

GAHC010080802022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2863/2022

NATIONAL PLASTO MOULDING A PARTNERSHIP FIRM HAVING ITS OFFICE AT EPIP COMPLEX, AMINGAON, NORTH GUWAHATI, KAMRUP METRO AND IN THE INSTANT PROCEEDINGS REPRESENTED BY SRI RATAN KUMAR SHARMA, ONE OF THE PARTNERS OF THE PETITIONER FIRM

VERSUS

1: THE STATE OF ASSAM AND 3 ORS REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM, FINANCE (TAXATION) DEPARTMENT, DISPUR, GUWAHATI-781006

2: THE COMMISSIONER OF STATE TAXES (EARLIER KNOWN AS THE COMMISSIONER OF TAXES) KAR BHAWAN DISPUR GUWAHATI-781006

3: THE SUPERINTENDENT OF TAXES
GUWAHATI UNIT B KAR BHAWAN DISPUR GUWAHATI-781006

4: NISHANT SALES CORPORATION
1B M M BURMAN STREET KOLKATA-700007 WEST BENGAL

Linked Case : WP(C)/4170/2021

1: M/S SOCIETY SOAP WORKS AND ANR A PROPRIETORSHIP CONCERN HAVING ITS OFFICE AT TINMILE DOLABARI SONITPUR ASSAM-784001 AND IN THE PRESENT PROCEEDINGS REPRESENTED BY SRI JUGAL KISHORE DAGA THE PROPRIETOR OF THE PETITIONER FIRM THE PETITIONER NO. 2 HEREIN

2: JUGAL KISHORE DAGA
S/O LT. LAXMINARAYAN DAGA R/O GEETA LAZMI SADAN BAROHOLIA
OPP-PRADEEP BHAWAN TEZPUR ASSAM-784001 THE PROPRIETOR OF THE PETITIONER NO. 1 FIRM

VERSUS

1: THE UNION OF INDIA AND 4 ORS REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA MINISTRY OF FINANCE DEPARTMENT OF REVENUE NEW DELHI

2:THE COMMISSIONER CENTRAL GOODS AND SERVICE TAX
GUWAHATICENTRLA GST HQRS GUWAHATI GST BHAWAN KEDAR ROAD
MACKHOWA GUWAHATI-781001

3:THE ASSISTANT COMMISSIONER CENTRAL GOODS ANA SERVICE TAX
TEZPUR DIVISION L.B. ROAD P.O.-TEZPUR-784001 ASSAM

4:THE SUPERINTENDENT O/O THE ASSISTANT COMMISSIONER CENTRLA
GOODS AND SERVICE TAX TEZPUR DIVISION L.B. ROAD P.O.-TEZPUR-
784001 ASSAM

5:JVL AGRO INDUSTRIES LTD. JL49 MOUZA-DEBHOG P.S.-BHABANIPUR
PURBA MEDINIPUR HALDIA WEST BENGAL-721657

Linked Case : WP(C)/5107/2021

1: ABHAY ASSOCIATES AND ANR A PROPRIETORSHIP CONCERN HAVING
ITS OFFICE AT PAUL PATTY ROAD SILAPATHAR MAIN ROAD DHEMAJI
787059 ASSAM AND IN THE PRESENT PROCEEDINGS REPRESENTED BY
SMTI MADHU JAIN THE PROPRIETOR OF THE PETITIONER FIRM

2: MADHU JAIN
D/O JATAN LAL BAFNA RESIDENT OF M.V SCHOOL ROAD PO SILAPATHAR
DIST DHEMAJI ASSAM 787059 THE PROPRIETOR OF THE PETITIONER NO. 1
FIRM

VERSUS

1: THE UNION OF INDIA AND 4 ORS REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE DEPARTMENT OF REVENUE NEW DELHI

2:THE COMMISSIONER CENTRAL GOODS AND SERVICE TAX GUWAHATI
CENTRAL GST HQRS GUWAHATI GST BHAWAN KEDAR ROAD
MACHKHOWA GUWAHATI 781001

3:THE ASSISTANT COMMISSIONER CENTRAL GOODS AND SERVICE TAX
TEZPUR DIVISION L.B ROAD PO TEZPUR 784001 ASSAM

4:THE SUPERINTENDENT O/O ASSISTANT COMMISSIONER CENTRAL
GOODS AND SERVICE TAX TEZPUR DIVISIONL.B ROAD PO TEZPUR
784001 ASSAM

5:JVL AGRO INDUSTRIES LTD. JL49 MOUZA-DEBHOG PS- BHABANIPUR

PURBA MEDINIPUR HALDIA WEST BENGAL

Linked Case : WP(C)/4173/2021

MAHABIR PRASAD MAHENDRA KUMAR A PARTNERSHIP FIRM HAVING ITS OFFICE AT WARD NO. 9 MAIN ROAD DHEKIAJULI SONITPUR ASSAM 784110 AND IN THE INSTANT PROCEEDINGS REPRESENTED BY SRI AMIT CHANDAK ONE OF THE PARTNERS OF THE PETITIONER FIRM

VERSUS

1: THE UNION OF INDIA AND 4 ORS REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE DEPARTMENT OF REVENUE NEW DELHI

2:THE COMMISSIONER CENTRAL GOODS AND SERVICE TAX GUWAHATI CENTRAL GST HQRS GUWAHATI GST BHAWAN KEDAR ROAD MACKHOWA GUWAHATI 781001

3:THE ASSISTANT COMMISSIONER CENTRAL GOODS AND SERVICE TAX TEZPUR DIVISION L.B ROAD PO TEZPUR 784001 ASSAM

4:THE SUPERINTENDENT O/O ASSISTANT COMMISSIONER CENTRAL GOODS AND SERVICE TAX TEZPUR DIVISION L.B ROAD PO TEZPUR 784001 ASSAM

5:JVL AGRO INDUSTRIES LTD. JL49 MOUZA DEBHOG PS BHABANIPUR PURBA MEDINIPUR HALDIA WEST BENGAL 721657

Linked Case : WP(C)/7167/2023

DIPANKAR BANIK, LEGAL HEIR OF SMT. MIRA BANIK AND CARRIES ON A PROPRIETORSHIP CONCERN IN THE NAME OF DISHA CONSTRUCTION AND A RESIDENT OF BANIKPARA LALGANESH LOKHRA ROAD GUWAHATI 787 034 IN THE DISTRICT OF KAMRUP METRO ASSAM.

VERSUS

1: UNION OF INDIA AND 5 ORS REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA MINISTRY OF FINANCE DEPARTMENT OF REVENUE NEW DELHI.

2:THE STATE OF ASSAM REPRESENTED BY THE COMMISSIONER AND SECRETARY FINANCE DEPARTMENT DISPUR ASSAM SECRETARIAT GUWAHATI - 781006.

3:THE COMMISSIONER CENTRAL GOODS AND SERVICE TAX GUWAHATI CENTRAL GST HQRS GUWAHATI GST BHAWAN KEDAR ROAD

MACHKHOWA GUWAHATI 781001

4:COMMISSIONER OF STATE TAXES
ZONE - B KAR BHAWAN GUWAHATI-781005.

5:THE ADDITIONAL COMMISSIONER OF STATE TAXES
ZONE - B KARBHAWAN GUWAHATI -781005.

6:VAISHNAVI ALLOYS PVT. LTD. PRAKASH TOWER 3RD FLOOR ABC GS
ROAD GUWAHATI. GSTIN- 18AAFV0628K2Z3

Linked Case : WP(C)/4166/2021

VIJAY TRADING CO., A PARTNERSHIP FIRM HAVING ITS OFFICE AT TODI
HOUSE MAIN ROAD TEZPUR-784001 SONITPUR ASSAM AND IN THE
PRESENT PROCEEDINGS REPRESENTED BY SRI HASTIMAL CHORADIA
ONE OF THE PETITIONER FIRM

VERSUS

1: THE UNION OF INDIA AND 4 ORS REPRESENTED BY THE SECRETARY TO
THE GOVERNMENT OF INDIA MINISTRY OF FINANCE DEPARTMENT OF
REVENUE NEW DELHI

2:THE COMMISSIONER CENTRAL GOODS AND SERVICE TAX GUWAHATI
CENTRAL GST HQRS GUWAHATI GST BHAWAN KEDAR ROAD MACKHOWA
GUWAHATI-781001

3:THE ASSISTANT COMMISSIONER CENTRAL GOODS AND SERVICE TAX
TEZPUR DIVISION L.B. ROAD P.O.-TEZPUR-784001 ASSAM

4:THE SUPERINTENDENT O/O THE ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICE TAX TEZPUR DIVISION L.B. ROAD
P.O.-TEZPUR-784001 ASSAM

5:JVL AGRO INDUSTRIES LTD. JL49 MOUZA-DEBHOG
P.S.-BHABANIPUR MEDINIPUR HALDIA WEST BENGAL-721657

Linked Case : WP(C)/495/2022

1: TOLARAM SURENDAR KUMAR KUNDALIA AND ANR, A PARTNERSHIP
CONCERN HAVING ITS OFFICE AT A.T ROAD JORHAT ASSAM AND IN THE
PRESENT PROCEEDINGS REP. BY SRI SURENDER KUMAR KUNDALIA
ONE OF THE PARTNERS OF THE PETITIONER FIRM THE PETITIONER NO.2
HEREIN

2: SURENDER KUMAR KUNDALIA S/O- LATE- SANTOSH KUMAR
KUNDALIA R/O- AT ROAD JORHAT ASSAM ONE OF THE PARTNER OF THE

PETITIONER NO.1 FIRM

VERSUS

1: THE UNION OF INDIA AND 4 ORS REP BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) NORTH BLOCK NEW DELHI-110001

2:THE COMMISSIONER CENTRAL GOODS AND SERVICE TAX COMMISSIONERATE DIBRUGARH MILAN NAGAR F LANE P.O- C.R BUILDING DIBRUGARH

3:THE SUPERINTENDENT (A/E) CGST (HQRS) DIBRUGARH OFFICE OF THE COMMISSIONER CENTRAL GOODS AND SERVICE TAX COMMISSIONERATE DIBRUGARH MILAN NAGAR F LANE P.O- C.R BUILDING DIBRUGARH

4:THE SUPERINTENDENT CENTRAL GOODS AND SERVICE TAX JORHAT CGST RANGE-I STATION GODOWN ROAD JORHAT ASSAM

5:JVL AGRO INDUSTRIES LTD. 9TH FLOOR ROOM NO. 902A DIAMOND PRESTIGE AJC BOSE ROAD KOLKATA WEST BENGAL 700017

Linked Case : WP(C)/4327/2021

GUNCHAND DALCHAND A PARTNERSHIP FIRM HAVINGITS OFFICE AT N.C ROAD TEZPUR SONITPUR ASSAM AND IN THE PRESENT PROCEEDINGGS REPRESENTED BY SRI LAKSHY BHURA ONE OF THE PARTNERS OF THE PETITION FIRM

VERSUS

1: THE UNION OF INDIA AND 4 ORS REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE DEPT. OF REVENUE NEW DELHI

2:THE COMMISSIONER CENTRAL GOODS AND SERVICE TAX GUWAHATI CENTRAL GST HQRS GUWAHATI GST BHAWAN KEDAR ROAD MACHKHOWA GUWAHATI 781001

3:THE ASSISTANT COMMISSIONER CENTRAL GOODS AND SERVICE TAX TEZPUR DIVISION L.B ROAD PO TEZPUR 784001 ASSAM

4:THE SUPERINTENDENT O/O ASSISTANT COMMISSIONER CENTRAL GOODS AND SERVICE TAX TEZPUR DIVISION L.B ROAD PO TEZPUR 784001 ASSAM

5:JVL AGRO INDUSTRIES LTD. JL49 MOUZA DEBHOG PS BHABANIPUR PURBA MEDINIPUR HALDIA WEST BENGAL 721657

Linked Case : WP(C)/4151/2021

HEMKARAN STORES, A PARTNERSHIP FIRM HAVING ITS OFFICE AT THELAMARA SONITPUR ASSAM-784149 AND IN THE INSTANT PROCEEDINGS REPRESENTED BY SRI GOBARDHAN PANDIA ONE OF THE PARTNERS OF THE PETITIONER FIRM

VERSUS

1: THE UNION OF INDIA AND 5 ORS REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA MINISTRY OF FINANCE DEPARTMENT OF REVENUE NEW DELHI

2:THE COMMISSIONER CENTRAL GOODS AND SERVICE TAX GUWAHATI CENTRAL GST HQRS GUWAHATI GST BHAWAN KEDAR ROAD MACKHOWA GUWAHATI-781001

3:THE ASSISTANT COMMISSIONER CENTRAL GOODS AND SERVICE TAX TEZPUR DIVISION L.B ROAD P.O.-TEZPUR-784001 ASSAM

4:THE SUPERINTENDENT O/O THE ASSISTANT COMMISSIONER CENTRAL GOODS AND SERVICE TAX TEZPUR DIVISION L.B. ROAD P.O.-TEZPUR-784001 ASSAM

5:JVL AGRO INDUSTRIES LTD. JL49 MOUZA-DEBHOG P.S.-BHABANIPUR PURBA MEDINIPUR HALDIA WEST BENGAL-721657

Linked Case : WP(C)/489/2022

1: M/S RATHI TRADERS AND ANR, A PROPRIETORSHIP CONCERN HAVING ITS OFFICE AT AT ROAD JORHAT ASSAM AND IN THE PRESENT PROCEEDING REPRESENTED BY SRI RAJENDRA KUMAR RATHI PROPRIETOR OF THE PETITIONER FIRM THE PETITIONER NO 2 HEREIN

2: SRI RAJENDRA KUMAR RATHI
S/O SRI GANPAT LAL RATHI RESIDENT OF A.T ROAD JORHAT ASSAM PROPRIETOR OF PETITIONER NO. 1 FIRM

VERSUS

1: THE UNION OF INDIA AND 4 ORS REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE DEPARTMENT OF REVENUE NEW DELHI

2:THE COMMISSIONER CENTRAL GST COMMISSIONERATE DIBRUGARH MILAN NGAR F LANE PO C.R BUILDING DIBRUGARH

3:THE SUPERINTENDENT (A/E) CGST (HQRS) DIBRUGARH

OFFICE OF THE COMMISSIONER CENTRAL GST COMMISSIONERATE
DIBRUGARH MILAN NGAR F LANE PO C.R BUILDING DIBRUGARH

4:THE SUPERINTENDENT CENTRAL GOODS AND SERVICE TAX
JORHAT CGST RANGE I STATION GODOWN ROAD JORHAT ASSAM

5:JVL AGRO INDUSTRIES LTD. 9TH FLOOR ROOM NO 902A
DIAMOND PRESTIGE AJC BOSE ROAD KOLKATA WEST BENGAL 700017

Linked Case : WP(C)/4168/2021

1: MOTILAL GYANCHAND AND ANR, A PROPRIETORSHIP CONCERN
HAVING ITS OFFICE AT TODI HOUSE MAIN ROAD TEZPUR-784001
SONITPUR ASSAM AND IN THE PRESENT PROCEEDINGS REPRESENTED BY
SRI GYANCHAND BENGANI THE PROPRIETOR OF THE PETITIONER FIRM
THE PETITIONER NO. 2 HEREIN

2: GYANCHAND BENGANI
S/O MOTILAL BENGANI R/O MANIN ROAD TEZPUR-7854001 ASSAM
THE PROPRIETOR OF THE PETITIONER NO. 1 FIRM

VERSUS

1: THE UNION OF INDIA AND 4 ORS. REPRESENTED BY THE SECRETARY TO
THE GOVERNMENT OF INDIA MINISTRY OF FINANCE DEPARTMENT OF
REVENUE NEW DELHI

2:THE COMMISSIONER CENTRAL GOODS AND SERVICE TAX
GUWAHATICENTRAL GST HQRS GUWAHATI GST BHAWAN KEDAR ROAD
MACKHOWA GUWAHATI-781001

3:THE ASSISTANT COMMISSIONER CENTRAL GOODS AND SERVICE TAX
TEZPUR DIVISION L.B. ROAD P.O.-TEZPUR-784001 ASSAM

4:THE SUPERINTENDENT O/O ASSISTANT COMMISSIONER
CENTRLA GOODS AND SERVICE TAX TEZPUR DIVISION L.B. ROAD
P.O.-TEZPUR-784001 ASSAM

5:JVL AGRO INDUSTRIES LTD. JL49 MOUZA-DEBHOG
P.S.-BHABANIPUR PURBA MEDINIPUR HALDIA WEST BENGAL-721657

Linked Case : WP(C)/4085/2021

M/S CHUNNILAL BOTHRA AND SONS, A PARTNERSHIP FIRM HAVING ITS
OFFICE AT G.D. ROAD TEZPUR SONITPUR ASSAM 784001 AND IN THE
INSTANT PROCEEDINGS REPRESENTED BY SRI RAJKARAN BOTHRA
ONE OF THE PARTNERS OF THE PETITIONER FIRM

VERSUS

1: THE UNION OF INDIA AND 4 ORS. REPRESENTED BY THE SECY. TO THE GOVT. OF INDIA MINISTRY OF FINANCE DEPTT. OF REVENUE NEW DELHI.

2:THE COMMISSIONER CENTRAL GOODS AND SERVICE TAX GUWAHATI
CENTRAL GST HQRS GUWAHATI GST BHAWAN KEDAR ROAD
MACHKHOWA GUWAHATI 781001

3:THE ASSTT. COMMISSIONER CENTRAL GOODS AND SERVICE TAX
TEZPUR DIVISION L.B. ROAD P.O. TEZPUR 784001 ASSAM.

4:THE SUPERINTENDENT O/O ASSTT. COMMISSIONER CENTRAL GOODS
AND SERVICE TAX TEZPUR DIVISION L.B. ROAD P.O. TEZPUR 784001
ASSAM.

5:JVL AGRO INDUSTRIES LTD. JL49 MOUZA DEBHOG P.S. BHABANIPUR
PURBA MEDINIPUR HALDIA WEST BENGAL 721657

Linked Case : WP(C)/7236/2021

1: M/S LUNAKARAN NANDKISHORE AND ANR, A PROPRIETORSHIP
CONCERN HAVING ITS OFFICE AT WARD NO.-9 N.T ROAD NORTH
LAKHIMPUR ASSAM-01 AND IN THE PRESENT PROCEEDINGS
REPRESENTED BY SRI LUNKARAN NANDKISHORE THE PROPRIETOR OF
THE FIRM THE PETITIONER NO.2 HEREIN

2: SRI MOTILAL LAHOTY
S/O- LATE LADURAM LAHOTY R/O-S.S COMMERCIAL COMPLEX
NT ROAD NORTH LAKHIMPUR-787001 ASSAM

VERSUS

1: THE UNION OF INDIA AND 4 ORS REP. BY THE SECRETARY TO THE
GOVERNMENT OF INDIA MINISTRY OF FINANCE DEPTT. OF REVENUE
NEW DELHI

2:THE COMMISSIONER CENTRAL GOODS AND SERVICE TAX GUWAHATI.
CENTRAL GST H.Q GUWAHATI GST BHAWAN KEDAR ROAD MACHKHOWA
GUWAHATI-01

3:THE ASSISTANT COMMISSIONER CENTRAL GOODS AND SERVICE TAX
TEZPUR DIVISION L.B ROAD P.O-TEZPUIR-784001 ASSAM

4:THE SUPERINTENDENT CENTRAL GOODS AND SERVICE TAX
TEZPUR DIVISION L.B ROAD P.O-TEZPUIR-784001 ASSAM

5:JVL AGRO INDUSTRIES LTD., 9TH FLOOR ROOM NO. 902A DIAMOND

PRESTIGE AJC BOSE ROAD KOLKATA WEST BENGAL-700017

Linked Case : WP(C)/4100/2021

M/S JAISWAL TRADING AND ANR, A PROPRIETORSHIP CONCERN HAVING ITS OFFICE AT G.C.ROAD TODI HOUSE MAIN ROAD TEZPUR- 784001 SONITPUR ASSAM AND IN THE PRESENT PROCEEDINGS REP. BY SRI SIYA RAM CHOUDHURY THE PROPRIETOR OF THE PETITIONER FIRM THE PETITIONER NO.2 HEREIN

2: SIYA RAM CHOUDHURY
S/O- SATYA NARAYAN CHOUDHURY R/O- TODI HOUSE MAIN ROAD
TEZPUR- 784001 SONITPUR ASSAM THE PROPRIETOR OF THE
PETITIONER NO. 1 FIRM

VERSUS

1: THE UNION OF INDIA AND 3 ORS REP. BY THE SECY. TO THE GOVT. OF INDIA MINISTRY OF FINANCE DEPTT. OF REVENUE NEW DELHI

2: THE COMMISSIONER CENTRAL GOODS AND SERVICE TAX GUWAHATI
CENTRAL GST HQRS GUWAHATI GST BHAWAN KEDAR ROAD
MACHKHOWA GHY-01

3: THE ASSTT. COMMISSIONER CENTRAL GOODS AND SERVICE TAX
TEZPUR DIVISION L.B. ROAD P.O. TEZPUR- 784001 ASSAM

4: JVL AGRO INDUSTRIES LTD., JL49 MOUZA-DEBHOG
P.S.- BHABANIPUR PURBA MEDINIPUR HALDIA WEST BENGAL- 721657

For the Petitioner(s) : Dr. A. Saraf, Senior Advocate, assisted by Mr. P.K. Bora, Advocate.

For the Respondent(s) : Mr. S.C. Keyal, Standing Counsel, CGST.
: Mr. B. Gogoi, Standing Counsel, Finance Department, Govt. of Assam.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SUMAN SHYAM

05.08.2024
(Vijay Bishnoi, CJ)

Dr. A. Saraf, learned senior counsel for the petitioners has submitted that though in this batch writ petitions, the petitioners have challenged the validity of Sections 16(2)(c) and 16(2)(d) of the Assam Goods and Services Tax

Act, 2017 as well as the validity of Sections 16(2)(c) and 16(2)(d) of the Central Goods and Services Tax Act, 2017 along with the show cause notices issued to the petitioners, however, the controversy involved in these writ petitions is squarely covered by the decision of the Delhi High Court in the case of ***On Quest Merchandising India Private Limited -Vs- Government of NCT of Delhi & Ors.***, reported in ***2017 SCC OnLine Del 11286***, wherein it was categorically held that a purchasing dealer cannot be punished for the act of the selling dealer in case the selling dealer had failed to deposit the tax collected by it.

It is submitted that the Delhi High Court has observed that the provisions of Section 9(2)(g) of the Delhi Value Added Tax Act, 2004 can be read down and the demand raised against the purchasing dealers, who have entered into *bona fide* transaction, cannot be sustained. It is also submitted that the Special Leave Appeal against the said judgment of the Delhi High Court has already been dismissed by the Hon'ble Supreme Court on 10.01.2018 vide Petition for Special Leave to Appeal No.36750/2017.

Mr. S.C. Keyal, learned Standing Counsel, CGST and Mr. B. Gogoi, learned counsel for the respondent State are not in position to dispute the fact that the controversy raised in these writ petitions is squarely covered by the decision of the Delhi High Court rendered in ***On Quest Merchandising India Private Limited*** (supra).

Before the Delhi High Court, the validity of Section 9(2)(g) of the Delhi Value Added Tax Act, 2004 was under challenge. The said provisions of the Delhi Value Added Tax Act are analogous to the provisions of Sections 16(2)(c) and 16(2)(d) of the Assam Goods and Services Tax Act, 2017 as well as Sections 16(2)(c) and 16(2)(d) of the Central Goods and Services Tax Act, 2017.

The Delhi High Court in the said judgment has observed as under:-

“39. Applying the law explained in the above decisions, it can be safely concluded in the present case that there is a singular failure by the Legislature to make a distinction between purchasing dealers who have bona fide transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of article 14 of the Constitution.

40.

41. The court respectfully concurs with the above analysis and holds that in the present case, the purchasing dealer is being asked to do the impossible, i.e., to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, what section 9(2)(g) of the DVAT Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer and if the selling dealer fails to do so, undergo the risk of being denied the ITC. Indeed section 9(2)(g) of the DVAT Act places an onerous burden on a bona fide purchasing dealer.

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53. In light of the above legal position, the court hereby holds that the expression "dealer or class of dealers" occurring in section 9(2)(g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with section 50 of the Act where there is no mismatch of the transactions in Annexures 2A and 2B. Unless the expression "dealer or class of dealers" in section 9(2)(g) is

"read down" in the above manner, the entire provision would have to be held to be violative of article 14 of the Constitution.

54. *The result of such reading down would be that the Department is precluded from invoking section 9(2)(g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under section 40A of the DVAT Act."*

The Hon'ble Supreme Court has dismissed the SLP preferred against the said judgment by passing the following order:-

"On hearing learned Additional Solicitor General appearing for the petitioner, we are not inclined to interfere with the impugned order. The special leave petition is dismissed.

Learned Additional Solicitor General, however, submits that a batch of petitions were decided by the impugned order and there are some of the cases where the purchase transactions are not bonafide like the present case and those cases ought to have been remitted back to the competent authority.

Learned Additional Solicitor General submits that the petitioner would move the High court with necessary particulars for directions in this behalf for which liberty is granted, as prayed for.

Pending application(s), if any, stand disposed of."

Having gone through the above referred judgments, we are of the view that the controversy raised in this batch of writ petitions is squarely covered by the decision of the Delhi High Court in the case of **On Quest Merchandising India Private Limited** (supra). Hence, the show cause notices impugned in the present writ petitions and the consequential orders are

set aside. However, the Department is free to act in those cases, where the purchase transactions are not *bona fide*, in accordance with law.

With these observations, these writ petitions are disposed of.

JUDGE

CHIEF JUSTICE

Mukut

Comparing Assistant