Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 20381 of 2024

M/s. Tata Steel Limited (formerly Tata Steel BSL Limited)
versus
Union of India & Ors.

with

WPA 23654 of 2024

M/s. Tata Steel Limited (formerly Tata Steel BSL Limited)
versus
Union of India & Ors.

with

WPA 23656 of 2024

M/s. Tata Steel Limited (formerly Tata Steel BSL Limited)
versus
Union of India & Ors.

with

WPA 23659 of 2024

M/s. Tata Steel Limited (formerly Tata Steel BSL Limited)
versus
Union of India & Ors.

For the petitioner : Mr. Sujit Ghosh, Sr. Adv.
Mr. Avra Mazumder
Ms. Salona Mittal
Mr. Suman Bhowmick
Ms. Alisha Das
Mr. Samrat Das
Ms. Elina Dey
Mr. Siddhartha Das
Mr. Sourendra Nath Banerjee

For the Union of India : Mr. P.K.Bhowmik
Mr. Soumen Bhattacharjee
Mr. Ankan Das
Ms. Shradhya Ghosh

For the CGST Authorities: Mr. Tushar Kr. Sathpathy
Mr. Debasish Sathpathy
Ms. Aishwarya Rajyashree
Mr. Chandra Gupta Kamal

Heard on : 01.05.2025, 20.05.2025 & 10.07.2025.

Judgment on : **12th November, 2025.**

Raja Basu Chowdhury, J:

1. Challenging the common final order dated 16th April, 2024 passed by the learned Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (hereinafter referred to as "CESTAT") in Excise Appeal Nos.252 of 201, 704 of 2011, 652 of 2012 and 281 of 2011 thereby, holding the appeals to have abated consequent upon the corporate insolvency of the petitioner's erstwhile entity, M/s. Bhusan Steel Ltd. (hereinafter referred to as the BSL), the instant writ petitions under Article 226/227 have been filed.
2. The writ petitions have since been assigned before this Court by the Hon'ble the Chief Justice vide order dated 7th February, 2025 and are accordingly, taken up for consideration together.
3. The facts giving rise to the instant writ petitions are common and are noted hereinbelow.
4. The petitioner is a company within the meaning of the Companies Act, 2013 (hereinafter referred to as the "Companies Act") and as is apparent from the cause title of the writ petitions, the petitioner is

represented through its Chief Legal counsel namely Mr. Vikash Mittal, a resident in the state of Jharkhand.

5. The petitioner also contends that its directors are citizens of India and thus, entitled to the protection of their fundamental/constitutional and statutory rights though no disclosure as regards the names of such directors have been made.

6. The directors have also not come forward to represent themselves as parties in the writ petitions.

7. According to the petitioner, at all material times BSL had set up a 5.6 MTPA integrated steel plant which included a sponge iron plant having 10 kilns, coke oven plant, blast furnaces, steel making plants, hot rolling mill and cold rolling mill for manufacture and sale of long and flat rolled steel products. The said BSL procured steel structures, parts, accessories and cement to be used in the manufacture of steel structure, prefabricated RCC items, and for making foundations for installing machinery. Accordingly, by treating such items to be 'capital goods', the said BSL had taken credit of the duty paid thereon.

8. Subsequently, five several show-cause notices came to be issued on the said BSL covering the periods from August, 2005 to July, 2009, seeking to disallow the CENVAT credit on the aforementioned items for the above periods.

9. From the particulars of the show cause notices which are detailed in the writ petitions, it would demonstrate that a sum of

Rs.151,98,18,355/-, Rs.5,01,82,810/-, Rs.4,78,91,060/- and Rs.3,04,17,110/- were claimed and demanded on account of disallowing CENVAT credit for the above period.

10. The show cause notices culminated in the orders in original dated 31st January, 2011, 29th April, 2011, 24th July, 2012 and 4th February, 2011 thereby disallowing CENVAT credit to the extent of Rs.140,46,88,065/-, Rs.2,74,86,476/-, Rs.2,09,40,479/- and Rs.15,46,214/- respectively, alleging that the CENVAT credit availed by the said BSL on the steel structures, parts and accessories as well as cement are “supporting structures” and thus not covered under the definition of “capital goods”.

11. According to the petitioner, the said BSL under the cover of protest letters all dated 24th March, 2011, while noting that they are not in agreement with the reasons of disallowing CENVAT credit and while notifying that they were filing appeals against the same before the tribunal confirmed to have reversed the CENVAT credit of Rs.140,46,88,065/-, Rs.2,74,86,476/-, Rs.2,09,40,479/- and Rs.15,46,214/- respectively under the protest, as per details attached to such letter. To morefully appreciate the same the details of the reversal of the CENVAT credit as attached to one such letter in the form of a chart is extracted hereinbelow:

Reversal of Cenvat Credit in respect of OIO No. CCE/BBSR-1/16-20/ 2011 dated 31.01.2011 under protest

Amount as per SCN			151,98,18,355
Less: Amount wrongly included as per OIO			68, 82,788
Net Disputed Amount			151,29,35,567
Less: Cenvat credit of steel already Reversed			
Steel & Cement A/c			
Part II NO & Date	Amount		
408 dtd 30.10.07	52113		
10 dtd. 10.10. 07	82292		
2910 dtd 31.08.07	2970		
2296 dtd 30.01.08	52653		
2179 dtd 01.08.08	135754		
3699 dtd 01.10.08	1299877		
5875 dtd 31.01.09	101150		
6018 dtd 01.02.09	130843		
451 dtd 01.05.09	31312		
1180 dtd 04.02.11 (Under Protest)	1398518913	1400407877	
Capital Goods A/c			
Part II NO & Date	Amount		
59 dtd 14.04.07	31826		
61 dtd 14.04.07	18813		
112 dtd 19.04.07	62234		
119 dtd 21.04.07	14838		
168 dtd 26.04.07	32735		
210 dtd 30.04.07	34519		
212 dtd 30.04.07	24963		
4839 dtd 04.02.11	822813		
4840 dtd 04.02.11	2763699	3806440	
Service Tax A/c			
2055 dtd 31.03.2009 (used from steel A/c in July 07 Debited)		473748	
		1404688065	1404688065
Allowed as per OIO			108247502

Bhushan Steel Ltd.
Authorised Signatory

12. The records would reveal that the said BSL had carried the orders in original dated 31st January, 2011, 29th April, 2011, 24th July, 2012 and 4th February, 2011 in appeal before the CESTAT which were registered as Excise Appeal Nos. 252 of 2011, 704 of 2011, 652 of 2012 and 281 of 2011 respectively.

13. By orders dated 19th July, 2012, 5th November, 2012, 6th May, 2014 and 5th November, 2012 the CESTAT/ Tribunal at the

instance of BSL waived the requirement of the pre-deposit and stayed the recovery of the equivalent penalty amounts during the pendency of the appeals.

14. During the pendency of the appeals before the tribunal, an insolvency proceeding was initiated by the State Bank of India under the provisions of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC"). The insolvency petition was admitted on 26th July, 2017 whereupon an interim resolution professional (in short, the 'IRP') was appointed who invited claims from various creditors of the said BSL.

15. The respondent no.2 being one of the operational creditors of the said BSL, within the meaning of Section 5(20) of the IBC also filed its claim of operational debt before the IRP in form B along with accompanying affidavits dated 1st November, 2017.

16. The petitioner contends that despite filing of such claim of operational debt, no claim was filed by the respondent no.2 with regard to the amount demanded under the order in original which included both tax and penalty and formed subject matter of appeal. On the basis of the public announcement inviting resolution plan from the prospective resolution applicants the petitioner submitted a resolution plan for taking over BSL as a going concern. According to the petitioner, such resolution plan dealt with both financial debts and operational debts.

17. According to the petitioner, having regard to the provisions of clauses 8.2.6 and 8.6.10 of the resolution plan which stated that claims of operational creditors including tax dues of the governmental agencies as they stood prior to approval of the resolution plan, whether claimed or not, would stand extinguished. Clause 8.7 of the plan also provided that the petitioner would take over the assets of BSL which included all receivables.

18. It is also the case of the petitioner, that the plan was approved by the committee of the creditors with an affirmative voting share of 99.80% and thereafter the National Company Law Tribunal (in short NCLT), by order dated 15th May, 2018 observed that the resolution plan conformed to all rigors, mandates and requirements as required and/or prescribed under the IBC.

19. The order of the NCLT was challenged before the National Company Law Appellate Tribunal (in short, the appellate tribunal). The appellate tribunal by its order dated 10th August, 2018 dismissed the appeal and affirmed the order of the NCLT.

20. The said BSL was then renamed as “Tata Steel BSL Limited” on 27th November, 2018. An application recording the factum of change of name was filed before the tribunal, and the same was allowed vide order dated 23rd November, 2019.

21. Still later, the petitioner had filed a miscellaneous application to bring on record the developments regarding the corporate insolvency resolution process of the said BSL, *inter alia*, contending

that the demands forming subject matter of appeals are not payable in terms of the approved resolution plan, having regard to the provisions contained in the IBC.

22. During the pendency of such proceeding before the CESTAT, Tata Steel BSL Limited merged with the petitioner with effect from 11th November, 2021. To bring on record the factum of merger a further application was filed before the CESTAT which was also allowed on 26th September, 2023. Subsequently, the petitioner filed yet another miscellaneous application being MA. 75784 of 2023 to bring on record the legal position regarding treatment of operational claims existing prior to approval of the resolution plan.

23. It was also submitted that the CENVAT credit reversed by BSL under protest was an uncrystallized claim and hence, had extinguished by virtue of the approval of resolution plan of BSL. Accordingly, the petitioner prayed for refund of Rs. 140,46,88,065/, Rs.2,74,86,476/-, Rs.2,09,40,479/- and Rs.15,46,214/- respectively on account of CENVAT credit reversed by BSL under protest. The said appeals came to be disposed of by a common judgment and order dated 16th April, 2024 passed by the CESTAT, *inter alia*, holding that by operation of Rule 22 of the CESTAT (Procedure) Rules, 1982 and by application of the judgment delivered by the Hon'ble Supreme Court in ***Ghanashyam Mishra and Sons Pvt. Ltd v. Edelweiss Asset Reconstruction Company Ltd.,*** reported in **(2021) 9 SCC 657**, the appeals stood abated and

therefore the same must be dismissed. Although, the order impugned is under challenge, having regard to the preliminary objection as regards the maintainability of the writ petition, Mr. Ghosh Learned Senior advocate representing the petitioner in the above writ petitions has contended that though the original orders disallowing the CENVAT credit emanates from a proceeding initiated by the authorities having their office in the state of Orissa and though ordinarily, an order passed by the tribunal exercising jurisdiction over several High Courts can be challenged before the jurisdictional High Court from where the original order emanates, such position is however, different when a challenge is thrown to an order passed by the tribunal either by invoking the provisions of Article 227 of the Constitution of India or by invoking the provisions of Article 226 of the Constitution of India and especially when the challenge is on a jurisdictional issue on the tribunal having failed to have exercised jurisdiction or exceeded its jurisdiction and/or the order suffering from violation of principles of natural justice. He has also in course of his argument distinguished between the exercise of authority of an appellate court and a court exercising jurisdiction under Article 226/227 of the Constitution of India.

24. According to him, in case of exercise of jurisdiction under Article 227 of the Constitution of India, the factum of presence of tribunal within the territorial limits of the jurisdiction of a High Court is sufficient for the High Court to exercise jurisdiction. Such a power

is inherent in the High Court exercising territorial jurisdiction over the tribunal, unlike, the power of the High Court to exercise Appellate jurisdiction under Section 35G of the Central Excise Act, 1944 **(hereinafter referred to as the "said Act").** In support of his aforesaid contention, he relies on the following judgments:

I. ***Waryum Singh & Anr. v. Amarnath & Ors.***, reported in **(1954) 1 SCC 51**,

II. ***Umaji Keshao Meshram & Ors. v. Radhika Bai & Anr.***, reported in **1986 Supp SCC 401**, and

III. ***Surya Devi Rai v. Ram Chander Rai & Ors.***, reported in **(2003) 6 SCC 675**.

25. Independent of the above, though the original proceeding emanates from outside of the state however, having regard to the tribunal/CESTAT exercising jurisdiction within the territorial limits of the jurisdiction of this Court, part cause of action is said to have arisen for the same to be questioned in exercise of the powers under Article 226 of the Constitution of India. In this context Mr. Ghosh has drawn attention of this Court to the scope of Article 226 of the Constitution of India as it stood prior to the amendment of the Constitution of India effected by the Constitution (Forty-second Amendment) Act, 1976 and the scope and effect of the case of ***Lt. Col. Khajoor Singh v. Union of India***, reported in **AIR 1961 SC 532**. While distinguishing the case of ***Ambica Industries v. Commissioner of Central Excise*** reported in **(2007) 6 SCC 769**,

he would submit that notwithstanding the Supreme Court distinguishing the judgment delivered in the case of ***Kusum Ingots & Alloys Ltd. v. Union of India***, reported in **(2004) 6 SCC 254** which is an authority for the proposition that the place from where the appeal and revisional order is passed may give rise to a part of cause of action although the original order was at a place outside to the said area, held that such proposition if accepted, the same would lead to giving rise to the problem of forum shopping and would also lead to an anomalous result, however notwithstanding the observing as above, in paragraph 17 of such judgment the Hon'ble Supreme Court did not doubt the authority of the High Court to exercise jurisdiction under Article 226/227 of the Constitution of India for issuance of writ of certiorari in respect of an order passed by subordinate Court within its territorial jurisdiction.

26. On the scope of exercise of powers under the Article 227 of the Constitution of India, he has relied on the following judgments:

I. ***Hari Vishnu Kamath., v. Syad Ahmed Ishaque***, reported in **(1954) 2 SCC 881.**

II. ***Suraj Woollen Mills v. Collector of Customs Bombay***, reported in **1998 (46) DRJ (DB)**

III. ***Syed Yakoob v. K. S. Radhakrishnan & Ors.***, reported in **(1963) SCC OnLine SC 24**

IV. **AIRCEL Limited v. The Commercial Tax Officer & Anr.**, in WP(C) No. 1055 of 2013 [Unreported judgement]

V. ***Union of India v. State of Haryana***, reported in **(2000) 10 SCC 482.**

27. On the scope of territorial jurisdiction of this Court to entertain this petition, reliance has been placed on the following judgments:

I. **Jayaswals Neco Limited v. Union of India,** in WP(C) No. 2103 of 2007 (Unreported judgement)

II. ***Ambica Industries*** *(Supra)*

III. ***Canon Steels (P) Limited v. Commissioner of Customs***, reported in **(2007) 14 SCC 464**.

IV. ***M/s. Sanjos Jewellers & Ors. v. Syndicate Bank & Ors.***, reported in **2007-4-L.W. 473**.

28. On merits, it has been submitted that the reversal of CENVAT Credit by the said BSL was under protest and as such ought to have been treated as a pre-deposit for all practical purposes. In support of such contention, reliance has been placed on the following judgments:

I. ***VVF (India) Ltd. v. State of Maharashtra & Ors.***, reported in **(2022) 13 SCC 644**.

II. ***Oswal Chemicals and Fertilizers Ltd. v. Commissioner of Central Excise, Bolpur***, reported in **(2015) 14 SCC 431**.

29. He has also placed reliance on the judgment delivered in the case of ***Ruchi Soya Industries Ltd. & Ors. v. Union of India & Ors.*****, reported in (2022) 6 SCC 343.**

30. In the facts stated hereinabove, since the tribunal/ CESTAT failed to exercise jurisdiction by holding that by operation of Rule 22 of the CESTAT(Procedure) Rules, 1982 (herein after referred to as the said rules) and by applying the judgment delivered in the case of ***Ghanashyam Mishra and sons Pvt. Ltd*** (supra) the appeal had abated and accordingly has dismissed the application as infructuous, which on the face of it is a clear act of failure to exercise jurisdiction by erroneous application of the provisions. This Court has a power and competence to correct such manifest error by setting aside the order dated 16th April, 2024 and allowing the refund of Rs. 140,46,88,065/-, Rs.2,74,86,476/-, Rs.2,09,40,479/- and Rs.15,46,214/-.

31. *Per contra*, Mr. Sathpathy, learned advocate appears on behalf of the respondent nos. 2 and 3 and has raised the point of maintainability. At the very outset, he has contended that this Court does not have the jurisdiction to entertain the writ petitions, *inter alia*, on the ground that though, the CESTAT was exercising jurisdiction within the territorial limits of this Court, however, the parent order that was under challenge was from Orissa and as such the jurisdictional High Court to challenge the same was Orissa High Court and not the High Court at Calcutta. Independent of the

above, he would submit that the order passed by the CESTAT is an appealable order under Section 35G of the said Act. In support of his aforesaid contention, he has placed reliance on the judgment delivered in the case of ***Ambica Industries*** (supra) and the judgment delivered in the case of ***Kusum Ingots & Alloys Ltd.*** (supra) has duly been considered, wherein it has been held that the said judgment of ***Kusum Ingots*** is a decision for an authority for the proposition that the place from where an appellate order or revisional order is passed, may give rise to a part of a cause of action although, the original order was at a place outside the said area. According to him, it is only when a part cause of action arises within one or the other High Courts, it will be for the petitioner to choose his forum. However, if an appeal is provided under a statute, the appeal cannot be filed before different Courts at the sweet will of the party aggrieved from the decision of the tribunal and in such case the doctrine may not be invoked. He has also placed reliance on the judgment delivered in the case of ***M/s Super Sales India Limited v. Customs Excise & Service Tax Appellate Tribunal,*** reported in **2017 SCC OnLine Mad 29641** on the scope of exercise of powers of a writ Court to exercise jurisdiction, in a challenge to a final order passed by the CESTAT, especially when, an appellate forum is available. Having regard thereto, it is submitted that the ordinary remedy provided for under Section 35G of the said Act cannot be undermined.

32. Having heard the learned advocates for the respective parties, I am of the view that the following question needs to be addressed: -

a. Whether the High Court, in exercise of its jurisdiction can correct jurisdictional errors to keep the tribunal within its territorial jurisdiction in bounds by invoking the provisions of Article 226/227 of the Constitution of India notwithstanding, not being a jurisdictional high Court.

b. Whether the Tribunal had failed to exercise jurisdiction in not adjudicating as to whether the payments made in relation to such adjudication orders which forms subject matter of challenge in the appeals could constitute a claim by the respondents and whether consequent upon approval of the resolution plan, the respondents having not included the reversal amount of the CENVAT credit in its claim in Form B, the said demand is said to have extinguished, having regard to clause 8.2.6 and 8.6.10 of the approved resolution plan.

33. I find, admittedly, the original proceedings emanate from outside of the state of West Bengal. The petitioner, in the instant case, does not, however, seek to invoke the jurisdiction of this Court on the ground that part cause of action had arisen within the jurisdictional/ territorial limit of this Court, but by reasons of the Tribunal exercising jurisdiction within the jurisdiction of this Court.

I find that the petitioner by placing reliance on ***Lt. Col. Khajoor Singh*** (supra) case and while distinguishing the judgment delivered in the case of ***Ambica Industries*** (supra) has contended that though permitting the petitioner to challenge an order on merit passed by the Tribunal wherein the original proceedings emanates from outside the jurisdiction of this Court would lead to forum shopping, however, the authority of the High Court to exercise jurisdiction under Article 227 of the Constitution of India for issuance of writ of certiorari in respect of order passed by subordinate Court within its territorial jurisdiction, to keep such subordinate Courts within its bound cannot be doubted. On the scope of issuance of writ of certiorari, I find that the petitioner has placed strong reliance on the judgment delivered in the case of ***Hari Vishnu Kamath*** (supra) and in particular paragraph 24 and 25 thereof. To appropriately appreciate the same, the said paragraphs are extracted below:

> ***"24.*** *Then the question is whether there are proper grounds for the issue of certiorari in the present case. There was considerable argument before us as to the character and scope of the writ of certiorari and the conditions under which it could be issued. The question has been considered by this Court in Parry & Co. Ltd. v. Commercial Employees Assn. [Parry & Co. Ltd. v. Commercial Employees Assn., (1952) 1 SCC 449 : 1952 SCR 519] , G. Veerappa Pillai v. Raman & Raman Ltd. [G. Veerappa Pillai v. Raman & Raman Ltd., (1952) 1 SCC 334 : 1952 SCR 583] , Ebrahim*

Aboobakar v. Custodian General [Ebrahim Aboobakar v. Custodian General, (1952) 1 SCC 798 : 1952 SCR 696] and quite recently in T.C. Basappa v. T. Nagappa [T.C. Basappa v. T. Nagappa, (1954) 1 SCC 905 : AIR 1954 SC 440] . On these authorities, the following propositions may be taken as established:

24.1. *Certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.*

24.2. *Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.*

24.3. *The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior court were to rehear the case on the evidence, and substitute its own findings in certiorari. These propositions are well settled and are not in dispute.***"**

34. It may, however, be noted that Mr. Sathpathy, learned advocate representing the respondents, has outrightly claimed that the writ petition cannot be entertained, primarily by reasons of the original proceedings emanating from outside the state, and the

jurisdictional Court, in the instant case, being the Orissa High Court, this Court ought not to exercise jurisdiction. He has also contended that the order impugned is an appealable order within the meaning of Section 35G of the said Act and as such a writ petition ordinarily would not lie. Despite the aforesaid, on the issue of scope and powers of this Court to entertain a challenge in respect of an order passed by an inferior Court exercising jurisdiction within its territorial limits/ jurisdiction to keep such Courts within its bound by exercising supervisory jurisdiction under Article 227 of the Constitution of India cannot been doubted. The judgement delivered in the case of ***Ambica Industries*** (supra) also recognizes the same. On similar terms the other judgment relied on by Mr. Sathpaty in the case of ***M/s Super Sales India Limited*** (supra), also recognizes the power of the writ Court to exercise jurisdiction in the exceptional circumstances as culled out therein, notwithstanding the appellate remedy, though, the case is confined to exercise of jurisdiction under Article 226 of the Constitution of India and does not deal with the powers of the High Court exercising supervisory jurisdiction to keep the subordinate Courts within its bounds.

35. Thus, upon deciding the first question, having regard to the respective arguments advanced by the learned advocates for the parties, it has become necessary to examine the order passed by the CESTAT/Tribunal for deciding the second question. For the said

purpose, it may be noted here that the order impugned has been passed while dealing with the application being MA. 75784 of 2023, wherein the petitioner have sought for refund of Rs. 140,46,88,065/-, Rs.2,74,86,476/-, Rs.2,09,40,479/- and Rs.15,46,214/- of CENVAT credit, which had been reversed by the said BSL under protest in respect of the impugned demand. It may be recalled that originally the said BSL had availed CENVAT credit on steel structures, parts and accessories as well as cement. The respondents alleging that the same are "supporting structures" and thus were not covered under the definition of capital goods had issued show-causes. According to the petitioner, amendment of the definition of "capital goods" by insertion of explanation-2 to Rule 2(k) of the CENVAT Credit Rules, 2004 was merely clarificatory and thus, retrospective in nature. Unfortunately, the four several show-cause notices culminated in the order dated 31st January, 2011 and the demand of Rs. 140,46,88,065/-, Rs.2,74,86,476/-, Rs.2,09,40,479/- and Rs.15,46,214/- were raised against BSL for the period from 1st August 2005 to 31st December, 2006 and 1st February, 2007 to 6th July, 2009 by disallowing CENVAT Credit availed by the said BSL on steel structures, parts and accessories as well as cement alleging that the same are "supporting structures" and thus, were not covered under the definition of capital goods. Challenging such order, the said BSL had preferred the appeals.

36. According to the petitioner, BSL under cover of protest letters all dated 24th March, 2011 while noting that they are not in agreement with the reasons of disallowing CENVAT credit and while notifying that they were in the process of filing appeals against the same before the tribunal confirmed to have reversed the CENVAT credit of Rs.140,46,88,065/-, Rs.2,74,86,476/-, Rs.2,09,40,479/- and Rs.15,46,214/- respectively under the protest, as per details attached to such letter.

37. Later, appeals were filed, which were registered as Excise Appeal Nos. 252 of 2011, 704 of 2011, 652 of 2012 and 281 of 2011. By order dated 19th July, 2012, 5th November, 2012, 6th May, 2014 and 5th November, 2012, the CESTAT/Tribunal at the instance of BSL waived the requirement of the pre-deposit and stayed the recovery of equivalent penalty amount during the pendency of the appeals. As noted above, it is during the pendency of the above appeals before the CESTAT that the insolvency proceeding was initiated by State Bank of India under the provisions of the IBC and the insolvency petition was admitted on 26th July, 2017, whereupon an IRP was appointed, who had invited claims from various creditors of BSL. According to the petitioner, the respondents as an operational creditor within the meaning of Section 5(20) of the IBC, though had filed its claim of operational debt before the IRP in form-B, along with accompanying affidavit dated 1st November, 2017, no claim was filed with regard to the amount demanded in the orders in

original, which included both tax and penalty. Later, the resolution plan was approved, which authorised the petitioner to take over the assets of BSL including all its receivables. Challenge to such approval plan ultimately, did not succeed. It is in the backdrop as aforesaid the above application had been filed.

38. The CESTAT/Tribunal has, however, by its order dated 16th April, 2024 by considering the judgment delivered in the case of ***Ghanashyam Mishra and Sons Pvt. Ltd*** (supra) and the said rules has returned a finding that since the appeals had abated the CESTAT/Tribunal has become *factious officio* and has also concluded that the impugned orders in original, which forms subject matter of challenge in the appeals, had stood merged with the order of NCLT dated 15th May, 2018, approving the resolution plan. Consequentially, the application was accordingly disposed of. In this context, it may be borne in mind that the argument of the petitioner has been that the pre deposit amount which had been deposited along with the appeal or prior to the appeals could not have been held back, even if, the appeals had abated. According to the petitioner even prior to the assessment order, a payment made, can be adjusted against pre-deposit required for filing of an appeal. In support of such contention reliance has been placed on the judgment delivered in the case of ***VVF (India) Ltd.*** (supra), ***Vinod Metal v. State of Maharashtra & Ors.***, reported in **2023 SCC OnLine Bom 2009**, ***ACC Ltd. v. Commissioner of CGST***, reported

in **2024 SCC OnLine CESTAT 679**, ***Harbicides India Ltd. v. Commissioner of Central Goods and Service Tax, Customs and Central Excise***, reported in **2009 SCC OnLine CESTAT 1480** and ***Oswal Chemicals and Fertilizers Ltd.*** (supra). I find while in the case of ***VVF (India) Ltd.*** (supra) the Hon'ble Supreme Court by noting the provisions of Section 26(6-A) of the MVAT Act, had observed that under the provisions of Section 26(6-A) of the MVAT Act, the appellant was liable to pay 10% of the tax disputed together with the filing of the appeal which was a condition precedent for maintaining the appeal. As such, by taking note of the amount deposited under protest it was held that there is no reason why the amount which was paid under protest should not be taken into consideration. The Hon'ble Supreme Court had also observed that the amount which had been deposited by the appellant prior to the order of assessment cannot be excluded from consideration, in absence of statutory language to that effect since, a taxing statute must be construed strictly and literally. The observations made in the said judgment were obviously based on the applicable law of Section 26(6-A) of the MVAT Act, which required 10 per cent of the amount of tax, as demanded in pursuance of the order of assessment, to be paid as a condition precedent for filing the appeal.

39. The judgment delivered in the case of ***Vinod Metal*** (supra) deals with the CGST Act. A perusal of Section 107(6) of the said Act

makes the position abundantly clear as the same specifically provides that no appeal shall be filed under sub-section (1) of Section 107 of the CGST Act, unless, the appellant has paid in full the amount of tax, interest, fine, fee and penalty arising out of the order impugned as admitted by him and a sum equal to 10 per cent of the remaining amount of tax in dispute, arising from the said order subject to a maximum of 25 crores, in relation to which the appeal has been filed.

40. The judgment delivered by CESTAT in the case of ***ACC Ltd.*** (supra) also considers the case of ***VVF (India) Ltd.*** (supra) and the scope and effect of mandatory pre-deposit for maintaining an appeal under section 35 of the Central Excise Act (herein-after referred to as the said Act).

41. In this context, it must be borne in mind that Section 35F of the said Act as amended specifically bars filing of any appeal, unless the appellant has deposited seven and a half per cent of the duty in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Commissioner of Central Excise. Provided that the amount required to be deposited under this section shall not exceed rupees ten crores and provided that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance

(No.2) Act, 2014. To morefully appreciate the above provisions, the relevant Section 35F of the said Act is extracted hereinbelow:

> ***"35-F. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal****.—The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal—*
>
> *(i) under sub-section (1) of Section 35, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the [Principal Commissioner of Central Excise or Commissioner of Central Excise];*
>
> *(ii) against the decision or order referred to in clause (a) of sub-section (1) of Section 35-B, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;*
>
> *(iii) against the decision or order referred to in clause (b) of sub-section (1) of Section 35-B, unless the appellant has deposited ten per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:*
>
> *Provided that the amount required to be deposited under this section shall not exceed Rupees Ten crores:*
>
> *Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.*

Explanation.—For the purposes of this section "duty demanded" shall include,—

(i) amount determined under Section 11-D;

(ii) amount of erroneous CENVAT credit taken;

*(iii) amount payable under Rule 6 of the CENVAT Credit Rules, 2001 or the CENVAT Credit Rules, 2002 or the CENVAT Credit Rules, 2004.]***"**

42. I find that the said Section 35F had been substituted with effect from 6th August, 2014. Prior to such amendment, Section 35F read as follows:

"35F. Deposit, pending appeal of duty demanded or penalty levied. *– Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of central excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied:*

Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such condition as he or it may deem fit to impose so as to safeguard the interest of revenue.

Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or penalty levied under the first proviso, the

Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing.

Explanation. – For the purposes of this section "duty demanded" shall include, -

(i) amount determined under section 11D;

(ii) amount of erroneous CENVAT credit taken;

(iii) amount payable under rule 57CC of Central Excise Rules, 1944;

(iv) amount payable under rule 6 of CENVAT Credit Rules, 2001 or CENVAT Credit Rules, 2002 or CENVAT Credit Rules, 2004;

*(v) interest payable under the provisions of this Act or the rules made thereunder.***"**

43. Having regard to the above, and noting that the order of waiver of the pre deposit by the tribunal, and the second proviso to section 35F of the said Act, as amended by Finance (No.2) Act, 2014, I have no doubt in my mind that there was no mandatory pre-deposit required to be made for maintaining the above appeals. The reversal of CENVAT Credit to the extent of Rs. 140,46,88,065/-, Rs.2,74,86,476/-, Rs.2,09,40,479/- and Rs.15,46,214/- by BSL., was voluntary and not a pre-deposit within the meaning of the pre amended Section 35F of the said Act, especially when waiver of pre deposit was sought for and was granted, unlike the amended section 35F, which mandatorily requires the pre deposit to maintain the appeal. In the instant case, admittedly, the original corporate debtor BSL has been wound up and ceased to exist from the date of

the order passed by the NCLT. I find that the entire case of the petitioner proceeds on the premise that notwithstanding the abatement of the appeals, the amount deposited by the said BSL by way of reversal of CENVAT credit is required to be returned to them, as there is no authority in law for the department to retain the said amount which was essentially in nature of security deposit. In this context, the petitioner has placed reliance on the judgment delivered in the case of ***Ruchi Soya Industries Ltd. & Ors.*** (supra). To morefully appreciate the same the relevant paragraphs of the above judgment are reproduced hereinbelow: -

> ***"10.*** *We find that the present appeals are squarely covered by the law laid down by this Court in Ghanashyam Mishra & Sons (P) Ltd. [Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657 : (2021) 4 SCC (Civ) 638] It will be relevant to refer to para 102 of the said judgment which reads as under : (SCC p. 716)*
>
> *"102. In the result, we answer the questions framed by us as under:*
>
> *102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be*

entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

102.2. The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.

102.3. Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."

11. *Admittedly, the claim in respect of the demand which is the subject-matter of the present proceedings was not lodged by Respondent 2 after public announcements were issued under Sections 13 and 15 IBC. As such, on the date on which the resolution plan was approved by the learned NCLT, all claims stood frozen, and no claim, which is not a part of the resolution plan, would survive.*

12. *In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim of the respondent, which is not part of the resolution plan, does not survive. The amount deposited by the appellant at the time of admission of the appeals along with interest accrued thereon is directed to be refunded to the appellant."*

44. In the light of the above it is thus, important to consider whether the original demand consequent upon payment made by the petitioner survived and whether the reversal of CENVAT Credit constitutes a claim/debt within the meaning of Section 3, clause (6)

and (11) of the IBC. It is also necessary in context with the above to consider the scope of the resolution plan, especially paragraphs 8.2.6 and 8.6.10 thereof which deals with the treatment of claims, and effect thereof on the operational creditors and other creditors, including the effect on the government dues and taxes. However, before proceeding further, it is necessary to examine what constitutes claim within meaning of IBC. It is thus relevant to refer to clauses (6), (10), (11) and (12) of Section 3 of the IBC.

> *"(6) "claim" means—*
>
> *(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;*
>
> *(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;"*
>
> *"(10) "creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;"*
>
> *"(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;"*
>
> *"(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;"*

45. It is well settled principle of law that all provisions in the statute have to be construed in context with each other and no provision can be read in isolation. I find that the Hon'ble Supreme Court while interpreting the provisions of the IBC in the case of ***Kotak Mahindra Bank Limited v. A. Balakrishnan***, reported in **(2022) 9 SCC 186** has noted that default has to be defined to mean non-payment of debt. The debt has been defined to mean a liability or obligation in respect of a claim which is due from any person and includes any financial debt or operational debt. A claim means a right to payment whether or not such right is reduced to judgement, fixed, disputed etc. In other words, the Court held that the claim would include a right to payment whether or not such right is reduced to judgement. Having regard to the above observations it is necessary to consider the scope and effect of the paragraphs 8.2.6 and 8.6.10 of the resolution plan. To morefully appreciate the same paragraphs 8.2.6 and 8.6.10 of the resolution plan which deals with the treatment of claims, and the effect thereof on the operational creditors and other creditors including the effect on the governmental dues and taxes, are extracted hereinbelow;

> ***"8.2.6. Treatment of claims in respect of contravention of Applicable Laws (including Taxes)***
>
> *All claims that may be made or arising against the Company in relation to any payments required to be made by the Company under Applicable Law (including Taxes), or in relation to any breach, contravention or non-compliance of any Applicable Law (whether or not such claim was notified*

to or claimed against the Company at such time, and whether or not such Governmental Authority was aware of such claim at such time), in relation to the period prior to the Effective Date, including, without limitation, in respect of the Applicable Laws, matters and proceedings set out in ***Annexure 12****, is a "claim" and "debt", each as defined under the IBC, and would consequently qualify as "operational debt" (as defined under the IBC) and therefore the full amount of such claims shall be deemed to be owed and due as of the Insolvency Commencement Date, the Liquidation Value of which is NIL and therefore no amount is payable in relation thereto. Further, the directors, key managerial personnel and officers of the Company nominated and/or appointed by the Resolution Applicant on the Closing Date shall not incur any Liability (whether civil or criminal) for such breach, contravention or non-compliance of Applicable Law by the Company in relation to the period prior to the Effective Date.*

It is clarified that any claims or payments required against the Company which do not qualify operational debt and are included in ***Annexure 12*** *shall be treated as claims from "Other Creditors" and accordingly the Resolution Applicant shall not be required to make any payments in relation thereto as the Information Memorandum does not provide for payment of Liquidation Value to the Other Creditors. Please refer to Section 8.4 of the Plan for further details in this regard.****"***

"8.6.10. Effect on Operational Creditors and Other Creditors

Upon approval of the Plan by the Adjudicating Authority:

(i) Except to the extent of the Operational Creditors Settlement Amount proposed to be paid payable to the relevant Operational Creditors in accordance with the terms of Section 8.2.2, the Company shall have no Liability, directly or indirectly, towards any Operational Creditors and Other Creditors with regard to any claims (as defined under the IBC) relating in any manner to the period prior to the Effective Date (whether under Annexures 8, 9, 10, 11, 12 or otherwise), other than as set out in this Plan. Any such Liability shall be deemed to be owed and due as of the Insolvency Commencement Date, the Liquidation Value of which is NIL and therefore no amount is payable in relation thereto. ***All such Liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled with there being no further claims whatsoever****, and all forms of security created or suffered to exist, or rights to create such a security, to secure any obligations towards the Operational Creditors and Other Creditors (whether by way of guarantee, bank guarantee, letters of credit or otherwise) shall immediately, irrevocably and unconditionally stand released and discharged, and the Operational Creditors and Other Creditors shall waive all rights to invoke or enforce the same. In accordance with the foregoing, all claims (whether final or contingent, whether disputed or undisputed, and whether or not notified to or claimed against the Company) of all Governmental Authorities (including in relation to Taxes, and all other dues and statutory payments to any Governmental Authority),* ***relating to the period prior to the Effective Date, shall stand fully and finally discharged and settled****.*

(ii) Any and all legal proceedings (including any notice, show cause, adjudication proceedings, assessment proceedings, regulatory orders, etc.) initiated before any forum by or on behalf of any Operational Creditor (whether under ***Annexures 8, 9, 10, 11, 12*** *or otherwise, and including Governmental Authorities) or any Other Creditors to enforce any rights or claims against the Company shall immediately, irrevocably and unconditionally stand withdrawn, abated, settled and/or extinguished, and the* ***Operational Creditors*** *and Other Creditors* ***shall take all necessary steps to ensure the same****. Except to the extent of the Operational Creditors Settlement Amount payable to the relevant Operational Creditors in accordance with the terms of Section 8.2.2, the Operational Creditors of the Company (whether under* ***Annexures 8, 9, 10, 11, 12*** *or otherwise, and including Governmental Authorities) and Other Creditors shall have no further rights or claims against the Company (including but not limited to, in relation to any past breaches by the Company), in respect of the period prior to the Effective Date, and* ***all such claims shall immediately, irrevocably and unconditionally stand extinguished****.*

(iii) All claims that may be made against the Company in relation to any payments required to be made by the Company under Applicable Law, or in relation to any breach, contravention or non-compliance of any Applicable Law (whether or not such claim was notified to or claimed against the Company at such time, and whether or not such Governmental Authority was aware of such claim at such time), ***shall be deemed to be owed and due as of the Insolvency Commencement Date****, and shall immediately, irrevocably and unconditionally stand abated, settled and extinguished. No Governmental Authority shall have any*

further rights or claims against the Company, in respect of the period prior to the Effective Date and/or in respect of the amounts written off."

46. A conjoint reading of the above would demonstrate that there was no debt or liability of the petitioner towards the respondent no.2 who was an operational creditor for the relevant period. As noted above, a claim means a right to payment whether such right is reduced to a judgement or not. It could thus be seen that unless there is a claim which may or may not be reduced to a judgement there would be no debt and consequentially no default in the form of non-payment of such a debt. Admittedly, as on the date when the CIRP proceeding was initiated, there was no outstanding debt.

47. In this context I may note that it has been rightly pointed out by the Mr. Ghosh that having regard to the clauses 8.2.1 and 8.2.2 of the resolution plan and clauses 8.2.4, 8.2.6, 8.6.10 and 8.6.11, 8.7.3 and 8.7.4 of the resolution plan read with annexure 12 thereof, all sub-judice claims of the assessee stands wiped out and extinguished and accordingly the claim made by the department in form B also stood wiped out and extinguished. Incidentally the claim made by the respondent no.2 in form B related to the period from June, 2014 to June, 2017 which in my view as rightly pointed out by Mr. Ghosh did not survive. For obvious reasons, the respondent no.2 did not include the payment made by BSL by reversal of the CENVAT credit as noted above. Though, the appeals

were filed, the claim of the respondent no.2 was not sub-judice in such appeals. The petitioner instead, despite the reversal of CENVAT credit without treating the same as a deposit with the adjudicating authority had sought for waiver of the pre-deposit, which was allowed by the Tribunal. BSL having thus, sought for waiver of the pre-deposit, the petitioner cannot now claim that the reversal of CENVAT Credit is in fact, a pre-deposit.

48. Though the petitioner has challenged the finding of the CESTAT on the issue of abetment of the appeals, however, I find that it is the case of the petitioner as submitted by Mr. Ghosh and as noted above that notwithstanding the appeals not surviving, the same could not have deterred the CESTAT to examine whether the payments made in relation to the adjudication orders which forms subject matter of challenge in the appeals could constitute a claim by the respondents and whether consequent upon approval of the resolution plan, the respondents having not included the reversal amount of the CENVAT credit in its claim in Form B, the said demand is said to have extinguished, having regard to clauses 8.2.6 and 8.6.10 of the approved resolution plan. Records reveal that CESTAT/Tribunal has refused to examine the same by holding that the Tribunal being the creature of the statute is bound by the provisions of the statute and since the appeals stood abated, having regard to Rule 22 of the said Rules, CESTAT/Tribunal has become *functus officio*.

49. I also find that on the issue of applicability of the CESTAT (Procedure) Rules, 1982 vis-à-vis where a resolution plan is approved under the IBC, CESTAT/Tribunal has noted as under:-

> ***"****33. An identical question regarding recovery or otherwise of the adjudged amount by the Revenue cropped up in the case of* ***Ultratech Cement Nathdwara Cement Limited v. Commissioner of Customs, Jamnagar (Preventive)*** *wherein the very question raised by the learned Sr. Counsel that Rule 22 of The Rules was applicable to a company only when it gets wound up was one of the issues under consideration. It was categorically asserted by the Tribunal that there is no provision under the Customs and Central Excise Act/Rules to give effect to NCLT proceedings. The Tribunal being a creature of the statute, in the absence of any explicit provision, it is handicapped to decide on the same. In fact, it is necessary to reproduce hereinbelow the finding and the manner in which the Tribunal dealt with the said question of law:*
>
> > *"4.2 From the above facts, we find that as per the resolution plan approved by the NCLT and in the light of Hon'ble Supreme Court judgment in the case of Ghanashyam Mishra & Sons Pvt. Ltd.-2021 SCC Online SC 313, it prima facie appears that the adjudged dues cannot be recovered by the department however, this issue has to be decided by the department and not by this tribunal. For this reason, that firstly, there is no provision made in the Customs and Central Excise Act to give effect of NCLT proceedings. This tribunal being creature under the Customs Act, even though the Insolvency and Bankruptcy Code have over riding effect*

over all the other acts in absence of any explicit provision under the Customs/Central Excise Act, this tribunal cannot decide finally whether the adjudged amount can be recovered by the department or otherwise. This issue has to be resolved by the respondent."

We are thus of the view that this decision suitably answers the question of law raised and are in agreement therewith.

34. It may be worthwhile to mention that the Hon'ble High Court of Jharkhand at Ranchi in the case of ***ESL Steel Ltd. v. Principal Commissioner, Central Goods & Services Tax & Central Excise, Ranchi & ors.****, after considering several of the pronouncements referred to supra, including that of Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd., and was concerned with the question of availment of transitional credit (TRAN-1) wherein the concerned company had undergone liquidation and the current management was not a taxpayer for the impugned period of procurement of inputs or capital goods, but the changed management had felt the need for recovery of such credit, by virtue of the Resolution Plan having been approved, of M/s. Vedanta Ltd. in terms of Section 31(1) of the Code, held as under:*

"5. Having heard learned counsel for the parties and after going through the averments made in the respective affidavits and the documents annexed therein and the judgments passed by the Hon'ble Apex Court referred to herein above it appears that the Petitioner revised its TRAN-1 on 30.11.2022 and sought to avail Input Tax Credit amounting to Rs. 92,13,412/- against the 86 invoices of Capital Goods, which were

not availed earlier, under Section 140(1) of the CGST Act, 2017.

It also emerges that as per the judgment of Hon'ble Apex Court in the case of Ghanshyam Mishra and Sons Private Ltd. (supra), no recovery and or proceeding can be continued against the Petitioner, for any dues prior to 17.04.2018 (Annexure-1) i.e., the date on which the National Company Law Tribunal has approved the resolution plan of the Petitioner. From perusal of the aforesaid Judgment, it is crystal clear that it is only the past obligation of the past period gets extinguished once the new management has taken over the Company as part of the Resolution Plan.

6. ***At the outset it is clarified that the contention of the Petitioner-Company that there is nothing in the said judgment which says that the past credit due to the company gets expunged; is misconceived. As a matter of fact, the liability of the earlier management may not be shifted to the current management but at the same time, the credit available to the earlier management will also not be available to the current management as the current management was not a taxpayer during the period of procurement of inputs or capital goods as availed in the TRAN-1 filed on 30.11.2022***

Accordingly, we hold that on the one hand; the Respondent No. 2 has illegally and arbitrarily confirmed the demand of Rs.6,02,34,616/- u/s 74(9) of the Central Goods and Service Tax Act, 2017 and imposed interest and penalty, on the ground of irregular

availment of transitional credit during the period 2017-18, which includes the transitional credit of Rs.5,10,21,204/-claimed by the Petitioner for the period prior to 17.04.2018 and balance amount of Rs.92, 13,412/- has been claimed by the Petitioner as Transitional credit by filing new TRAN-1; ***but at the same time the petitioner can also not take advantage of the ITC of the earlier period i.e., any dues prior to 17.04.2018 (Annexure-1); the date on which the National Company Law Tribunal has approved the resolution plan of the Petitioner.***

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.

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9. Consequently, the Order-in-Original dated 24.02.2023 (Annexure-9) passed by the Additional Commissioner, CGST & CEX, Ranchi (Respondent No. 2), whereby the Respondent No. 4, has confirmed the demand of Rs. 6,02,34,616/- u/s 74(9) of the Central Goods and Service Tax Act, 2017, is quashed and set aside along with all consequential orders.

However, we categorically hold that the petitioner can also not take credit of the ITC of the earlier period i.e., prior to 17.04.2018 (Annexure-1); the date on which the National Company Law Tribunal has approved the resolution plan of the Petitioner. Hence, the petitioner is not entitled to claim of Rs. 92,13,412/-which has been claimed by the Petitioner as Transitional credit by filing new TRAN-1 in light of the Order passed by Hon'ble Supreme Court in the case of Union of India Vrs.

Filco Trade Centre Put. Ltd. being SLP (C) No. 32709-32710/2018."

(Emphasis supplied)

Viewed in the context, without amplifying, we would like to re-emphasize the obvious position of law that was laid down by the Hon'ble High Court.

35. The Hon'ble Apex Court, in the context of fastening duty liability against the legal representatives / estate of sole proprietor-deceased manufacturer, in the case of ***Shabina Abraham v. Collector of Central Excise and Customs****, had asserted that it was impermissible to continue with the assessment proceedings in the altered circumstances. It had dwelt extensively into the provisions of Section 4(3)(a) of the Central Excise Act, 1944 regarding the "person who is liable to pay duty". The consequence of such an action undisputedly upon death, for instance, is that of abatement of the appeal in terms of Rule 22 of the Rules. The Hon'ble Apex Court observed therein that the Court cannot imply anything which is not expressed and it cannot import provisions in a statute so as to supply any assumed deficiency.*

35.1 The Hon'ble Apex Court in 2015 (322) E.L.T. 372 (S.C.) while approving the decision of the Hon'ble Karnataka High Court in the case of ***Commissioner of Central Excise, Bangalore-III v. Dhiren Gandhi****, held that the Hon'ble High Court was correct in its conclusion that while interpreting the provisions of the Central Excises and Salt Act, legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions. Viewed in the backdrop*

buttressed by the provisions of Rule 22 of The Rules, the issue in the present case is somewhat akin to the given circumstances, but instead of the legal heir it is now the new operators, who in turn are operating the erstwhile company (original appellant/BSL), in accordance with the Resolution Process as laid out in law. Moreover, what is good for the goose has to be good for the gander as well.

35.2 The Hon'ble Apex Court in the said judgement noted and reiterated the legal position by citing the case of in Partington v. A.G., as under:

> *"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible* ***in a taxing statute where you can simply adhere to the words of the statute****".*
>
> *(Emphasis supplied)*

35.3 In fact, the Hon'ble Apex Court further went on to state that in taxation matters, equitable considerations are of no significance, relevance or a consideration, in the following manner:

> *"32. In Cape Brandy Syndicate v. IRC, (1921) 1 KB 64 at 71, Rowlatt J. laid down:*
>
> > ***In a taxing Act one has to look merely at what is clearly said. There is no room for any***

> ***intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.***
>
> *33. This Court has, in a plethora of judgments, referred to the aforesaid principles. Suffice it to quote from one of such judgments of this Court in Commissioner of Sales Tax, Uttar Pradesh v. Modi Sugar Mills, 1961 (2) SCR 189 at 198:-*
>
> ***In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency." ”***

50. Having regard to the above and noting the provisions of Rule 22 of the said rules, the effect of the resolution plan and the judgment delivered by the Hon’ble Supreme Court in the case of ***Ghanashyam Mishra and sons Pvt. Ltd*** (supra), this Court does not find the CESTAT/Tribunal to have acted irregularly or having failed to have exercised jurisdiction in not adjudicating whether the payments made in relation to the adjudication orders which formed subject matter of challenge in the appeals could constitute a claim

by the respondent no.2, especially when the appeals were heard on the basis of orders which waived payment of the pre deposits.

51. This apart, in my view, since the scope of enquiry before this Court is limited to the question whether the tribunal has acted within its authority without questioning the correctness of the decision on facts. I find that CESTAT/ Tribunal being creature of the statute in absence of any express provision could not have adjudicated as to whether the voluntary deposit made by the petitioner prior to filing of the appeals would constitute a security deposit, once, the appeals had abated. The petitioner has however, taken a chance and has not filed an appeal from the above order but has questioned such order in the limited supervisory jurisdiction of this Court.

52. It is an admitted position that the respondent no.2 as an operational creditor, by reasons of the original corporate debtor, voluntarily discharging its liability, did not include any claim in relation to the assessment already made by orders dated 31st January, 2011 for the period 1st August, 2005 to 31st December, 2006, and 1st February, 2007 to 6th July, 2009. In the interregnum during the subsistence of the adjudication orders the appeals stood abated by operation of law. As noted above there appears to be no irregularity or jurisdictional error in the common order passed by the CESTAT/Tribunal. The petitioner has failed to identify any illegality, or violation of principals of natural justice. As such no

interference is called for and the writ petitions are accordingly dismissed.

53. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)

S. Mandi
P.A.