

1. It was contended that
2. Held / observed
3. by virtue of
4. and, therefore
- 5 Alternatively
6. have to be
7. must have
8. would have
9. It was submitted that
10. In our submission
11. It was further submitted that
12. learned counsel placed reliance upon the decision of the Supreme Court in the case of
13. Next, it was contended
14. keeping in view the same
15. It was pointed out that by virtue
16. underlying theme is the same, though the language is different
17. It was, accordingly, urged that
18. Vehemently opposing the petition
19. On the merits of the case, it was submitted that
20. in so far as
21. Reference was made
22. In support of such submission, the learned counsel relied upon the decision of the Supreme Court in the case of
- 23 In the backdrop of the facts and contentions noted hereinabove
- 24 taking shelter behind the impugned circular
25. Strong reliance is placed upon the judgment in the case of
26. The same analogy is sought to be extended in the present case also.
27. clearly stated that
28. It is submitted that
29. Reliance has been placed on the decision of the Supreme Court in the case of
30. It is vehemently contended that
31. it is profitable to quote the provision
32. Preliminary view
33. Advisory view
34. in so many words
35. Respondents have admitted that
36. Fair and reasonable exercise of power
37. to the best of his knowledge
38. Just, proper and valid
39. That the impugned notice is invalid, void and bad in law
40. That the impugned notice reveals that it is bereft of any details whatsoever (except the quantified liability) which are essential and mandatorily required in a show cause notice issued.
41. This the impugned notice is vague non-specific, incoherent and bereft of any details
42. Revenue is given liberty to pass an order in a manner known to law and communicate the same to the petitioners.
43. Our submission relating to omission of Rule 61 was not considered.
44. It is trite law that when the Act prescribes the method and manner for performing an act, such act shall be performed in compliance with the said method and manner and no other manner.
45. It cannot be lightly overlooked
46. does not align with the provisions of Article 271 of the Constitution
47. Can be viewed as non-compliant notice

48. May be considered an infraction of GST law

49. Cannot be considered as a notice that is in accordance with GST law

50. Does not comply with GST law / GST rules

51. Considered a violation of GST law / GST Rules

52. Not in compliance

53. authorities below have proceeded on the fallacious assumption

54. The decisive conclusions that arise out of the above discussion

55. from the above discussion coupled with the definitive findings and conclusions drawn in the cited case, it is clear that

56. In the instant case there is no material on record to prove or even remotely suggest that

57. In the instant case, in the face of the authoritative documentary evidence filed/available with the Ld. Assessing officer and argument cited above.

58. The specific reason garnered by the Ld. Assessing Officer (As per para 7, 8 and 9 of the assessment order) in making the aforesaid addition can be countered as follows:

59. was arbitrary and founded on erroneous logic

60. The use of words 'commits' make it more than amply clear that the committal of the offence is to be fixed first before punishment is imposed

61. and as such it is clear and unambiguous

62. is clearly incorrect and amounts to putting the cart before the horse.

63. established

64. would amount to a violation

65. In the light of the grave position put forth by the prosecution and also the fact that the investigation was at very early stages

66. does not take into consideration

67. does not take into account

68. To put it in other words

69. and from the scheme of the Act and the Law as a whole

70. Eventually,

71. The contention of the

72. in accordance with the procedure

73. does not advance the cause of investigation/enquiry

74. as well as necessity

75. in the peculiar and special facts and circumstances of the instant case

76. I am of the considered opinion

77. which has occurred due to bonafide reasons, unavoidable circumstances, sufficient cause

78. I am of the view that by adopting a justice oriented approach

79. is clearly a bonafide error, which has occurred due to bonafide reasons, unavoidable circumstances, sufficient cause and consequently, the aforesaid Circular would be directly and squarely applicable to the facts of the instant case.

80. by adopting a justice oriented approach, the petitioner would be entitled to the benefit of the Circular for the year 2019-20 also.

81. There can be no reason / justification for withholding or attaching

82. Full and fair hearing

83. Pressurised, compel, direction, forced

Quash the same as illegal Quash the same as devoid of merits Seeking to call for records

the said finding is clearly not based on any facts or misinterpretation of the provisions of Transport Property Act.

The learned counsel for the petitioner would also rely upon the decisions of Hon'ble Apex Court

- Before going into the issues which arise in this writ petition
- It would be necessary to consider the scheme of the GST regime by looking at the CGST Act
- in the following manner
- In the present case
- the central issue is whether the transactions in question
- the legislature intended
- It would also be necessary to note the definition of
- which reads as follows.
- A conjoined reading of Section ...
- would reveal that a
- However, there could be a
- The definition is similar to the concept of ...
- The issue that would arise
- which answers the description of
- but would still fall outside the ambit of
- Thus, the distinction between
- would be the end product
- fall within the ambit of
- The Hon'ble court also considered the judgment
- and more specifically Paragraph - 5
- The judgment of the Hon'ble SC in ... was cited before the Hon'ble SC
- The Hon'ble SC took the view that the principles laid down in the judgment in

- there is finding of fact
- did not apply the dictum
- he had advanced his arguments
- he had also extensively agreed
- with regard to the same
- had fairly agreed
- Common Portal is the Computer resource
but cannot be considered as designated
Computer resource.
- mere uploading
- without serving the notices
- also mandates
- where such being the case, it is not fair
on the part of the taxpayer to make a plea
- cannot should not be the reason
- negating or altering the scheme
- one must turn to common parlance
- fall back on the commonly understood meaning

- the underlying thrust of the definition
- Further, they have referred ...
- opportunity to litigate
- should not dilute the mandates of the Act
- It is settled jurisprudence in tax law that the difficulty of few in following the law will not make the law arbitrary or unreasonable.
- on the grounds of hardship and ignorance of the mechanism of the portal.
- By virtue of legal fiction
- being well aware of the fact the mode of service adopted...
- adopted by them is not effective but only sufficient.
- this court is unable to understand as to why there
- mode of service, which is sufficient as well as effective.
- Due to failure on the part of the...
- empty formality
- no useful purpose was achieved.
- from the face of the Table...
- the tax period in question.
- it is clearly evident that the
- In case your goodself is not satisfied with the submissions, then an opportunity of Personal Hearing may kindly be provided.
- The grievance of the tax payer is total
- ought to have afforded hearing
- The present application reveals the harrowing experience that a genuine person has gone through...
- wrongfully invoking NN...
- in excess of jurisdiction.
- order passed without service of notice
- shall be treated as invalid
- deemed to have never been issued
- Without proving any fraud, wilful misrepresentation
- merely to implicate petitioner.
- for respondent to establish that,
- complete non-application of mind.
- purposely ignored the submission & information
- explanation provided
- with the motive to simply cover-up the lacuna
- foisted
- assuming everything to be correct, no penalty could have been demanded
- as the said provisions are prospective in nature
- That in any even
- Impugned order goes beyond the SCN
- Basic jurisdictional requirement / ingredients
- are not attached for issuance of SCN
- Even otherwise, it is ill-conceivable to read and recognize
- rendered bad and illegal, deserving to be quashed and set-aside
- highly unconscionable & disproportionate
- content of the SCN itself would demonstrate

- Show cause notice was never properly served
- Hence, there is clear breach of principles of natural justice
- which itself makes the impugned order vulnerable to challenge
- If the impugned order is unsustainable, naturally all the notices issued pursuant to the said order also cannot stand
- one of the ground canvassed is
- on the strength of ..
- Certain minimum facts need to be noticed.
- The books of A/c were taken up for auditing by the ...
- reply filed by U is untenable
- directing it to discharge
- Proposing to demand and recover the alleged
- The petitioner being aggrieved by the aforesaid SCN has filed the present writ petition.
- It is vehemently argued
- Pre-conceived mind
- is rule of Policy, Convenience & discretion
- The case of the Revenue was that in the guise of an Inter-State Sale
- It is pre-mature for the High Court to opine Anything
- the same is required to be considered in an appropriate proceeding,
- The facts there were that the ...,
- why the goods in question.
- From the pleadings on record
- Needless to re-iterate
- aforesaid is factually incorrect.
- has materially erred in entertaining
- Reverting back to the facts of the instant case
- Containing exclusion details how it has arrived at a Conclusion, sufficient enough to voice SCN.
- annihilating a still born proceeding
- In view of the above and for the reasons stated above and without expressing anything on merits in favour of either of the parties.
- Prior to issuance of Notification exempting tax on supplies to Merchant Exporter in excess of 0.1% with effect from 23-10-2017, no tax was payable on goods procured by the Merchant Exporter.
- Mischief sought to be remedied
- and the entire exercise is revenue neutral and even if petitioners would have paid the Cess, same would have been availed as credit and subsequently claimed as refund.
- Part and parcel of same transaction.
- Hon'ble SC was considering the question as to whether
- similar analogy would apply to the
- Supreme Court while uploading levy
- would frustrate the entire purpose of the recommendation
- rationale/objective of granting exemptions
- applies with equal force to the,
- deny exemption to Cess is clearly discriminatory, arbitrary and violative of Article 14
- No interest is recoverable as the demand is not sustainable
- failed to declare the correct information ...
- illegally saddled with interest and penalty
- In the alternative,
- mandatory pre-deposit may be waived.
- It would be germane to refer to the relevant provisions.

- It is feared that in the absence of any notification
- There is a fallacy in reasoning of
- so as to urge the GST Council to re-consider
- if formula leads to absurd results or is unworkable
- the formula is not ambiguous in nature
- Practical effect of the formula might result in certain inequities
- we shall refrain from replacing the wisdom of the legislature
- given the anomalies pointed out
- reveals that
- unambiguously stipulates that
- limited to the extent of discrepancy occurring in the return
- beyond the scope of Section 61
- Cannot constitute cause of action for initiating proceedings
- reliance in this regard was placed upon a division Bench decision of this Court in case of ... decision dated 21.02.2023 in W.P(T)
- merely a procedural notice having no civil consequence
- with a clear objective to enable
- order is well reasoned & within four corners of law
- Petitioner has given misleading statement of facts
- Same principle has been followed and adopted
- These decisions are not directly applicable to the facts of the present case
- in view of the special dispensation
- subject to a factual determination
- have an overriding effect over the other enactments
- irrelevant, redundant, superfluous
- we are of considered opinion that
- reliance placed on the judgment of Hon'ble Supreme Court seems to be misplaced. We reproduce paragraph '6' of the said judgment hereunder.
- The writ petition is opposed and contested by
- Impugned order passed is contrary to facts and law
- Learned Counsel took this Court through the various statutory provisions, the judgments of the Apex Court, this Court and other High Courts as well as circular
- He would elaborate his submissions as under
- Contend the menace of fake invoices which are alleged to have been fraudulently obtained by the appellants
- A pre-decisional hearing was required and post-decisional hearing is not a substitute
- Power conferred was drastic and draconian in nature warranting existence of reasons to believe before exercising the said power by strictly complying with all the conditions/requirements of the said provision
- An order of blocking the ECL cannot be passed merely based on investigation reports
- The onus was on the department to prove that the taxpayer had deliberately availed fraudulent or ineligible ITC
- Resulting in irreparable injury and hardship
- ITC was a valuable right
- Cannot be confiscated opposed to law
- Since serious civil consequences are involved in the exercise of such powers
- Creates a disability for the taxpayer
- On the basis of some objective material available
- Cannot be made on the whims or fancies or wishes or caprices
- Must not be exercised in a mechanical manner

- Careful examination of all the facts
- Resort to with utmost circumspection and with maximum care and caution
- When a thing is directed to be done in a particular manner, it must be done in that manner or not at all — it is the well-established principle of administrative law
- Based on borrowed satisfaction
- Order passed based on the communication received from the officers
- In the light of existence of a legal mandatory pre-requirement
- It was incumbent upon the officer
- Orders are bad, vague, cryptic, laconic, unreasoned and non-speaking
- Showing the importance of the provision
- To secure justice or to prevent miscarriage of justice.
- Special audit is only a step towards assessment and being in the nature of an inquiry before assessment.
- Anything which affects a citizen in his Civil Life comes under wide umbrella.
- Fell in error in coming to the conclusion.
- Committed a grave and serious error / illegality / infirmity.
- As it is out of context and the said judgment deals with the issue of consideration under the Gift Tax Act, which is not pari materia with the definition of the term consideration under the CGST Act.
- Non-taxable amount
- It should nonetheless be payment.
- This is the most vital aspect noted in the present case.
- The legislature is not presumed to waste its words.
- Meaning should be given to each & every word used in the statute and nothing should be rendered redundant.

- This is an anti-evasion section and should not be pressed to an interpretation to make it difficult to implement and promote evasion.
- Jurisprudence in tax law says that penalty is nothing but civil liability.
- aims to curb the practice of illegal trading by creation of fake invoices without actual & physical supply of goods.
- and not beyond reasonable doubt.
- texture of the whole case
- will put a bench mark beyond reasonable doubt.
- Jurisprudence in tax law says that penalty is nothing but civil liability
- has addressed his arguments meticulously
- vehemently debunked the arguments
- mainly based on two pillars
- upon a careful perusal of the multifarious definitions in the legal dictionaries and judgements cited herein above
- Interpretation thereof by a Court should be to secure the Object
- when a particular section is a charging as well as remedial provision, its main object is to plug leakage and prevent evasion of tax
- a construction which would defeat its purpose.
- absurd interpretation
- unworkable

- heavily relied
- a straight jacket formula
- May remove the offending word and restore to constitutional health the rest of the provision.
- If the answer to the above question is in negative then, whether be said...
- It would be germane to refer to legislative history of
- Whether omission of Rule 96(10) was curative, and remedial or not.
- To examine the circumstances under which the amendment was brought in existence.
- Clarificatory or substantive in nature.
- Decision of Apex Court would be applicable to the facts of the present case.
- Such technicalities ought not to defeat the requirement of justice.
- Unintentional error on the part of the assessee.
- Which they otherwise legitimately are entitled to.
- There is much substance in the contention.
- Any contrary interpretation would lead to an absurdity and/or bring a regime that GST restrains...
- The error was to the effect that what should have figured
- That the error was not deliberate and was not intended to gain any undue benefit.
- Prejudice would be caused to the petitioners.
- Considering the civil contention.
- In fact, just and fair.
- Human errors and mistakes are normal, and errors are also made by the Revenue.
- It is concerning to note that the department is refusing to follow the decision of this Court.
- We are today constrained to proceed further.
- We so observe.
- However, in the present matters, it is not for this Court to be boggled by or question the wisdom of the CBIC.
- This would lead one to the inescapable conclusion of no perceivable or plausible tax liability possibly being created.
- Consequently, we are of the considered opinion
- Would be futile and impeached
- Would have stood absolved of all tax liabilities and implications flowing from the Act.
- A wholly false plea is raised.
- It is their bounden duty to take action against
- There is no valid excuse for its inaction.
- Assailing the validity of SCN
- In respect of the fee received by them in the course of discharge of their regulatory functions.
- Have sought to draw dichotomy between adjudicatory and regulatory functions.
- □ In order to appreciate the stand
- It would be apposite to take note of the assertions made in the SCNs.
- However, and for the sake of brevity
- Seeking to elucidate the stand of the
- It appears that appellant has selectively picked up a portion of the judgment of the Hon'ble Supreme Court which does not reflect properly in the present case.
- Submission made by appellant is out of context.
- Have trappings of the Court.
- Nature and functions performed.
- The enumerated functions are determinative of the above distinction and their implications.
- Based on the above, the commissioner's order was set aside by the Hon'ble Supreme Court.
- For the observations of the Hon'ble Supreme Court.
- For also on which we don't sign and set aside SCNs impugned.
- We find ourselves unable to sustain the correctness of the SCNs.

- In order to relieve department to labour assumptive stand — the law as interpreted in Section...
- The adoption of above a piece of conclusion which is not voted in a common source could be arbitrary.
- Standards that must bifurcate and draw a widely defined and explained —
- Which are duly and independently defined and explained.
- Cannot be possibly affirmed or even left on the conclusion.
- Unable to accept —
- Uniform, if that definition —
- Expansive reading of that definition —
- Would have to be necessarily be read alongside.
- Would have to be relatable.
- Clearly intended to include the material facts in context.
- Will not obliquely by possible misuse of powers given to the department.
- Chronical ensemble of true and fair basis and without arrest of natural justice has been flouted.
- Not a single piece of evidence has been found.