pangam has responded to the arguments canvassed by the learned Senior Counsels for the two sets of petitions and he would invite our attention to the judgment of this Court delivered on 14.09.2023, pronouncing upon the challenge to the constitutional validity of the Goa Cess on Products and Substances Causing Pollution (Green Cess) Act, 2013, when its validity was tested on the ground of the legislative

competency. He would invite our attention to Paragraph 70 of the said judgment, where the object and purpose of the Act is highlighted as below:

> *"70. Going by the preamble to the impugned Act, it does appear that the object and purpose of the impugned Act is to augment the State's revenue for having programmes and schemes to reduce the carbon footprint. The impugned Act provides for levy and collection of cess on the products and substances including hazardous substances, which upon their handling or consumption or utilization or combustion or movement or transportation cause pollution of the lithosphere, atmosphere, biosphere, hydrosphere and other environmental resources of the State of Goa, under the concept of "polluter pays principle", and also to provide for measures to reduce the carbon footprint left due to such activities and for matters connected therewith or incidental thereto.*
>
> *71. The levy under the impugned Act is on the handling or consumption or utilization or combustion or movement or transportation of products and/or substances, the handling etc. of each causes pollution within the State of Goa. The Act invokes the "polluter pays principle" as a justification for the levy though it is not often that legislation provides for justification for the levy in the text of the legislation itself."*

Apart from the above, he would also invite our attention to the relevant observations in Paragraph 164 of the judgment with reference to Rule 3 of the Rules framed under the impugned Act, when it is held that the Rules framed only prescribe the point at which the Cess become payable and the measure of tax, point and manner of levy are different and distinct from the charging event prescribed under the taxing legislation and what is relevant is the charging section under the impugned Act and not the Rules which prescribe the point at which the Cess becomes payable or would be

imposed or collected.

15. According to the learned Advocate General, Section 4 of the Act has prescribed the levy and collection of Cess, leaving the rate of Cess to be specified by the Government by Notification in the Official Gazette, but with a rider that it shall not exceed 2% of the sale value of the product or substance. In addition, by inviting our attention to the Rules, framed under the Act, he would submit that the Government of Goa has fixed duty of assessment, levy and collection of Cess on the competent authority by providing that it shall be collected from every person who brings or causes to be brought in the State, any products or substances at entry point but the proviso appended to the said Rules prescribe that the Government may extend such levy at any other point or point in addition to the entry point by notification in the Official Gazette. When we specifically inquired with Mr Pangam whether any such notification to that effect is issued, his answer is in the negative.

According to Mr Pangam, the provision of the Act and Rules is a whole sole mechanism for levy, assessment and collection of the Cess under the Act of 2013, and according to him, Rule 3 has also prescribed for filing a monthly return to the competent authority and the manner in which the Cess shall be remitted. He would also raise a preliminary objection that if the petitioners are aggrieved by

the assessment, they have a remedy of an appeal to the Appellate Authority as specified in GVAT Act 2005 and in such a case, the provisions of Section 35 of the said Act which provide an appeal to the Appellate Authority within a period of 60 days shall come into force and in absence of alternate remedy being exhausted, according to him, the petitions, raising a challenge to the assessment orders are not maintainable and deserve dismissal.

16. We have considered the counter submissions advanced and appreciated the same in the backdrop of the pleadings in the two sets of petitions along with the statutory scheme in form of the Act of 2013 and the Rules framed thereunder.

The imposition of Cess under the Act of 2013 is based on the principle of "Polluter must pay" and the Cess is levied and collected for causing pollution of the lithosphere, atmosphere, biosphere, hydrosphere and other environmental recourses of the State of Goa, upon handling or consumption or utilization or combustion or movement or transportation of any products or substances which causes the pollution.

The term 'product', is defined under Section 2(e) as those products which upon their handling or consumption or utilization or combustion or movement or transportation etc. cause emission of carbon dioxide and other greenhouse gases or discharge other

types of effluents and this includes the products like asphalts, automotive gasoline, fuel, oils, kerosene, lubricants, napthas, waxes, other hydrocarbon components including mixtures and products obtained from crude oil, natural gas processing and such other products which the Government may, by Notification in the Official Gazette specify.

A similar meaning is assigned to the term "products" as upon their handling, consumption, utilization, etc., it causes pollution and includes carbon products, coke, coal, chemicals and chemical products, hazardous substances and other substances which the Government may, by Notification in the Official Gazette, specify.

Section 4, the charging Section provides for levy and collection of Cess, at such rates as may be specified by the Government not exceeding two percent of the sale value of the products and/or substances, the handling, utilization, consumption, combustion, transportation or movement, of which, by any means, causes pollution within the State of Goa and this Cess shall be levied and collected from every person carrying out any of the above activities.

The manner in which the said Cess has been assessed, levied, and collected is to be prescribed by sub-section (2).

The Act of 2013 is enacted with an avowed object of making the polluter pay, and the proceeds of the said Cess collected under Section 4 are credited to the consolidated funds of the State of Goa to be utilized for undertaking the measures to reduce the carbon footprint, by means of such programmes or schemes as may be decided by the Government and is already held to be within the legislative competence of the State legislature.

17. In order to determine the question that arises for our consideration as to whether the two sets of petitioners before us could be imposed with the levy of Green Cess and whether the Cess can be collected from them, we must keep in mind the components which enter into the concept of tax; viz., (1) the character of the imposition known by its nature which prescribed the taxable event attracting the levy; (2) a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax; (3) the rate at which the tax is imposed; (4) the major or value to which the rate would be applied for computing the tax liability.

Any uncertainty or vagueness in the legislative scheme defining, any of the aforesaid components of levy, is fatal to its validity. If those components are not clearly and definitely ascertainable, it would be difficult to say that the levy exists in law.

By reading of Section 4, the charging Section, which has prescribed the character of imposition, being levied, the rate at which it is to be imposed is left to be determined by the executive, with a maximum limit being prescribed, but there is no clear indication of the person on whom the levy is imposed and who is obliged to pay the Cess. However, Rule 3 of the Rules of 2014, offers clarity, when it provide that levy and collection of Cess under Section 4 of the Act shall be from every person who brings or causes to be brought within the State any products and/or substances at the entry point of the State.

Thus, it is evidently clear that the incidence of the Green Cess i.e. as to what is the activity on which Cess is levied, is provided in the charging Section but from whom it shall be collected is provided in the Rules, framed by the State Government. The charging Section 4 do provide for the levy of Cess, whereas Rule 3 provides that the Cess shall be levied and collected from the person who brought within the State any product and/or substance which is responsible for causing pollution, on account of its handling, utilization, consumption etc.

At this juncture, we only note that Section 4, which refer to the activity on which levy is imposed i.e. what activity will bear the burden i.e. one which pollutes the environment. Rule 3, however, provide for its collection and together they form a scheme.

We shall be dealing with the submission advanced by Mr Kadam that the Rules framed are in excess of the power conferred under the Act and therefore ultra vires, a little later.

18. SWPL operates two berths at Mormugao Port where M/s JSW Steel Limited, a group company of the petitioner, imports shipments of coal and coal products from abroad for consumption in steel-making products in its factory in Bellary Karnataka. The imported coal and coal products arrive at Mormugao Port by ships and are then transported to the JSW Steel plant in Bellary Karnataka. The JSW Infrastructure, on the other hand, is a company, engaged in the business of construction and operation of port, jetties and allied infrastructure and other port-related services has entered into a cargo handling agreement with SWPL and it act as service provider at Berth Nos.5A and 6A, which is licensed to SWPL at Mormugao Port. Pursuant to the cargo handing agreement, between SWPL and JSWIL, the former has engaged the latter as sub-contractor and the question for consideration is whether these two entities could be subjected to the levy under the Green Cess Act of 2013 which is enacted for the purpose of levy and collection of Cess on the products and substances, which upon handling and consumption or utilization or combustion, movement or transportation, caused pollution.

19. Section 4(1) of the Act provides for levy and collection of Green Cess. Section 4(2) of the Act without setting out any specific provision enumerating the substantive power of assessment/reassessment, delegates the mechanism to be provided by subordinate legislation, as the statute provides that the Cess shall be assessed, levied and collected in the manner prescribed by the Rules of 2014.

In furtherance of this power conferred, the Department of Science, Technology and Environment, Government of Goa, has framed the Green Cess Rules and published the same vide Notification dated 18.02.2014.

Thus as per the charging Section i.e. Section 4(1) of the Green Cess Act, the Cess shall be levied and collected from every person carrying out the activities of "handling, utilization, consumption, combustion, transportation or movement" of specified products and this Cess shall be levied and collected in such manner as may be prescribed.

In terms of the mandate of charging Section in the Act, Rule 3(1) cast the liability to pay Green Cess upon the person, who brings or cause to bring the specified products within the State at the entry point. Hence the person statutorily liable to pay the

Green Cess is "every person" who brings or causes to bring within the State specified products/substances which are the cause for pollution.

20. What is specifically urged before us by the respective Senior Counsels representing the SWPL and JSWIL is, that they are the service provider or a sub-contractor operating the berth licenced to SWPL, and they do not bring or cause to be brought within the State, any of the specified products at the entry point of the State, which is an expressed pre-requisite, for levy of Green Cess as per Rule 3(1) of the Rules of 2014. It is urged that a service provider who offers service at Mormugao Port is not the person who either brings the product or causes the product to be brought and therefore, cannot be fastened with liability to pay Green Cess.

21. Rule 3 of the Green Cess Rules is a complete Code with regard to the manner in which the assessment shall be carried by the competent authority and a careful reading thereof along with sub clauses, make it clear about the manner in which the Cess shall be levied and collected.

It is apposite to reproduce the mechanism stipulated in Rule 3 of the 2014 Rules, which read thus:-

"(5) The registered dealer shall furnish monthly returns in Form III hereto alongwith copy of challan in proof of payment of cess and/or penalty or other levies, if any, with the competent authority indicating the detailed value of opening stock for the month as well as the value of purchases effected during the month and/or stock transfer received during the month as well as the value of imports of the products and/or substances in that month which are liable for levy of cess, within 30 days from the end of each month.

(6) If the competent authority is satisfied that the returns submitted are correct and complete, he shall assess the person on the basis of such returns and pass the order therein which may be for a Financial Year or for any part of a year.

(7) If the returns submitted by the person appears to the competent authority to be incorrect or incomplete, he shall assess the person after giving him reasonable opportunity of proving the correctness and completeness of the returns submitted by him and where no returns are submitted by the person, he shall assess the person to the best of his judgment recording the reasons for such assessment."

22. Rule 3 of the Green Cess Rules contemplate three kinds of assessment namely; self-assessment by the assessee by filing the return, declaring turnover and paying applicable Cess; (2) scrutiny assessment by competent authority, either accepting the return filed or otherwise assessing the return after granting reasonable opportunity being heard and (3) best judgment assessment by the competent authority, if no return is filed.

The basis of the impugned show cause notices issued, is the assumption of the petitioners as "Dealers" even though the petitioners did not import any products/substances subjected to levy of Green Cess under the Green Cess Act and consequently the petitioners' claim that they are not liable to register themselves

under the Green Cess Act, as the petitioners, being service provider is not the same person "who brings or causes to be brought within the State any product and/or substance at the entry point". The petitioner admittedly is not a 'consignee' or 'importer' or 'user' of the specified products/substances but it merely provides service at the Port and Rule 3(1) of the Rules of 2014 cast burden of paying the Cess upon the person, who cause the entry or movement of the polluting product/substance into the State of Goa, specifically intended to target manufacturer, importer, dealer and user of such products. The petitioners as service provider, have no proprietary or possessory interest in the cargo handling nor do they have ownership title and any economic interest in the goods. The petitioners neither brings nor causes to be brought, the covered products and/or substances within the meaning of Rule 3(1) of the Green Cess Rules 2014 and if they do not fall within this category, they cannot be fastened with liability to pay the Green Cess under the Act of 2013.

Further the petitioners are not Dealers and they did not even import any product/substance, which can be subjected to levy of Green Cess under the Act, they cannot be held liable for its recovery.

23. Rule 3(1) of 2014 Rules clearly contemplate "either bringing of the goods or causing it to be brought" and distinction between the two is succinct and settled and we deem it appropriate to refer to the judgment of Queens Bench in the case of ***Shave Vs Rosner***[6] as it aptly depicts an illustration of 'causing' in the backdrop of the provisions contained in the Motor Vehicles (Construction and Use) Regulations, 1951.

The pronouncement came in the backdrop, when an owner of a motor vehicle left it at the respondent's garage to have the brakes re-shoed and after the work was completed, the vehicle was delivered to the owner, who drove the respondent back to garage so as to test the brakes himself. Later on, the same day, while the owner was driving the vehicle, one of the front wheels came off and injured a passer-by and the accident occurred since the nuts were not properly fastened by the respondent's workmen while carrying out the works of the brakes.

The respondent was charged with 'unlawfully causing' a vehicle to be used on a road in such condition that danger was caused to a person on the road contrary to the Motor Vehicles (Construction and Use) Regulations, 1951.

The Queens Bench in these facts held that the word 'causes' in the Regulations of 1951 involved some degree of dominance or

[6] 1954 (2) ALL ER 280

control over the person who used the vehicle, or some express or positive mandate to him, by or from the person alleged to have caused the user after the respondent had delivered the vehicle back to the owner he ceased to have any control over it; and, therefore, he had not caused it to be used on a road within the meaning of Regulation 101.

Lord Goddard, C.J., by referring to the Regulation penned his verdict in the following words 'if any person uses or causes or permits to be used on any road a motor vehicle or trailer in contravention of or fails to comply with any of the preceding regulations contained in Part III, he shall for each offence will be liable to a fine' held that the expressions 'causes or permits' in contrast or juxtaposition 'permit' means giving leave and licence to somebody to use the vehicle, and 'causes' involves a person, who has authority to do so, ordering or directing another person to use it".

The distinction is succinctly brought out in the words of Lord Goddard, C.J. - "If I allow a friend of mine to use my motor car, I am permitting him to use it. If I tell my chauffeur to bring my car round and drive me to the courts, I am causing the car to be used.

There may be a civil liability to indemnify the owner if he is made liable, …. but if the owner is sued, the garage proprietor

would have an action brought against him and part of the damage for not doing the work properly would be the damages the owner is caused to pay to the person injured. But, from the point of view of the criminal law, I do not think the regulation is wide enough to catch this case."

The word 'causes' was therefore interpreted to be something involving control or dominance or compulsion.

24. Another Queens Bench judgment in the case of ***Price Vs Cromack,***[7] which also drives home the pertinent distinction between the words 'permitting' and 'causing' in the following words of Lord Widgery C.J, "It is important to note that the distinction between 'causing' and 'knowingly permitting' was very much in their Lordship's minds. It seems to me that the overwhelming opinion of their Lordships in that case was, that whatever else 'causing' might or might not involve, it did involve some active operation as opposed to mere tacit standing by and looking on. That is made good first of all by Lord Wilberforce, who said "The subsection evidently contemplates things–causing, which must involve some active operation or chain of operations involving as the result the pollution of the stream; knowingly

[7] 1975 (1) WLR 988

permitting, which involves a failure to prevent the pollution, which failure, however, must be accompanied by knowledge."

In light of the aforesaid observations noted by us, the term 'to cause' convey the reason or motivation behind an action or situation, and it contemplate a preceding event or action that brings about a result or effect and since the word convey to produce an effect; specific things that bring about a specific result.

The cause is thus the reason or force behind the outcome, the effect, being its direct result or consequence.

25. Rule 3(1) of Rules of 2014, clearly give effect to the levy of Cess, upon the activity resulted into pollution, by necessarily identifying the person from whom the levy shall be collected i.e. one who bring or cause to be brought, the goods/substances causing pollution in the State and since it is not in dispute that the petitioners only operate the berth and do not bring the product or cause the product causing pollution to be brought in the State, by merely relying upon the terminology in sub-section (1) of Section (4) by describing one of the activities covered under the Cess to be "handling" since the products/goods at the port are being handled by the petitioners, is not a valid justification to levy the Green Cess upon the petitioners as it shall be collected from those who bring or cause to be brought the products/substances in the State which

causes the pollution and particularly when we are informed that JSW Steel, the company which brings the coal on the Port, which is merely handled by the petitioners at the port, is already subjected to levy of Green Cess and there cannot be levy at multiple points.

26. Another point raised by the respective Senior Counsels is the authority to reassess the petitioners, once having been assessed them to 'NIL' assessment, for the FY 2014-15 to FY 2022-23.

The impugned show cause notices dated 13.02.2025 and 23.05.2025 proposed to "reassess" the petitioner for the aforesaid period under Section 31 of the Goa Value Added Tax, 2005, read with Section 4 of the Act of 2013 and the Rules of 2014.

The impugned show cause notices aver as below:-

> *"As per your contention, the company is merely an operator of berths at Marmugao Port, Goa and does not import or utilize any products or substances on which the purported green cess is liable to be paid. Since the company is handling the imports, a show cause notice under Section 31 of the Goa VAT Act, 2005 read with Section 4 and Rule 3 of the Goa Green Cess Act, 2013 is issued to quantify and determine the liability for the imports of products/substances liable to green cess".*

The notice dated 23.05.2025 requiring the noticee/petitioners to appear in person or through an authorized representative, direct production of books of accounts, registers, invoices which were required to be maintained in terms of Green Cess Act, 2013 and the Rules made thereunder along with any

other relevant evidence on which the noticee wish to rely and also to show cause notice as to why a penalty under the provisions of the Act of 2013 and Rules made thereunder read with Sections 54, 55, 57, 58 and 59 of the Goa Value Added Tax, 2005 shall not be levied for the distinct period.

The impugned show cause notices, therefore, seek to initiate reassessment proceedings and has invoked Section 54 to Section 59 of the GVAT Act, 2005.

27. For exercising the power of re-assessment as contemplated under Section 31 of the GVAT, most significant ingredient is "reasons to believe" by the Commissioner that the whole or any part of the turnover of the dealer in respect of any period has escaped assessment to tax or it has been assessed or any deduction or exemption has been wrongly allowed or turnover is assessed at lower rate than the one applicable and in such case the Commissioner is empowered to exercise the power.

One of the jurisdictional pre-requisites for exercise of power under Section 31, therefore, is "reasons to believe", that the turnover has escaped assessment, and this power is being exercised subject to the period of limitation as set out in the provisions. The term "reasons to believe" contemplate existence of tangible material for reopening the assessment and in this case it is vehemently urged

before us that the present re-assessment proceedings are clearly based on "change of opinion" by respondent No.2, inasmuch as the petitioners had earlier received NIL assessments for FY 2014-2015 to FY 2023-24, in turn accepting the position that the assessee are not liable to pay Green Cess and NIL assessment order for FY 2023-24 is even passed after initiation of the re-assessment proceedings triggered by issuance of the show cause notices.

The existence of "reasons" is a sine qua non for holding a belief that any turnover has escaped assessment and the term "reasons to believe" postulate belief and for existence of that belief and the formation of belief and recording of reasons are imperative before reopening of any assessment for the previous Financial Years.

28. A bare reading of the impugned show cause notices in both the petitions would reveal that respondent No.2 has neither communicated any reason nor adduced a positive finding as to what would constitute "reasons to believe". The reliance placed upon the decision in case of ***State of UP Vs Aryaverth Chawal Udyog*** (supra) is aptly applicable to the case in hand where it is held, that the authority had substantiated "reasons to believe" by placing reliance on change in position of law under Section 15(c) of the Act but it is held to be not sufficient for initiating the reassessment proceedings in accordance to Section 21(1) of the UP

Trade Tax Act, 1948, as the reassessment proceedings can only be initiated if the assessing authority has "reasons to believe" that it is a case of escape assessment and not otherwise and when a statute provide for "reasons to believe", either reasons must appear on the face of the notice or they must be available in the material, which has been placed before the Authority. In no uncertain words, the principle of law is reiterated with reference to the earlier decision in ***CST Vs Bhagwan Industries (P) Ltd***[8]**.** in the following words:

> *"19. Under Section 21(1) of the Act, the re-assessment proceedings can only be initiated if the assessing Authority has "reason to believe" that there is a case of escaped assessment and not otherwise. It is now trite law that whenever a statute provides for "reason to believe", either the reasons should appear on the face of the notice or they must be available on the materials which have been placed before him. (See: Aslam Mohd. Merchant v. Competent Authority, (2008) 14 SCC 186).*
>
> *20. In context of Section 21 of the Act, the position of law was explained succinctly by this Court in CST v. Bhagwan Industries (P) Ltd., (1973) 3 SCC 265 as follows:*
>
> *"11. The controversy between the parties has centered on the point as to whether assessing Authority in the present case had reason to believe that any part of the turnover of the respondent had escaped assessment to tax for Assessment Year 1957-58. Question in the circumstances arises as to what is the import of the words "reason to believe", as used in the section. In our opinion, these words convey that there must be some rational basis for the assessing Authority to form the belief that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax for some year. If such a basis exists, the assessing Authority can proceed in the manner laid down in the section. To put it differently, if there are, in fact, some reasonable grounds for the assessing Authority to believe that the whole or any part of the turnover of a dealer has escaped assessment, it can take action under the section. Reasonable grounds necessarily postulate that they must be germane to the formation of the belief regarding escaped assessment. If the grounds are of an extraneous character, the same would*

[8] (1973) 3 SCC 265

not warrant initiation of proceedings under the above section. If, however, the grounds are relevant and have a nexus with the formation of belief regarding escaped assessment, the assessing authority would be clothed with jurisdiction to take action under the section. Whether the grounds are adequate or not is not a matter which would be gone into by the High Court or this Court; for the sufficiency of the grounds which induced the assessing authority to act is not a justiciable issue. What can be challenged is the existence of the belief but not the sufficiency of reasons for the belief. At the same time, it is necessary to observe that the belief must be held in good faith and should not be a mere pretence.

12. It may also be mentioned that at the stage of the issue of notice the consideration which has to weigh is whether there is some relevant material giving rise to prima facie inference that some turnover has escaped assessment. The question as to whether that material is sufficient for making assessment or reassessment under Section 21 of the Act would be gone into after notice is issued to the dealer and he has been heard in the matter or given an opportunity for that purpose. The assessing authority would then decide the matter in the light of material already in its possession as well as fresh material procured as a result of the enquiry which may be considered necessary."

(emphasis supplied)

29. In ***Commissioner of Income Tax, Delhi Vs Kelvinator of India Limited***[9], while testing the exercise of the power under Section 147 of the Income Tax Act, the Apex Court observed thus:-

"4..... However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to

[9] (2010) 187 Taxman 312 (SC)

check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No.549 dated 31st October, 1989, which reads as follows:

> *"7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression `reason to believe' in Section 147.-- A number of representations were received against the omission of the words `reason to believe' from Section 147 and their substitution by the `opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, `reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression `has reason to believe' in place of the words `for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same." [Emphasis supplied]*

30. Perusal of the impugned show cause notices issued to the petitioners do not disclose expression of any opinion being communicated to the petitioners or existence of any ground as regards specific, of any alleged discovery made after the completion of assessment on 13.12.2023 or any tangible evidence gathered, resulting into an inference of the turnover escaping assessment and in absence thereof we find substance in the argument advanced on

behalf of the petitioners that there do not exist any cogent reason to believe that the "turnover has escaped assessment" as the power to open the assessment as per the Constitutional Court is well defined. It is consistently held that reopening by the Assessing Officer must be based on the existence of "tangible material" and there can be no review of assessment in the guise of its reopening and any such attempt without existence of any tangible material would amount to abuse of power. In the absence of any such material, the jurisdiction to initiate assessment do not vest in the officer and assessment cannot be reopened on a mere change of opinion by the Assessing Officer.

31. It is worth pertinent to note that for the previous years, the petitioners have been assessed to the Green Cess as NIL and even the Assessment Order for the year 2023-24, which was passed, after issuing notice to the Dealer and calling him to produce books of account for determination of Green Cess liability and upon the books of accounts being produced, they were verified along with the consolidated financial accounts and the agreement of service of cargo handling, tax invoices etc., and a conclusion is reached; that the revenue is generated from the operation of the cargo handling services and there are no imports affected by the Dealer as they deal only in services. Therefore, upon verification of the invoices and

the statements produced, a conclusion is drawn that the Dealer has affected services at Berth Nos. 5, 6 and 7 to M/s JSW Energy Limited, M/s JSW Steel Limited, M/s BMM Ispat Limited, M/s Benline Agencies Pvt. Ltd., M/s Indo German International Pvt. Ltd. and since the Dealer has not purchased any substance which is hazardous causing pollution, the gross sale value of the hazardous products/substances handled by the Dealer is determined as NIL with liability of Green Cess to be NIL.

This order being passed by the appropriate Assessing Authority on 12.03.2025, clearly runs counter to the show cause notice for reassessment under Section 31 of the GVAT Act read with the Act of 2013, Rule 3(7) and Rules of 2014.

32. The respective Senior Counsels have also attempted to canvas before us that the resort to procedure under GVAT Act could not have been done in the manner set out in Rule 4, as the heading of the said provision is only 'Appeal' and clause (2) thereof cannot travel beyond the provisions of appeal under the GVAT Act, 2005, we do not intent to get into this issue, as we find that in absence of a mechanism being set out in the Green Cess Act and the Rules, for the purpose of assessment, levy and collection of Cess, it is deemed appropriate to fall back on the provisions of the GVAT Act, 2005 and Rules, in so far as they apply for the purpose

of assessment, levy and collection of Cess and as indicated, we are not persuaded to examine the case of the petitioners on this count as we are satisfied on the arguments urged before us that for exercising power of re-assessment, mere "change of opinion" is not a permissible ground and the impugned show cause notices issued to the petitioners fail to fulfil the jurisdictional pre-condition for invocation of Section 31 of the GVAT Act, which necessarily contemplate the communication or existence of "reasons to believe" that the turnover of the Dealer has escaped an assessment. The show cause notices on its careful reading are evidently deficient and provide no clue for "reasons to believe" and since we find that reassessment is a more serious venture, once assessment is complete and it cannot be merely reopened for the sake of an Officer's opinion but the exercise of this power is manifestly circumscribed by existence of certain conditions and expression "reasons to believe" postulate the belief and existence of reasons for that belief and the expression do not cover the subjective satisfaction of the particular Officer but it must be a belief of an honest and reasonable person based upon reasonable ground and tangible material and not merely a pretence.

33. This Court in the ***State of Maharashtra Vs Ketan Enterprises and Another***[10], dealing with Section 35 of the

[10] (2010) SCC On Line Bom 2201

Bombay Sales Tax Act, 1959, which involves a similar phraseology "reasons to believe", that the dealer has concealed sales or purchase of any material particulars relating to or has knowingly furnished incorrect return, observed thus:-

> *"24. The above sub-section specifically makes out that there is a distinction of substance between the concept of assessment and reassessment, it is not a one and the same thing. Once the assessment is complete, that cannot be reopened merely for asking. The authority is manifestly circumscribed by certain conditions. The power to reassess can be exercised only if those conditions exist and not otherwise. On an analysis of the relevant provisions, the material conditions prescribed for the exercise of the power to commence proceedings for reassessment are to be found under Section 35(1) of the BST Act.*
>
> *25. The existence of the reasons is a must for holding the belief that any turnover of sales or turnover of purchases of any goods has in respect of that year or part thereof escaped assessment, or has been under assessed or assessed at a lower rate, or that any deduction or other benefit referred to under Section 35(1) has been wrongly granted. The first condition thus immediately raises the question about the true import of the expression as "reason to believe" appearing in Section 35(1) of the BST Act."*

Clearly highlighting that the belief may be subjective but the reason has to be objective, this Court has held that the existence of reasons for the belief is certainly justiciable but not the sufficiency of the reasons and it is, therefore, necessary for the Assessing Officer to record reasons so that the same can be supplied to the assessee in the event of demand by him and even when the challenge is raised, the higher forum is entitled to examine, it being justiciable.

34. Another relevant aspect as to why the exercise of the power in reopening the assessment cannot be justified is that the impugned show cause notices purportedly issued under Rule 4(2) of the Rules of 2014 read with Section 31 of the GVAT Act, 2005, are evidently time-barred. Section 31(1) of the Act prescribed an outer limit of "eight years from the expiry of the year to which the tax relates" for passing an order on reassessment. The assessment, which is sought to be reopened by issuance of the impugned show cause notices covered the period from FY 2014-15 to FY 2023-24, notice being issued on 13.02.2025 and hence the proceedings are hopelessly time-barred.

It is trite position in law that when a statute prescribe a period of limitation, it must be treated as sacroscent when the assessee raised a challenge to the proposed action by stating that it was time barred because the period prescribed for initiation of proceedings had expired and in this context, we find it appropriate to rely upon the observations of the Apex Court in case of ***S. S. Gadgil Vs Lal and Company***[11]and we reproduce the relevant observations:

> *"9. A proceeding for assessment is not a suit for adjudication of a civil dispute. That an income-tax proceeding is in the nature of a judicial proceeding between contesting parties, is a matter which is not capable of even a plausible argument. The Income-Tax Authorities who have power to assess and recover tax are not acting*

[11] (1964) 53 ITR 231

as judges deciding a litigation between the citizen and the States: they are administrative authorities whose proceedings are regulated by statute, but whose function is to estimate the income of the taxpayer and to assess him to tax on the basis of that estimate. Tax legislation necessitates the setting up of machinery to ascertain the taxable income, and to assess tax on the income, but that does not impress the proceeding with the character of an action between the citizen and the State: The Commissioner of Inland Revenue v. Sneath (17 TC 149, 164); and Shell Company of Australia Ltd. v. Federal Commissioner of Taxation(1931) AC 275.

10. Again the period prescribed by Section 34 for assessment is not a period of limitation. The section in terms imposes a fetter upon the power of the Income-tax Officer to bring to tax escaped income. It prescribes different periods in different classes of cases for enforcement of the right of the State to recover tax….."

35. Another point which is pressed into service by Mr Kadam is about Section 4(2) being suffering from the vice of excessive delegation, as it failed to set out legislative guidelines or policy in relation to the assessment of Cess payable under the Act and delegated the same to the executive. Reliance is placed upon the decision of ***Kunj Behari Lal Butail and others Vs State of H.P.***[12], where it is held that the essential legislative functions cannot be delegated by the legislature and only ancillary or subordinate legislative functions are permitted to be delegated. Submitting that the power of assessment of a tax levy is an essential legislative function and statute which delegates uncontrolled and unbridled authority without prescribing the yardsticks or measures within

[12] (2000) 3 SCC 40

which the authority may be exercised, is discriminatory, arbitrary and violate Articles 14 and 19 of the Constitution.

It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act, however when such a power is given and Rules are framed availing this power, it is permissible to find out whether rules so framed fall within the scope of the general power conferred. The delegated power to legislate by making rules "for carrying out the purpose of the Act" is a general delegation without laying down any guidelines and such rules definitely cannot travel beyond the parent Act and affect the substantive rights or obligations or create disabilities not contemplated by the provisions of the Act. Before a Rule can have the effect of a statutory provision, it must satisfy two prerequisites (1) it must conform to the provision of the statute under which it is framed, and (2) it must also come within the scope and purview of the rule-making power of the authority framing the rule.

Reliance is placed upon the decision in case of ***A. N. Parasuraman and others Vs State of Tamil Nadu***[13] by the learned Senior Counsel for the petitioner in the backdrop of the provisions of the Tamil Nadu Private Educational Institutions

[13] (1989) 4 SCC 683

(Regulation) Act, 1966, which allowed the competent authority to grant or refuse permission on an application received, by taking into consideration of the particulars of the said application. The competent authority was also empowered to cancel the permission in certain circumstances and the power to examine an institution for the provision of the Act was vested in the State Government under Section 22.

The provisions of the Act are impugned on the ground that it does not lay down any guidelines for the exercise of the powers by the delegated authority as a result, the authority would be in a position to act according to its whims, and that having failed to indicate conditions for the exercise of power, the decision of the competent authority would suffer from arbitrariness.

36. On appreciating the arguments advanced, it was found that Section 6, which confers a power to refuse or grant the permission, was too wide in terms without indicating the nature of such direction or the extent within which the authority should confine itself while exercising the power. So was the provision of exemption contained in Section 22 and despite an argument advanced by the State that with reference to Section 4, the competent authority had to take into consideration the particulars supplied in the

application and which would be guiding factor for refusing or allowing the permission, it was held that the impugned sections were invalid as it confer uncanalised, unlimited and arbitrary power as the Act did not lay down any principle or policy for the guidance of exercise of the discretion in the authority.

37. The principle summarised above, being followed as a position prevailing in law, could be clearly discerned to the effect that the essential legislative function cannot be delegated, but where the law lays down the principles and affords guidance to the subordinate law-making authority, details may be left for being filled up by the executive or by other authorities vested with quasi-legislative power.

The power to fix a rate of tax is an essential legislative function, and it is urged before us that in the absence of any guidance being provided for the subordinate law-making authority, the legislation would suffer from the vice of excessive delegation and would be void as arbitrary.

Relying upon the aforesaid principle, it is urged before us that (1) process of assessment-self-assessment, scrutiny, hearing, final orders (2) process of reassessment –limitation period, conditions for reopening (3) formulation/adoption of any appellate mechanism or (4) formulation/adoption of any review/

rectification mechanism is not provided in the Act, which has left it to the complete discretion of the Competent Authority who would carry out the assessment/reassessment and such power being excessive, uncanalised, capable of being exercised in arbitrary manner is liable to be struck down.

The principle laid down in the case of ***Indian Express Newspapers (Bombay) (P). Ltd. Vs Union of India and others***[14] is invoked to urge that delegation legislation cannot travel beyond the scope of the parent legislation and for applicability of VAT and for the purpose of Green Cess, it was not open to the executive to deal with the same in delegated legislation in form of Rule 4(2) of the Green Cess Rules.

38. Meaningful reading of the provisions of the Green Cess Act of 2013 in the backdrop of its object, being a statute providing for levy and collection of Cess on the products and substances, which are the cause of pollution of the atmosphere etc., upon their handling or consumption or utilization or transportation, by following the well accepted principle of polluter pay principle, the Cess Act has defined the products and the substances which happened to be the cause of pollution. Section 4 of the Act clearly prescribes the levy at such a rate which will be determined by the

[14] (1985) 1 SC 641

State Government but not exceeding 2% of the sale value, and it also provides for the act which would result in pollution i.e. handling, utilization, consumption, combustion, transportation or movement of the products and/or substances identified by the statute to cause pollution.

Sub-Section (2) of Section 4, however has left the procedure for assessing levy and collection of the Cess to the executive. By invoking this power, the Government of Goa has enacted the Rules 2014, thereby setting out the functions and duties of the competent authority and the assessment of levy and collection of the Cess.

Who shall be subjected to such levy and from whom the Cess shall be collected under Section 4 is determined by sub-rule (1) of Rule 3 by stating that it shall be from every person who brings or causes to be brought within the State any products and/or substances at the entry point.

The manner in which the authority shall levy and collect the Cess is prescribed in the very said Rule 3, as fixing the responsibility upon the person liable to pay the Cess by filing monthly returns pursuant to obtaining registration from the competent authority from the coming into force of the Rules or from the date of accrual of his liability to pay the Cess. The rule further clarify in form of sub-rule (4) by providing that a registered

person pays Cess under Section 4 of the Act for every month in the manner prescribed and it also cast duty on the registered Dealer to furnish monthly returns indicating the value of opening stock for a month as well as the details of its purchases made along with value of import of the products, which allow the competent authority to assess the person on the basis of such return and pass order for financial year or any part of the year. Rule 3 also contemplates a procedure to assess if the return is found to be incorrect or incomplete by affording him an opportunity of rectification, and if no returns are filed, then leaving it to the competent authority to assess him to the best of its judgment by recording reasons.

Supplementing the aforesaid scheme is the power in the competent authority directing a person to pay, in addition to the Cess assessed, a penalty as prescribed. Sub-rule (1) of Rule 4 is a provision for appeal against assessment or any order passed by the competent authority, and such an appeal would be governed by Section 35 of the VAT Act, a provision contained in Chapter VI, prescribing an appeal to be preferred before the Appellate Authority and thereafter before the Tribunal. Sub-rule (2) of Rule 4 prescribes that in the absence of any specific provision being made, the provisions of the VAT Act and Rules shall apply for the purpose of assessment, levy and collection of Cess under this Rule.

The Rules also contain a reference to the provisions of the VAT Act, without incorporating them and while providing the remedy of appeal, being aggrieved by the order of assessment or any order passed by the Competent Authority to the Appellate Authority, it is prescribed that the provisions of Section 35 of the VAT Act shall apply to such an appeal. On a specific provision being made to the effect that if no provision is found in the Cess Act and the Rules, the provisions of the VAT Act and Rules would apply for the purpose of assessment, levy and collection and in such a situation, we do not agree with the contention of the respective counsel for the petitioners that the delegation to the executive under Section 4(2) is excessive. In ***Municipal Corporation of Delhi Vs Birla Cotton, Spinning and Weaving Mills, Delhi and another***[15]***,*** a Constitution Bench was confronted with the provisions of Delhi Municipal Corporation Act, 1957 comprising of power to the Corporation to levy optional taxes subject to Central Government approval and the question for determination was whether it suffered from the vice of excessive delegation of legislative power and therefore ultra vires. The test laid down to determine whether there is excessive delegation was laid in the following words:-

> *"The vice of delegation lies not in its capacity for abuse, but in its delegation beyond permissible limits and contrary to the constitutional*

[15] (1968)3 SCR 251

scheme. Undoubtedly delegation of the authority to legislate is always subject to the rule that action of the delegate which amounts to unreasonable exercise of the powers will be invalid. But that does not alter the true character of the rule against excessive delegation of legislative authority. It cannot be said that this rule may be departed from on the ground that the delegate is hedged in by controls or restrictions which will prevent it from abusing its authority. Safeguards against abuse do not alter the character of unauthorised delegation of legislative power. They cannot be a substitute for the guidance which the constitutional scheme requires that the Parliament must give to a delegate. As the validity of the constitutional protection cannot be judged in the light of what the character, capacity or the special aptitude of the delegate may be, it cannot also be adjudged in the light of the provisions made against abuse of power."

Invoking the principles laid down in the case of ***Vasantlal Maganbhai Sanjanwal Vs The State of Bombay***[16]**,** the question of delegation of legislative power was enunciated in the following words:-

"Although the power of delegation is a constituent element of the legislative power, it is well-settled that a legislature cannot delegate its essential legislative function in any case and before it can delegate any subsidiary or ancillary powers to a delegate of its choice, it must lay down the legislative policy and principle so as to afford the delegate proper guidance in implementing the same. A statute challenged on the ground of excessive delegation must therefore be subjected to two tests, (1) whether it delegates essential legislative function or power and (2) whether the legislature has enunciated its policy and principle for the guidance of the delegate."

The law on excessive delegation, being laid down in the case of ***Devi Das Gopal Krishnan Vs State of Punjab***[17]**,** guides us as below:-

[16] (1961) 1 SCR 341

[17] AIR 1967 SC 1895s

> *"The Constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is danger inherent in such a process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a Court to bold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits. But the said liberal construction should not be carried by the Courts to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities. It is the duty of the Court to strike down without any hesitation any arbitrary power conferred on the executive by the legislature."*

39. It is a trite position in law that when it comes to the power of taxation, it is necessarily a legislative function. Delegation of the fixation of rates of tax to a subordinate authority with proper guidance and subject to safeguards and limitations, is not unknown, but definitely the legislature must provide guidance for such fixation. In a case where the legislature gave power to the State Government to fix sales tax at such rates as the State Government thought fit, in ***Devi Das Gopal Krishnan*** (supra) it was held that the needs of the State and the purposes of the Act could not give sufficient guidance for the purpose of fixing

rate of sales tax by the State Government and there is clear distinction between the delegation of fixing the rate of tax like sales tax to the State Government and delegation of fixing rates of certain taxes for purposes of local taxation. Holding that the needs of the State are unlimited, the result of making delegation of a tax like sales tax to the State Government means a power to fix the tax without any limit, even if the needs and purposes of the State are to be taken into account. On the other hand, when there is a delegation of power to fix rates of tax, like the sales tax, to the State Government, it cannot be said to be excessive. In this regard, the various factors to be looked into were also culled out in the following words:-

> *"A review of these authorities therefore leads to the conclusion that so far as this Court is concerned the principle is well established that essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature. Nor is there any unlimited right of delegation inherent in the legislative power itself. This is not warranted by the provisions of the Constitution. The legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its preamble. Further it appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation."*

40. Applying the aforesaid principle, it is evidently clear to us that as far as Green Cess Act, 2013 is concerned, it has imposed the Green Cess, by prescribing the transaction on which the levy shall be paid and also has set out the maximum rate at which the Cess shall be collected, leaving only the manner of assessment to be worked out by the executive and by specifically providing that in absence of any specific provision, recourse could be taken to the provisions of Act and Rules.

The Act of 2013 has provided the incidence of Green Cess under Section 4, but the mechanism by which this Cess shall be assessed and collected is left to the Government, which is conferred with the power of making Rules for carrying out the purpose of the Act. The manner in which the Cess shall be collected is provided in the Rules, along with a detailed mechanism being carved out as to how the liability of Cess imposed under Section 4 of the Green Cess Act shall be met. It is a well-known device for the Legislation to fix the tax incidence/burden of tax as it is a legal authority to levy cess/tax and the machinery for its implementation including its collection to be provided by the Rules and as long as these Rules do not contradict a counter to the statutory provisions, the tax is permitted to be collected in accordance with the provisions in the subordinate legislation, as the collection of tax along with its manner is always be prescribed by the Rules. Therefore, we do not

find that Rule 3 of the Rules of 2014 suffers from the vice of excessive delegation by the legislation, and since we do not find substance in the submissions of Mr Kadam, we decline to interfere with Rule 3 on the said ground.

41. Since we have already expressed above that the impugned show cause notices issued to the petitioners suffer from the vice of arbitrariness; firstly on the ground that the Petitioners do not fall within the ambit of Section 4 of the Act of 2013 read with Rule (3) of the Rules of 2014 as they are merely Service providers and they have neither brought or caused to be brought goods or substances, which has caused pollution, into the State, which has caused pollution on its handling and secondly on the ground that the power of reassessment attempted to be exercised is not based on principles of satisfaction being reached on a reasonable belief and in fact neither of the show cause notice display any 'reasons to believe' nor have those reasons be placed before us except stating that since there was a stay operating in the proceedings raising challenge to the validity of the statute and the Court had restrained any coercive action being taken, the Green Cess was not collected.

This reason, however, failed to convince us about the action on the part of the Commissioner to reopen the assessment proceedings in form of reassessment by issuing show cause notices.

As a result of the above discussion, the writ petitions filed by the petitioners are allowed by quashing and setting aside the show cause notices dated 13.02.2025 and 23.05.2025 issued to the respective petitioners for the respective years. However, the challenge to Rule 3 of the Goa Cess on Products and Substances Causing Pollution (Green Cess) (Functions and Duties of the Competent Authority, Assessment, Levy and Collection of Cess) Rules, 2014, on the ground it being ultra vires of the Goa Cess on Products and Substances Causing Pollution (Green Cess) Act, 2013, according to us has no merit and substance and we dismiss the said challenge.

NIVEDITA P. MEHTA, J **BHARATI DANGRE, J**