Ald Automotive Pvt Ltd vs The Commercial Tax Officer And Ors Now ... on 12 October, 2018

Equivalent citations: AIR 2018 SUPREME COURT 5235, 2019 (13) SCC 225, AIRONLINE 2018 SC 700, (2018) 13 SCALE 725, AIR 2019 SC (CIV) 593

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Bench: Ashok Bhushan, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10412-10413 OF 2018
(ARISING OUT OF SLP(C)NOS.36112-36113 OF 2013)

ALD AUTOMOTIVE PVT. LTD. ... APPELLANT

VERSUS

THE COMMERCIAL TAX OFFICER
NOW UPGRADED AS THE ASSISTANT
COMMISSIONER (CT) & ORS. ... RESPONDENTS

WITH

Civil Appeal Nos. 10414-10450 of 2018 @ SLP(C) NOS.36590-36626 OF 2013, Civil Appeal Nos. 10451-10455 of 2018 @ SLP(C)NOS.2474-2478 OF 2014, Civil Appeal Nos. 10498-10499 of 2018 @ SLP(C)NOS.10060-10061 OF 2014, Civil Appeal Nos. 10456-10481 of 2018 @ SLP(C) Nos. 3675-3700 of 2014, Civil Appeal Nos.10482-10497 of 2018 @ SLP(C) NOS.3702-3717 OF 2014, Civil Appeal Nos. 10509-10513 of 2018 @ SLP(C)NOS.11313-11317 OF 2014, Civil Appeal Nos. 10503-10507 of 2018 @ SLP(C)NOS.11319-11323 OF 2014, Civil Appeal No. 10523 of 2018 @ SLP(C)NO.13961 OF 2014, Civil Appeal Nos. 10525-10527 of 2018 @ SLP(C)NOS. 13204-13206 OF 2014, Civil Appeal No. 10544 of 2018 @ SLP(C)NO.30638 OF

2014, Civil Appeal No. 10522 of 2018 @ SLP(C)NO.13960 OF 2014, Civil Appeal No. 10524 of 2018 @ SLP(C)NO. 12779 OF 2014, Civil Appeal Nos. 10519-10521 of 2018 @ SLP(C)NOS.12175-12177 OF 2014, Civil Appeal Nos. 10500-10502 of 2018 @ SLP(C)NOS.10506-10508 OF 2014, Civil Appeal No. 10508 of 2018 @ SLP (C) NO. 11324 OF 2014, Civil Appeal Nos. 10516-10518 of 2018 @ SLP(C)NOS.12163-12165 OF 2014, Civil Appeal No. 10543 of 2018 @ SLP(C)NO.30637 OF 2014, Civil Appeal Nos. 10514-10515 of 2018 @ SLP(C) NOS.12192-12193 OF 2014, Civil Appeal No. 10528 of 2018 @ SLP(C)NO.17467 OF 2014, Civil Appeal Nos. 10534-10538 of 2018 @ SLP(C)NOS. 26044-26048 OF 2014, Civil Appeal Nos. 10529-10532 of 2018 @ SLP(C)NOS.24055-24058 Of 2014, Civil Appeal No. 10533 of 2018 @ SLP(C)NO.24964 OF 2014, Civil Appeal Nos. 10539-10542 of 2018 @ SLP(C)NOS. 29297-29300 OF 2014, Civil Appeal No. 10549 of 2018 @ SLP(C)NO.30673 OF 2015, Civil Appeal Nos. 10545-10548 of 2018 @ SLP(C)NOS. 26924-26927 OF 2015, Civil Appeal No. 10550 of 2018 @ SLP(C) NO. 14350 OF 2016, Civil Appeal Nos. 10551-10553 of 2018 @ SLP(C)NOS.22612-22614 OF 2016, Civil Appeal Nos. 10554-10558 of 2018 @ SLP(C)NOS.487-491 OF 2017, Civil Appeal No. 10559 of 2018 @ SLP(C)NO.33303 OF 2017.

J U D G M E N T

ASHOK BHUSHAN, J.

Delay condoned. Leave granted.

2. All these appeals have been filed against common judgment dated 17.07.2013 of Madras High Court dismissing a bunch of writ petitions filed by the appellants. The main challenge in the writ petitions was provision of Section 19(11) of Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the "Tamil Nadu VAT Act,2006"). For appreciating the issues raised in this batch of appeals it is sufficient to notice the facts in Civil Appeal Nos. 10412-10413 of 2018 arising out of SLP(C)Nos. 36112-36113 of 2013(ALD Automotive Pvt. Ltd. vs. The Commercial Tax Officer and others).

3. The appellant Company is a registered dealer under Tamil Nadu VAT Act, 2006. The appellant Company is engaged in the business of leasing and fleet management of the motor vehicles and resale of used motor vehicles. The head office of the Company is at

Mumbai. The head office of the appellant negotiates the purchase price with the local registered dealers in Tamil Nadu and issues the purchase order to the dealer along with the payment including the tax payable under the Tamil Nadu VAT Act, 2006. The registered dealer raises the tax invoice as and when the motor vehicle is ready for delivery to the appellant. The date of purchase for the vehicle in the books of the appellant is same as the date of delivery. The tax invoices of such purchases are received after a considerable delay as the original documents are sent to the Regional Transport Authority for registration of motor vehicles. The appellant enters the details of the tax invoice containing the payment of tax in its books of accounts. The appellant had outsourced the job of collection of original tax invoices to one M/s. MID Controls Private Limited, an Agency specialised for collecting documents. The appellant is entitled to claim Input Tax Credit of the amount of tax paid on the purchases made from the registered dealer of motor vehicle as per Section 19(2) of the Tamil Nadu VAT Act, 2006. As per Section 19(11), if a dealer has not claimed Input Tax Credit for a particular month, the dealer can claim the Input Tax Credit before the end of the financial year or before 90 days from the date of purchase whichever is later. When the appellant filed its returns for the assessment year 2007□2008 for want of the tax invoices, the said Input Tax Credit could not be claimed. The appellant, however, filed revised returns claiming Input Tax Credit on the receipt of the tax invoices from the dealer. The appellant also filed its monthly returns for the period from April, 2007 to February, 2008. The appellant had filed a monthly return for the month of March, 2008 on 06.10.2008. There was delay in filing return. Due to late receipt of original purchase invoices, the appellant revised its returns for the period from March, 2008 to January, 2009 in the month of March, 2009.

4. In the returns filed on 06.10.2008, the appellant claimed Input Tax Credit of Rs.42,04,628/□. By order dated 21.11.2008, the Commercial Tax Officer rejected the Input Tax Credit claimed by the appellant in the month of March, 2008. On a writ petition filed by the appellant being Writ Petition(C) No.18137 of 2009, the High Court set aside the order confirming the proposal to disallow the Input Tax Credit and directed the Commercial Tax Officer to pass appropriate orders in accordance with law. Notice was issued proposing to reject the appellant's revised returns which was objected. In the objections, the appellant stated that the delay in getting the original tax invoices was only due to the fact that the Original Tax Invoices were received belatedly from the registered dealers. Notice dated 01.06.2009 was issued confirming the notice and rejecting the appellant's objections by treating the entire amount of Input Tax Credit of Rs.1,28,36,822/□as not admissible for the assessment year 2008□2009 taking the view that it was a belated claim. The appellant filed writ petition. In the writ petition following prayers were made:

> "For the reasons stated above, it is prayed that this Hon'ble Court may be pleased to issue a Writ of Declaration or any other appropriate Writ, order or direction in the nature of Writ, declaring Section 19(11) of

the Act read with Rule 10(2) of the Tamil Nadu Value Added Tax Rules, 2007 as ultra vires the provisions of the Act, arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India, pass such other or further orders as this Hon'ble Court may deem fit and proper on the facts and circumstances of the case and thus render justice.

For the reasons stated above, it is prayed that this Hon'ble Court may be pleased to issue a Writ of Certiorari, Mandamus or any other appropriate Writ, order or direction or order in the nature of writ, quash the impugned notice issued by the respondent in TN 33421463542/08□09 dated 01.06.2009 served on the petitioner on 16.06.2009 and direct the respondent to allow the appellant's claim of Input Tax Credit for the sum of Rs.1,28,36,822/□, pass such other or further orders as this Hon'ble Court may deem fit and proper on the facts and circumstances of the case and thus render justice."

5. We may also notice the facts of another Civil Appeal No. 10503□10507 of 2018 arising out of SLP(C) Nos.11319□11323 of 2014 (Sri Devi Enterprises vs. The Commercial Tax Officer & Anr.).

6. The appellant is a partnership firm which owns petrol pump and deals in petrol, diesel, Auto LPG and Lubricating Oils (all products of Bharat Petroleum Corporation Limited). The appellant's claim for Input Tax Credit was disallowed by order dated 11.04.2011. The respondent placed reliance on time limit under Section 19(11) of Tamil Nadu VAT Act, 2006 for disallowing Input Tax Credit to the appellant. Aggrieved by the aforesaid order dated 11.04.2011 Writ Petition (C) No.10648 of 2011 was filed by the appellant wherein following reliefs were claimed:

"28. It is therefore just and necessary that this Hon'ble Court may be pleased to issue a Writ of Declaration or any other appropriate writ, order or direction under Article 226 of the Constitution of India, declaring that 19(11) of the Tamil Nadu Value Added Tax Act, 2006 is inconsistent with the charging Section 3, and the general scheme of annul assessment under Sections 20, 21, 22 and 27 Of the Tamil Nadu Value Added Tax Act, 2006, and void is being arbitrary and irrational infringing the rights of the petitioner under Article 14 and 19(1)(g) and the resultant tax demands arising out of disallow of input credit tax are violative of Articles 265 and 300A of the Constitution of India, 1950, and, therefore, unenforceable, or pass such further or other orders as may deem fit and proper in the circumstances of this case and render justice.

29. It is therefore just and necessary that this Hon'ble Court may be pleased to issue a Writ of Certiorari or and other appropriate writ order or direction under Article 226 of the Constitution of India quashing the proceedings of the First Respondent herein in his TIN 33251300045/0607 dated 11.04.2011 and to quash the same or pass such further or other orders as may deem fit and proper in the circumstance of the case and render justice."

7. Similarly, large number of writ petitions were filed in Madras High Court by other writ petitioners where Input Tax Credit was disallowed on account of non-compliance of Section 19(11) of the Tamil Nadu VAT Act, 2006. All the writ petitions were decided by common judgment dated 17.07.2013. The Division Bench of the Madras High Court by the impugned judgment upheld the validity of Section 19(11) of the Tamil Nadu VAT Act, 2006 and upheld the orders passed by the respondents denying the benefit of Input Tax Credit. The High Court further, in the cases where final orders of assessment have been challenged, granted liberty to the appellants to prefer statutory appeal within 60 days from the receipt of a copy of the order, the same was to be entertained by the appellate authority subject to the assessee full-filling other mandatory statutory conditions. It is useful to notice the operative portion of the judgment contained in paragraphs 84,85 and 86, which is to the following effect:

"84. The other bunch of writ petitions challenging the assessment order/show cause notices denying the credit taken in the revised returns involving Section 19(11) of TN VAT Act are not maintainable. The writ petitions challenging the constitutionality of Section 19(11) having failed the writ petitions challenging assessment orders/show cause notices have no legs to stand and therefore, they should necessarily fail.

85. In cases where final orders of assessment have been challenged, the assessees shall be entitled to prefer statutory appeal against such order and if such appeals are presented, whithin a period of 60 days from the date of receipt of a copy of this order, the same shall be entertained by the appellate authority subject to the assessee full-filling other mandatory statutory conditions except rejecting those appeals on the ground of limitation. In ceases where the petitioners have challenged show cause notices, they are at liberty to submit their explanation. If such explanation is submitted within a period of 30 days from the date of receipt of a copy of this order, the assessing authority shall consider the case in accordance with law.

86. In the result, all the writ petitions are dismissed holding that Section 19(11) is a valid piece of legislation, cannot be struck down as being either unreasonable or discriminatory and violative of Article 265 and 360A of the Constitution of India. The interim stay granted in all writ petitions

stand vacated and the miscellaneous petitions are closed. There is no order as to costs."

8. All these appeals have been filed challenging common judgment dated 17.07.2013.

9. We have heard learned counsel for the appellants as well as the learned Advocate General appearing for the State of Tamil Nadu.

10. Learned counsel for the appellants in support of the appeals contend that substantive and vested right of a registered dealer to claim Input Tax Credit cannot be curtailed and fettered by an unreasonable restriction imposed under Section 19(11) of the Tamil Nadu VAT Act, 2006 requiring claim to be made within 90 days from the date of purchase or before the end of the financial year whichever is later.

11. It is submitted that Section 19(11) makes the enforcement of the substantive right unreasonable as well as arbitrary and violative of Article 14 and 19(1)(g) of the Constitution. Such right under Section 3(3) of the Act cannot be taken away by Section 19(11) which is only a procedural provision. Section 19(11) is inconsistent with the charging Section 3(3) of the Act. In any view of the matter, Section 19(11) is only a directory provision and cannot be held to be mandatory. Sections 3(3) and 19(11) being part of the same scheme that is to allow Input Tax Credit, Section 19(11) has to be construed harmoniously so as not to take away the right which has been given under Section 3(3). Statutory benefit under Section 3(3) is mandatory being part of charging Section. Section 3 which entitles claim of Input Tax Credit does not contain any limitation hence such right could not be hedged by any limitation, as contained in Section 19(11).

12. Learned Advocate General of the State of Tamil Nadu refuting the submissions of learned counsel for the appellants contends that Section 19(11) of the Tamil Nadu VAT Act, 2006 contains essential conditions under which Input Tax Credit can be claimed by a dealer, hence, on non-compliance of the conditions the Input Tax Credit has rightly been denied to the appellants. Section 19(11) is a part of the same statutory scheme and does not suffer from any ultra-vires. Learned Advocate General submits that judgment of this Court in Jayam and Company vs. Assistant Commissioner and another, 2016 (15) SCC 125, where validity of Section 19(20) of the T.N.VAT Act, 2006 has been upheld and it has been laid down that whenever concession is given by the statute or notification, the conditions thereof should strictly be complied with in order to avail such concession, is fully applicable in the facts of the present case and all the appeals are liable to be dismissed.

13. From the submissions of the learned counsel for the parties and evidence on record following are the issues which arise for consideration in this batch of appeals :

(1) Whether Section 19(11) violates Article 14 and 19(1)(g) of the Constitution of India ?

(2) Whether Section 19(11) is inconsistent to Section 3(3) of the Act ?

(3) Whether Section19(11) is directory provision, non-compliance of which cannot be a ground for denial of input tax credit to the appellants ?

(4) Whether denial of input tax credit to the appellants is contrary to the scheme of VAT Act, 2006 ?

(5) Whether Assessing Authorities could have extended the period for claiming Input Tax Credit beyond the period as provided in Section 19(11) of Tamil Nadu VAT Act, 2006 ?

14. Before we enter into the submissions of the learned counsel of the parties, it is necessary to notice the statutory scheme as delineated by the Tamial Nadu Value Added Tax Act, 2006. The Tamil Nadu VAT Act, 2006 has been enacted to consolidate and amend the law relating to the levy of tax on sale and purchase of the goods in the State of Tamil Nadu. Input Tax Credit has been defined under Section 2(24) in the following words:

"2(24) "input tax" means the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods including capital goods in the course of his business;"

15. Section 3 is charging Section. Section 3(1), (2) and (3) which are relevant for the present case, are as follows:

"3. Levy of Taxes on sales of goods.-(1) (a) Every dealer, other than a casual trader or agent of a non-resident dealer, whose total turnover for a year is not less than rupees five lakhs and every casual trader or agent of a non-resident dealer, whatever be his total turnover, for a year shall pay tax under this Act.

1(b) Notwithstanding anything contained in clause (a), every dealer, other than a casual trader or agent of a non-resident dealer, whose total turnover in respect of purchase and sale within the State, for a year, is not less than rupees ten lakhs, shall pay tax under this Act.

(1-A) Notwithstanding anything contained in this Act, for the purpose of assessment of tax under this Act, for the period from the 1st day of January 2007 to the 31st day of March 2007 in respect of

dealers referred to in clause (a) or (b) of sub-section (1) the total turnover for the period from the 1st day of April 2006 to the 31st day of December 2006 under the repealed Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) and the total turnover for the period from the 1st day of January 2007 to the 31st day of March 2007 under this Act, shall be the total turnover for the year 2006-2007. in respect of such dealer whose total turnover for that year exceeds the total turnover referred to in the said clause (a) or (b) of sub-section 1 and if,-

(a) such dealer has not collected the tax under this Act, he is liable to pay tax under this Act,

(b) such dealer has collected the tax under this Act, he is liable to pay tax under this Act, and other provisions of this Act, shall apply to such dealer.] (2) Subject to the provisions of sub-section (1), in the case of goods specified in Part -B or Part -C of the First Schedule, the tax under this Act shall be payable by a dealer on every sale made by him within the State at the rate specified therein:

Provided that all spare parts, components and accessories of such goods shall also be taxed at the same rate as that of the goods if such spare parts, components and accessories are not specifically enumerated in the First Schedule and made liable to tax under that Schedule.] (3) The tax payable under sub-section (2) by a registered dealer shall be reduced, in the manner prescribed, to the extent of tax paid on his purchase of goods specified in Part - B or Part - C of the First Schedule, inside the State, to the registered dealer, who sold the goods to him."

16. Section 19 contains a heading "Input Tax Credit". Section 19 contains 20 sub-sections. Section 19 enumerates several sub-sections which provide that no Input Tax Credit is allowed in certain circumstances whereas other provisions contain statutory scheme under which Input Tax Credit is permissible. In the present case we are concerned with Section 19(11) which is to the following effect:

"19(11) In case any registered dealer fails to claim input tax credit in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before ninety days from the date of purchase, whichever is later." Issue no. 1 and 2

17. The challenge in this batch of appeals is challenge to a fiscal legislation. It is relevant to notice the principles of statutory interpretation of a fiscal legislation. The

Constitution Bench of this Court in (1981) 4 SCC 675, R.K.Garg versus Union of India, has enumerated established principles for interpreting law dealing with economic activities. In paragraph 8 of the judgment following has been held: □"8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait□jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud7 where Frankfurter, J., said in his inimitable style:

> "In the utilities, tax and economic regulation cases, there are good reasons for judicial self□restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events — self□limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.""

18. Another principle of statutory interpretation which needs to be noticed is that a provision in the statute is not to be read in isolation rather it has to read along with other related provisions itself, more particularly when the subject matter dealt within different sections or parts of the same statute is the same. This proposition was reiterated by this Court in Kailash Chandra and another versus Mukundi lal and others, 2002 (2) SCC 678. In paragraph 11, following has been laid down: □"11. A provision in the statute is not to be read in isolation. It has to be read with other related provisions in the Act itself, more particularly, when the subject□matter dealt with in different sections or parts of the same statute is the same or similar in nature."

19. Here we have noticed that Input Tax Credit is being allowed under Section 3 which is provision on "levy of taxes on sale of goods". Section 3 is a charging section which provides for levy of taxes on sale of goods. Sub□section (3) is the part of the same scheme where tax payable under sub□section (2) by registered dealer shall be reduced, in the manner prescribed, to the extent of tax paid on his purchase of goods. Other provisions of the Act elaborated and explained the whole mechanism of the Act. Section 4 to 12

are various provisions dealing with following subject matters:= "Section 4. Levy of tax on right to use any goods.

Section 5. Levy of tax on transfer of goods involved in works contract.

Section 6. Payment of tax at compounded rates by work contractor.

Section 6A. Payment of tax at compounded rate by brick manufacturers.

Section 7. Levy of tax on food and drinks. Section 8. Payment of tax at compounded rate by hotels, restaurants [sweet□stalls and bakeries] Section 9. Levy of tax on bullion and jewelery.

Section 10. Tax on goods purchased by dealers registered under Central Sales Tax Act, 1956(Central Act 74 of 1956) Section 11. Levy of tax on sugarcane. Section 12. Levy of purchase tax."

20. Section 13 deals with reduction of tax at source in works contract, Section 14 deals with reversal of tax credit, Section 15 deals with exempted sale, Section 16 deals with stages of levy of taxes in respect of imported and exported goods; Section 17 deals with burden of proof; Section 18 deals with zero rating; and Section 19 deals with Input Tax Credit.

21. As noted above, Section 3, sub□Section (3) provided that tax payable under sub□Section (2) by registered dealer shall be reduced, in the manner prescribed, to the extent of tax paid on his purchase of goods specified in Part□B and Part□C of the First Schedule inside the State, who is registered dealer who sold the goods to him. The provision of Section 3 sub□Section (3) is a provision which entitled a registered dealer to obtain a tax credit which has been explained in Section 19. The submission that Section 19 is inconsistent to Section 3(3) is wholly misconceived. What is envisaged in Section 3 sub□Section (3) is amplified and explained in Section 19. The reduction in the tax as contemplated in Section 3 sub□section (3) has to be in manner and as provided in Section 19. Section 19(11) contains a condition for claiming the input tax credit. As noticed above, there are other various provisions in Section 19 itself where it contains provisions where no input tax credit is allowable, e.g. Section 19(6) to Section 19(10), which are as follows: □"19(6). No input tax credit shall be allowed on purchase of capital goods, which are used exclusively in the manufacture of goods exempted under section 15.

[PROVIDED that on the purchase of capital goods which are used in the manufacture of exempted goods and taxable goods, input tax credit shall be allowed to the extent of its usage in the manufacture of taxable goods in the manner prescribed.] (7) No registered dealer shall be entitled to input tax credit in respect of –

(a)goods purchased and accounted for in business but utilized for the purpose of providing facility to the proprietor or partner or director including employees and in any residential accommodation; or

(b) purchase of all automobiles including commercial vehicles, two wheelers and three wheelers and spare parts for repair and maintenance thereof, unless the registered dealer is in the business of dealing in such automobiles or spare parts; or

(c)purchase of air-conditioning units unless the registered dealer is in the business of dealing in such units.

(8) No input tax credit shall be allowed to any goods purchased by him for sale but given away by him by way of free sample or gift or goods consumed for personal use.

(9) No input tax credit shall be available to a registered dealer for tax paid or payable at the time of purchase of goods, if such-

(i) goods are not sold because of any theft, loss or destruction, for any reason, including natural calamity. If a dealer has already availed input tax credit against purchase of such goods, there shall be reversal of tax credit, or

(ii) inputs destroyed in fire accident or lost while in storage even before use in the manufacture of final products; or

(iii) inputs damaged in transit or destroyed at some intermediary stage of manufacture.

(10)(a) The registered dealer shall not claim input tax credit until the dealer receives an original tax invoice duly filled, signed and issued by a registered dealer from whom the goods are purchased, containing such particulars, as may be prescribed, of the sale evidencing the amount of input tax.

(b) if the original tax invoice is lost, input tax credit shall be allowed only on the basis of duplicate or carbon copy of such tax invoice obtained from the selling dealer subject to such conditions as may be prescribed."

22. Can it be said that above provisions are inconsistent to Section 3(3) which permits reduction of tax of registered dealer, answer, obviously is No. When the input tax credit is to be allowed and when it is to be disallowed is elaborated in Section 19 which is self-contained scheme and benefit under Section 3 sub-Section (3) can be claimed only when conditions as enumerated in Section 19 are fulfilled.

23. Now, we need to refer to certain judgments of this Court which has been relied by learned Counsel for the appellant. The first judgment which needs to be noticed is the judgment of this Court in AIR (1967) SC 1823, Sales Tax officer, Ponkunnam and another versus K.I. Abraham. This Court had occasion to consider Section 8 of the Central Sales Tax Act, 1956 and Rule 6 of the Central Sales Tax (Kerala Rules, 1957). Section 8 sub-Section (1) provided that for dealer who in the course of inter-State trade or commerce - (a) sells to the government any goods; or (b) sells to a registered dealer other than government goods of the description referred to in sub-section (3); shall be liable to pay tax under this Act, which shall be one percent of his turnover. Sub-section (4) of Section 8 provides: -"8. (4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner—

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government."

24. Rule 6 of Central Sales Tax (Kerala Rules) has been noticed in paragraph 5, which is to the following effect: - "5. Rule 6 of the Central Sales Tax (Kerala) Rules, 1957 read as follows:

> "6. (1) Every dealer registered under Section 7 of the Act and every dealer liable to pay under the Act shall submit a return of all his transaction including those in the course of export of the goods out of the territory of India in Form II together with connected declaration forms so as to reach the assessing authority on or before the 20th of each month showing the turnover for the preceding month and the amount or amounts collected by way of tax together with proof for the payment of tax due thereon under the Act.
>
> Provided that in cases of delayed receipt of declaration forms, the dealer may submit the declaration forms at any time before the assessment is made:
>
> Provided further that the delay in submitting the declaration forms shall not exceed three months from the date of sale in question:
>
> Provided also that all declaration forms pending submission by dealers on 2-5-1960 shall be submitted not later than 16-2-1961."

The first proviso to Rule 6 was inserted by notification dated January 3, 1958, the second

by notification dated April 26, 1960 and the third by notification dated January 16, 1961."

25. The submission which was raised before this Court was that phrase "in the prescribed manner used in Section 8(4) does not take in the time element." In paragraph 6 of the judgment this Court interpreting the phrase "in the prescribed" manner occurring in Section 8(4) and held that it does not take in the time element. This Court also notice the provision of Section 13(4) which provision empowers the State to make rules for the "time" within which and the manner in which the authorities to whom any change in the ownership of any business shall be furnished. It is useful to extract relevant observations made in paragraph 6 of the judgment: □"6.....But the phrase "in the prescribed manner" in Section 8(4) does not take in the time□ element. In other words, the section does not authorise the rule□making authority to prescribe a time limit within which the declaration is to be filed by the registered dealer. The view that we have taken is supported by the language of Section 13(4)(g) of the Act which states that the State Government may make rules for "the time within which, the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer shall be furnished". This makes it clear that the legislature was conscious of the fact that the expression "in the manner" would denote only the mode in which an act was to be done, and if any time limit was to be prescribed for the doing of the act, specific words such as "the time within which" were also necessary to be put in the statute. In Stroud's Judicial Dictionary it is said that. the words "manner and form" refer only "to the mode in which the thing is to be done, and do not introduce anything from the Act referred to as to the thing which is to be done or the time for doing it.....".

26. This Court, in above view of the matter, held that Rule 6(1) was ultra vires to Section 8(4) read with Section 13(3) and 13(4) of the Act.

27. The ground on which Rule 6 was held as ultra vires has been clearly noticed by this Court in paragraph 6 as noticed above. It is relevant to notice that in the same paragraph this Court had noticed Section 13(4)(g) of the Act where the State was empowered to make rule with regard to the 'time'. Thus, this Court noticed the contradiction in phraseology of Section 8 sub□Section (4) and Section 13 sub□section (4) and held that non□mention of time in Section 8(4) is for clearly denying the rule making power to make any rule pertaining to the time. Thus, the above case has no bearing in the present controversy, since, in the present case the time period is prescribed in Section 19(11) itself which is a part of the Act and has to be read with Section 3 sub□section (3).

28. Another judgment which needs to be noticed is judgment of this Court in Commissioner of Central Excise, Madras versus Home Ashok Leyland Ltd., 2007

(4) SCC 51. The issue which came to be considered in the above case was noticed in paragraph 1 of the judgment, which is to the following effect: "1. In this civil appeal filed by the Department the short question which arises for determination is whether the assessee was entitled to avail MODVAT credit on differential duty paid during the period 21-4-1986 to 2-4-1987 in respect of inputs received in his factory during the year 1986-87 which inputs were utilised between the period 16-8-1987 and 30-12-1987. According to the Department, Rule 57-E of the Central Excise Rules, 1944 underwent an amendment with effect from 15-4-1987 which according to the Department operated prospectively and consequently the claimant was not entitled to avail MODVAT credit of differential duty paid during the period 21-4-1986 to 2-4-1987."

29. In paragraph 2 of the judgment this Court noticed that Rule 57-E of the Central Excise Rule, 1944 as first introduced on 01.03.1986 provided for adjustment in duty credit. It further provided that duty paid on any inputs is varied subsequently due to any reason credit alone shall vary accordingly by adjustment in the credit account maintained under Rule 57G-(3). The relevant provisions of Rule and amendments have been noticed in paragraph 2 which is to the following effect: "2....Rule 57-E as it stood when MODVAT was first introduced on 1-3-1986 provided for adjustment in duty credit. It originally provided that if the duty paid on any inputs in respect of which credit has been allowed under Rule 57-A, is varied subsequently due to any reason resulting in refund, the credit alone shall be varied accordingly by adjustment in the credit account maintained under Rule 57-G(3) (with which we are concerned). Rule 57-E underwent a change on 1-3-1987 under which it was stipulated that if duty is paid on any inputs in respect of which credit has been allowed under Rule 57-A and if such duty is varied subsequently due to any reason resulting in refund or if the duty is varied due to the change in classification resulting in recovery then the credit allowed shall also be varied accordingly by adjudgment in the credit account maintained under Rule 57-G(3). Rule 57-E underwent a further change on 15-4-1987. This change operated till 15-4-2000. This case, therefore, falls within the above period i.e. 15-4-1987 to 15-4-2000. Under this amended Rule 57-E the right of the manufacturer to obtain additional MODVAT credit in respect of inputs on which further duty had been paid for any reason subsequent to the date of the receipt of inputs by the manufacturer is recognised. However, such right accrues to the manufacturer subject to his complying with the procedure of adjustment contemplated in Rule 57-E, as amended."

30. In the above case, Rule 57-E was amended w.e.f. 15.04.1987 providing for MODVAT credit but department contended that since the amendment shall apply prospectively the respondents were not entitled to claim MODVAT credit. The High Court had held that Rule 57-E as amended was clarificatory in nature and shall not affect the right of manufacturer to claim MODVAT credit for duty paid on inputs. In paragraph 4 following has been held: "4. In our view, therefore, the courts below were right in holding that Rule 57-E was procedural, clarificatory and therefore would not affect the substantive rights of the manufacturer of the specified final product to claim MODVAT credit for the duty paid on the

inputs subsequent to the date of the receipt of those inputs. Consequently, the respondent manufacturer in the present case was entitled to take credit between the period 16-8-1987 to 30-12-1987 in the sum of Rs 6,43,994.57."

31. The above case also does not come to help the appellant in the present appeal. In the above case there was no case that manufacturer does not fulfill any essential eligibility to obtain MODVAT credit on the additional duty paid by the manufacturer. The amendment which was made effective w.e.f. 15.04.2017 providing availability of MODVAT credit on additional duty paid was held to be clarificatory, hence, did not affect the right of MODVAT credit. The above case was thus on its own facts.

32. The input credit is in nature of benefit/ concession extended to dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the Statute. Reference is made to judgment of this Court in Godrej and Boyce Mfg. Co. Pvt. Ltd. and Others versus Commissioner of Sales Tax and Others, (1992) 3 SCC

624. Rule 41 and 42 of Bombay Sales Tax, 1959 provided for the set off of the purchase tax. This Court held that Rule making authority can provide curtailment while extending the concession. In paragraph 9 of the judgment, following has been laid down: - "9... In law (apart from Rules 41 and 41-A) the appellant has no legal right to claim set-off of the purchase tax paid by him on his purchases within the State from out of the sales tax payable by him on the sale of the goods manufactured by him. It is only by virtue of the said Rules — which, as stated above, are conceived mainly in the interest of public — that he is entitled to such set-off. It is really a concession and an indulgence. More particularly, where the manufactured goods are not sold within the State of Maharashtra but are despatched to out-State branches and agents and sold there, no sales tax can be or is levied by the State of Maharashtra. The State of Maharashtra gets nothing in respect of such sales effected outside the State. In respect of such sales, the rule-making authority could well have denied the benefit of set-off. But it chose to be generous and has extended the said benefit to such out-State sales as well, subject, however to deduction of one per cent of the sale price of such goods sent out of the State and sold there. We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of set-off is itself a boon or a concession. It was open to the rule-making authority to provide for a small abridgement or curtailment while extending a concession. Viewed from this angle, the argument that providing for such deduction amounts to levy of tax either on purchases of raw material effected outside the State or on sale of manufactured goods effected outside the State of Maharashtra appears to be beside the point and is unacceptable. So is the argument about apportioning the sale-price with reference to the proportion in which raw material was purchased within and outside the State."

33. A Three-Judge Bench in (2005) 2 SCC 129, India Agencies (Regd.), Bangalore versus Additional Commissioner of Commercial Taxes, Bangalore had occasion to consider Rule 6(b)(ii) of Central Sales Tax (Karnataka) Rules, 1957, which requires furnishing original Form-C to claim concessional rate of tax under Section 8(1). This Court held that the requirement under the Rule is mandatory and without producing the specified documents, dealers cannot claim the benefits. Following was laid down in paragraph 13: "13.....Under Rule 6(b)(ii) of the Karnataka Rules, the State Government has prescribed the procedures to be followed and the documents to be produced for claiming concessional rate of tax under Section 8(4) of the Central Sales Tax Act. Thus, the dealer has to strictly follow the procedure and Rule 6(b)(ii) and produce the relevant materials required under the said rule. Without producing the specified documents as prescribed thereunder a dealer cannot claim the benefits provided under Section 8 of the Act. Therefore, we are of the opinion that the requirements contained in Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 are mandatory....."

34. This court had occasion to consider the Karnataka Value Added Tax Act, 2013 in State of Karnataka versus M.K. Agro Tech.(P) Ltd., (2017) 16 SCC 210. This Court held that it is a settled proposition of law that taxing statute are to be interpreted literally and further it is in the domain of the legislature as to how much tax credit is to be given under what circumstances. Following was stated in paragraph 32: "32. Fourthly, the entire scheme of the KVAT Act is to be kept in mind and Section 17 is to be applied in that context. Sunflower oil cake is subject to input tax. The legislature, however, has incorporated the provision, in the form of Section 10, to give tax credit in respect of such goods which are used as inputs/raw material for manufacturing other goods. Rationale behind the same is simple. When the finished product, after manufacture, is sold, VAT would be again payable thereon. This VAT is payable on the price at which such goods are sold, costing whereof is done keeping in view the expenses involved in the manufacture of such goods plus the profits which the manufacturer intends to earn. Insofar as costing is concerned, element of expenses incurred on raw material would be included. In this manner, when the final product is sold and the VAT paid, component of raw material would be included again. Keeping in view this objective, the legislature has intended to give tax credit to some extent. However, how much tax credit is to be given and under what circumstances, is the domain of the legislature and the courts are not to tinker with the same."

35. The judgment on which learned Advocate General of Tamil Nadu had placed much reliance i.e. Jayam and Company versus Assistant Commissioner and Another, (2016) 15 SCC 125, is the judgment which is relevant for present case. In the above case, this Court had occasion to interpret provisions of Tamil Nadu Value Added Tax Act, 2016, Section 19(20), Section 3(2) and Section 3(3). Validity of Section 19(20) was under

challenge in the said case. This Court after noticing the scheme under Section 19 noticed following aspects in paragraph 11: ☐"11. From the aforesaid scheme of Section 19 following significant aspects emerge:

(a) ITC is a form of concession provided by the legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.

(b) Concession of ITC is available on certain conditions mentioned in this section.

(c) One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect, evidencing the amount of input tax."

36. This Court further held that it is a trite law that whenever concession is given by a statute the conditions thereof are to be strictly complied with in order to avail such concession. In paragraph 12, following has been laid down: ☐"12. It is a trite law that whenever concession is given by statute or notification, etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the "dealers" to get the benefit of ITC but it is a concession granted by virtue of Section

19. As a fortiori, conditions specified in Section 10 must be fulfilled. In that hue, we find that Section 10 makes original tax invoice relevant for the purpose of claiming tax. Therefore, under the scheme of the VAT Act, it is not permissible for the dealers to argue that the price as indicated in the tax invoice should not have been taken into consideration but the net purchase price after discount is to be the basis. If we were dealing with any other aspect dehors the issue of ITC as per Section 19 of the VAT Act, possibly the arguments of Mr Bagaria would have assumed some relevance. But, keeping in view the scope of the issue, such a plea is not admissible having regard to the plain language of sections of the VAT Act, read along with other provisions of the said Act as referred to above."

37. The Constitutional validity of Section 19(20) was upheld. The above decision is a clear authority with proposition that Input Tax Credit is admissible only as per conditions enumerated under Section 19 of the Tamil Nadu Value Added Tax Act, 2016. The interpretation put up by this Court on Section 3(2) and 3(3) and Section 19(2) is fully attracted while considering the same provisions of Section 3(2) and 3(3) and provision of Section 19(11) of the Act. The Statutory scheme delineated by Section 19(11) neither can be said to be arbitrary nor can be said to violate the right guaranteed to the dealer under Article 19(1)

(g) of the Constitution. We thus do not find any infirmity in the judgment of the High Court upholding the validity of Section 19(11) of the

Act. Both the issues are answered accordingly.

Issue Number 3 and 4

38. The alternative submission pressed by learned Counsel for the appellant was that Section 19(11) cannot be held to be mandatory and it is only a directory provision, non-compliance of which cannot be ground of denial of Input Tax Credit to the appellant. The conditions under which Input Tax Credit is to be given are all enumerated in Section 19 as noticed above. The condition under which the concession and benefit is given is always to be strictly construed. In event, it is accepted that there is no time period for claiming Input Tax Credit as contained in Section 19(11), the provision become too flexible and give rise to large number of difficulties including difficulty in verification of claim of Input Credit. Taxing Statutes contains self-contained scheme of levy, computation and collection of tax. The time under which a return is to be filed for purpose of assessment of the tax cannot be dependent on the will of a dealer. The use of word 'shall' in Section 19(11) does not admit to any other interpretation except that the submission of Input claimed cannot be beyond the time prescribed. Section 19(11), in fact, gives additional time period for claim of Input Credit. The Statutory scheme contemplates filing of the timely return before 20th of the succeeding month. Rule 7 of Tamil Nadu Value Added Tax Rules, 2007 deals with filing of returns. Rule 7(a) and (b) are as follows: -"7. Filing of Returns:

> (1)(a) Every registered dealer liable to pay tax under the Act, other than a dealer who opted to pay tax under sub-section (4) of section 3 or section 6 or section 8 including agent of a non-resident dealer and casual trader, shall file return for each month in Form I on or before 20th of the succeeding month, to the assessing authority in whose jurisdiction his principal place of business or head office is situated. Such return shall be accompanied by proof of payment of tax.
>
> (b) Every registered dealer who is liable to pay tax under sub-section (5) of section 3 shall file a return in Form J on or before 20th of the succeeding month to the assessing authority in whose jurisdiction his principal place of business or head office is situated.

Such return shall be accompanied by proof of payment of tax:

> [PROVIDED that a registered dealer specified in clause (a) or (b), whose taxable turnover in the preceding year is two hundred crores of rupees and above, shall file the above returns on or before 12th of the succeeding month to the assessing authority in whose jurisdiction his principal place of business or head office

is situated. Such return shall be accompanied by proof of payment of tax.]"

39. Section 21 of the Act provides for filing of return in following manner: □ "[21. Filing of returns.

Every dealer, liable to pay tax under this Act, shall file return, in the prescribed form showing the total and taxable turnover within the prescribed period, in the prescribed manner, along with proof of payment of tax. The tax under this section shall become due without any notice of demand to the dealer on the date of receipt of the return or on the last date of the period for filing return as prescribed.]"

40. Section 19(11) thus allowed an extended period for Input Credit which if not claimed in any month can be claimed before the end of the financial year or before the 90 days from the date of purchase whichever is later. The provision of Section 19(11) is thus an additional benefit given to dealer for claiming Input Credit in extended period. The use of word "shall make the claim" needs no other interpretation.

41. Learned Counsel for the appellant has referred to judgment of this Court in Dal Chand versus Municipal Corporation, Bhopal and another, 1984 (2) SCC 486,. This Court in the above case was considering Rule 9(j) of Prevention of Food Adulteration Rules, 1955, which requires supply of copy of the report of the public analyst within period of 10 days. The said rule was held to be directory. While considering the above case, following observations were made by this Court: □".....There are no ready tests or invariable formulae to determine whether a provision is mandatory or directory. The broad purpose of the statute is important. The object of the particular provision must be considered. The link between the two is most important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not, determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to non□compliance of the provision is necessary to invalidate the act complained of. It is well to remember that quite often many rules, though couched in language which appears to be imperative, are no more than mere instructions to those entrusted with the task of discharging statutory duties for public benefit. The negligence of those to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute. It is as well to realise that every prescription of a period within which an act must be done, is not the prescription of a period of limitation with painful consequences if the act is not done within that period. Rule 9(j) of the Prevention of Food Adulteration Act, as it then stood, merely instructed the Food Inspector to send by registered post copy of the Public Analyst's report to the person from whom the sample was taken within 10 days of the receipt of the report. Quite obviously the period

of 10 days was not a period of limitation within which an action was to be initiated or on the expiry of which a vested right accrued. The period of 10 days was prescribed with a view to expedition and with the object of giving sufficient time to the person from whom the sample was taken to make such arrangements as he might like to challenge the report of the Public Analyst, for example, by making a request to the Magistrate to send the other sample to the Director of the Central Food Laboratory for analysis. Where the effect of non□compliance with the rule was such as to wholly deprive the right of the person to challenge the Public Analyst's report by obtaining the report of the Director of the Central Food Laboratory, there might be just cause for complaint, as prejudice would then be writ large. Where no prejudice was caused there could be no cause for complaint. I am clearly of the view that Rule 9(j) of the Prevention of Food Adulteration Rules was directory and not mandatory....."

42. This Court in the above case clearly laid down that whether particular provision is mandatory or directory has to be determined on the basis of object of particular provision and design of the statute. The period of 10 days in submitting the report of the public analyst was held to be directory for the reason that on the negligence of those to whom public duties are entrusted no one should suffer. Such interpretation should not be put which may promote the public mischief and cause public inconvenience and defeat the main object of the statute. The interpretation of the Rule 9(j) in the above case was on its own statutory scheme and has no bearing in the present case. We, thus, are of the view that time period as provided in Section 19(11) is mandatory. Issue no. 5

43. One of the submission advanced by learned counsel for the appellant was that appellant assessee had valid explanation for not claiming Input Tax Credit within the time provided under Section 19(11), hence, the authority had jurisdiction to extend the time. It is submitted that time period as contained in Section 19(11) is not akin to the law of limitation. We have already found that expression "shall" occurring in Section 19(11) is mandatory whose compliance is necessary for claiming Input Tax Credit. The appellant has placed reliance on judgment of this Court reported in Surinder Singh versus Central Government and Others, 1986 (4) SCC 667. Learned Counsel submits that in the above case Central Government which was exercising authority under Displaced Persons (Compensation and Rehabilitation) Act, 1954 was held to be entitled to extend the time which was required for depositing the auction amount. In the above case, the officials of the Central Government were exercising Revisional Jurisdiction as conferred under Section 33 of the Act to the Central Government. Facts of the case were noticed in paragraph 9 to the following effect: □"9. The second question relates to the validity of the order of Shri Rajni Kant the officer to whom power under Section 33 was delegated, extending time to enable the appellant to deposit the auction□sale money. Shri Rajni Kant by his order dated February 6, 1970 exercising the delegated powers of the

Central Government under Section 33 of the Act set aside the order cancelling the auction sale held in August 1959 and permitted the appellant to deposit the balance of the purchase money within fifteen days from the date of the order with a default clause that on his failure his petition would stand dismissed. In accordance with that order appellant was entitled to deposit the money till February 21, 1970. It appears that on appellant's request the office prepared a challan which was valid up to February 20, 1970. The appellant went to the State Bank on February 20, 1970 to make the deposit but due to rush he could not make the deposit. On his application Shri Rajni Kant extended the time permitting the deposit by February 28, 1970 as a result of which a fresh challan was prepared which was valid up to February 28, 1970 and within that period appellant deposited the balance purchase money....."

44. Section 33 has been extracted in paragraph 10 of the judgment which is to the following effect: "10. Section 33 reads as under:

> "Certain residuary powers of Central Government. —The Central Government may at any time call for the record of any proceeding under this Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act or the rules made thereunder."

45. This Court in the above case held that the officer was exercising power of Central Government under Section 33 and had ample jurisdiction to set aside the Orders of the sub ordinate authorities canceling the order and to permit the appellant to deposit the balance amount of the purchase money. Following observations while examining the power given under Section 33 had been made:

> "11. The power conferred upon the Central Government under this provision is a residuary power in nature as the title of the section itself indicates. By enacting this section Parliament has conferred wide powers on the Central Government to call for the record of any case and to pass any order which it may think fit in the circumstances of the case. The only limitation on exercise of this power is that the Central Government shall not pass any order which may be inconsistent with any of the provisions of the Act and the rules made thereunder. Therefore, the Central Government or the delegated authority has power to set aside any order of the subordinate authorities, or to issue directions which it may consider necessary on the facts of a case subject to the aforesaid rider. This power is intended to be used to do justice and to mitigate hardship to a party unriddled by technicalities. Shri Rajni Kant while exercising powers of the Central Government under Section 33 of the Act had ample jurisdiction to set aside the orders of the subordinate authorities cancelling

> the auction held on August 24, 1959 and to permit the appellant to deposit the balance amount of the purchase money and he further had jurisdiction to extend the time initially granted by him. Extension of time to enable the appellant to deposit the money did not amount to review of the earlier order dated February 6, 1970……."

46. The above case was thus on its own facts, this Court held that in exercise of residuary power of Central Government, it had jurisdiction to pass such order in relation thereto as in its opinion the circumstances in the case require. In the scheme of Tamil Nadu Value Added Tax Act, 2006, there is no power conferred on any authority under the Act to dilute the mandatory requirement under Section 19(11). The taxing statute has to be strictly construed. Nothing is to be read in, noting is to be implied and language used in taxing statute had to be looked into fairly. The benefits envisaged in the taxing statute had to be extended as per the restrictions and conditions envisaged therein. The statute having not given any indication for extension of time which is a condition for claiming Input Tax Credit, the submission that period could have been extended by assessing authority is unfounded and cannot be accepted. Issue number 5 is answered accordingly.

47. The High Court had already granted liberty to writ petitioners in whose cases assessment has been finalized to file statutory appeal and objections which substantially protect the interest of the appellants

48. We, thus, do not find any error in the judgment of the High Court. All the appeals are dismissed.

……J. (A.K. SIKRI) ……J. (ASHOK BHUSHAN) NEW DELHI, OCTOBER 12,2018.