Reserved on : 23.04.2026
Pronounced on : 07.07.2026

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

SALES TAX APPEAL No. 3 OF 2023

C/W

SALES TAX APPEAL No. 11 OF 2022

SALES TAX APPEAL No. 12 OF 2022

SALES TAX APPEAL No. 2 OF 2025

SALES TAX APPEAL No. 5 OF 2025

SALES TAX APPEAL No. 7 OF 2025

IN STA No. 3/2023

BETWEEN:

1. M/S. R. R. GOLD PALACE PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMPANIES ACT, 1956,
REPRESENTED HEREIN BY ITS
MANAGING DIRECTOR,
SRI R RAMESH,
PREVIOUSLY KNOWN AS
M/S. R. R. GOLD PALACE,
A REGISTERED PARTNERSHIP FIRM
UNDER THE INDIAN PARTNERSHIP ACT, 1932.

HAVING OFFICE AT
NO. 88, SAMPIGE ROAD,
BETWEEN 6TH AND 7TH CROSS,
MALLESHWARAM, BANGALORE – 560 003.

…APPELLANT

(BY SRI. SUMANTH SUDARSHAN, ADVOCATE FOR
SRI. ANNAMALAI S., ADVOCATE)

AND:

1. THE ADDITIONAL COMMISSIONER OF
COMMERCIAL TAXES
(ZONE)-1, GANDHINAGAR,
BENGALURU VANIJYA THERIGE KARYALAYA,
KALIDASA ROAD, GANDHINAGAR,
BENGALURU – 560 009.

2. THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES
(AUDIT AND RECOVERY) - 1.8,
DGSTO-1, BENGALURU
3RD FLOOR, BMTC COMPLEX, YESHWANTHPUR,
BENGALURU – 560 022.

…RESPONDENTS

(BY SRI. ADITYA VIKRAM BHAT, AGA)

THIS STA IS FILED UNDER SECTION 66(1) OF KARNATAKA VALUE ADDED TAX ACT 2003 AGAINST THE ORDER DATED 16.11.2022 PASSED IN ORDER No.ZAC-1/BNG/SMR-13/2022-23, ON THE FILE OF THE ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES, ZONE-1, GANDHINAGAR, BENGALURU. SETTING ASIDE THE ORIGINAL REASSESSMENT ORDER PASSED ON 29.10.2018 PASSED IN NO. VAT.AP, 101/17-18 PASSED BY THE JOINT COMMISSIONER OF COMMERCIAL ACT ALLOWING THE APPEAL BY SETTING ASIDE THE RECTIFICATION ORDER DATED 28.07.2017

RECTIFICATION ORDER DATED 28.07.2017 PASSED UNDER SECTION 69(1) OF KVAT ACT, 2003 BY ACCT (AUDIT) - 1.8, DVO -1, BENGALURU AND ALSO THE PENALTY ORDER. BY THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT)-1.8, DVO-1 BENGALURU, FOR THE TAX PERIOD FOR APRIL 2010 TO MARCH 2011.

IN STA No. 11/2022

BETWEEN:

1. M/S RAJDEEP BUILDCON PVT LTD
BUNGLOW NO.4,
LIBERTY SOC-2
NORHT MAIN ROAD,
OPP. LANE NO.5,
KOREGAON PARK
PUNE - 411 001

(REPRESENTED BY ITS DIRECTOR
SHRI. RAJESH MANNALAL KATARIYA
S/O MANNALAL PRITHWIRAJ KATARIYA
AGED ABOUT 52 YEARS)

...APPELLANT

(BY SRI. CHIDANANDA URS B.G., ADVOCATE)

AND:

1. THE ADDITIONAL COMMISSIONER OF
COMMERCIAL TAXES (ZONE)-1
DEPARTMENT OF COMMERCIAL TAXES
GOVERNMENT OF KARNATAKA
GANDHINAGAR BANGALORE - 560 001

2. THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES (AUDIT)-1.1
DGSTO-1,
YESHWANTHPURA

BENGALURU - 560 022

...RESPONDENTS

(BY SRI. ADITYA VIKRAM BHAT, AGA)

THIS STA IS FILED UNDER SECTION 66(1) OF KARNATAKA VALUE ADDED TAX ACT 2003 AGAINST THE ORDER DATED 29.06.2022 PASSED IN ORDER No.ZAC-1/BNG/SMR-27/2021-22, ON THE FILE OF THE ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES, ZONE-1, GANDHINAGAR, BENGALURU. MODIFYING OF THE APPEAL AND FILED AGAINST THE RE-ASSESSMENT ORDER DATED 14.06.2018 PASSED IN CAS NO.297503252 BY THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT)-1.1, DVO-01, BANGALORE UNDER SECTION 39(1) OF THE KVAT ACT, 2003 FOR THE TAX PERIOD FOR 2016-17.

IN STA NO. 12/2022

BETWEEN:

1. M/S RAJDEEP BUILDCON PVT LTD
BUNGALOW NO.4, LIBERTY SOC 2
NORTH MAIN ROAD
OPP LANE NO.5
KOREGAON PARK
PUNE – 411 001

REP BY ITS DIRECTOR
SRI RAJESH MANNALAL KATARIYA
S/O MANNALAL PRITHWIRAJ KATARIYA
AGED ABOUT 52 YEARS

...APPELLANT

(BY SRI. CHIDANANDA URS B G., ADVOCATE)

AND:

1. THE ADDITIONAL COMMISSIONER OF
   COMMERCIAL TAXES (ZONE)-1
   DEPT OF COMMERCIAL TAXES
   GOVERNMENT OF KARNATAKA
   GANDHINAGAR BANGALORE – 560 001

2. THE ASSISTANT COMMISSIONER OF
   COMMERCIAL TAXES (AUDIT)-1,
   DGSTO -1 YESHWANTHPURA
   BENGALURU – 560 022

3. THE UNDER SECRETARY
   FINANCE DEPARTMENT (C T -1) KARNATAKA
   GOVERNEMNT SECRETARIAT
   VIDHANA SOUDHA BENGALURU – 560 001

...RESPONDENTS

(BY SRI. ADITYA VIKRAM BHAT, AGA)

THIS STA IS FILED UNDER SECTION 66(1) OF KARNATAKA VALUE ADDED TAX ACT 2003 AGAINST THE ORDER DATED 28.06.2022 PASSED IN ORDER No.ZAC-1/BNG/SMR-26/2021-22, ON THE FILE OF THE ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES, ZONE-1, GANDHINAGAR, BENGALURU. MODIFYING OF THE APPEAL AND FILED AGAINST THE RE-ASSESSMENT ORDER DATED 22.12.2017 PASSED IN CAS NO.275307649 BY THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT)-1.1, BANGALURU, UNDER SECTION 39(1) OF THE KVAT ACT, 2003 FOR THE TAX PERIOD FOR APRIL 2015 TO MARCH 2016.

IN STA NO. 2/2025

BETWEEN:

1. M/S. P. S. TECH COM PRIVATE LIMITED
   1^{ST} BLOCK 9^{TH} B MAIN,

CHAIRMAN LAYOUT, HRBR LAYOUT,
BANASAWADI, BENGALURU - 560 43.
(REPRESENTED BY ITS DIRECTOR
SRI PRASAD PARUSURAMAN)

...APPELLANT

(BY SRI. ATUL K. ALUR, ADVOCATE)

AND:

1. THE ADDITIONAL COMMISSIONER OF
COMMERCIAL TAXES
ZONE-3, 6^{TH} FLOOR, VTK-1,
VANIJYA THERIGE KARYALAYA,
GANDHINAGAR, BANGALORE - 9

...RESPONDENT

(BY SRI. ADITYA VIKRAM BHAT, AGA)

THIS STA IS FILED UNDER SECTION 64(1) OF KARNATAKA VALUE ADDED TAX ACT 2003 AGAINST THE ORDER DATED 31.07.2024 PASSED IN CAS NO. 351440821 AD SMR ON THE FILE OF THE ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES, ZONE-3, BENGALURU SETTING ASIDE THE REASSESSMENT ORDER PASSED ON 31.07.2024 PASSED BY THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES ZONE-3, BENGALURU, FOR THE TAX PERIOD FOR APRIL 2008 TO MARCH 2009.

IN STA NO. 5/2025

BETWEEN:

1. M/S H R SATHISH
NO. 15, SIDDI VINAYAKA LAYOUT,
BHOOPSANDRA, BENGALURU- 560 064

(REPRESENTED BY ITS

PROPRIETOR SRI. H.R SATHISH.)

...APPELLANT

(BY SRI. ATUL K. ALUR, ADVOCATE)

AND:

1. THE ADDITIONAL COMMISSIONER OF COMMERCIAL
TAXES (SMR)-3, 8^{TH} FLOOR VTK-1
VANIJYA THERIGE KARYALAYA,
GANDHINAGAR, BANGALORE-9.

...RESPONDENT

(BY SRI. ADITYA VIKRAM BHAT, AGA)

THIS STA IS FILED UNDER SECTION 66(1) OF KARNATAKA VALUE ADDED TAX ACT 2003 AGAINST THE ORDER DATED 21.10.2024 PASSED IN ZAC/03/BNG/SMR-23/2024-25 ON THE FILE OF THE ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES, (SMR)-3, BENGALURU SETTING ASIDE THE REASSESSMENT ORDER PASSED ON 13.09.2019 PASSED BY THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS)-5, BANGALORE, FOR THE TAX PERIOD FOR APRIL 2011 TO MARCH 2012.

IN STA NO. 7/2025

BETWEEN:

1. M/S DHRUVADESH META STEEL PVT LTD
HAVING ITS REGISTERED OFFICE AT
1^{ST} FLOOR, NO. 372, NILAYA,
OPP R.T NAGAR POLICE STATION,
R.T NAGAR MAIN ROAD,
BENGALURU 560 032

(REPRESENTED BY ITS SRI. SREEVATHSA. B.N
GENERAL MANAGER - COMMERCIAL AND

ADMINISTRATION).

FACTORY AT:
M/S. DHRUVADESH META STEEL PVT LTD.,
SY NO. 150-156, HIREBAGANAL VILLAGE,
GINIGERA POST, KPPPALA TALUK.
KOPPAL - 583 028

...APPELLANT

(BY SRI. ATUL K. ALUR, ADVOCATE)

AND:

1. THE ADDITIONAL COMMISSIONER OF
COMMERCIAL TAXES, ZONE-3,
6TH FLOOR, VTK-1,
VANIJYA THERIGE KARYALAYA,
GANDHINAGAR, BANGALORE - 560 009.

...RESPONDENT

(BY SRI. ADITYA VIKRAM BHAT, AGA)

THIS STA IS FILED UNDER SECTION 66(1) OF KARNATAKA VALUE ADDED TAX ACT 2003 AGAINST THE ORDER DATED 30.04.2024 PASSED IN ORDER No.ZAC/03/DVG/SMR-29/2019-20 ON THE FILE OF THE ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES, ZONE-3, BENGALURU. SETTING ASIDE THE ORDER DATED 28.02.2015 PASSED IN APPEAL NO.KVAT /AP-488 TO 499/2014-15 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL (APPEALS, DAVANGERE) ORIGINAL REASSESSMENT ORDER PASSED ON 28.04.2014 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT) DAVANGERE, ALLOWING THE APPEALS AND FILED UNDER SECTION 39(1), 72(2) AND 36 OF THE KVAT ACT 2003 FOR THE TAX PERIOD FOR 2007-2008.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, ***K.V. ARAVIND J.,*** DELIVERED THE FOLLOWING:-

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE MR. JUSTICE K. V. ARAVIND

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE K. V. ARAVIND)

Heard Sri Sumanth Sudharshan, learned counsel for Sri Annamalai S., learned counsel for the appellant in STA No.03/2023; Sri Chidananda Urs B.G., learned counsel for the appellant in STA No.11/2022 and STA No.12/2022; and Sri Atul K. Alur, learned counsel for the appellant in STA Nos.02/2025, 05/2025 and 07/2025, and Sri Aditya Vikram Bhat, learned Additional Government Advocate for the respondent-authorities/Revenue.

2. These appeals are filed under Section 66(1) of the Karnataka Value Added Tax Act, 2003 (for short, 'the Act') by the dealer/assessee, impugning the order passed by the *Suo Motu* Revisional Authority (for short, 'the SMR Authority') under Section 64 of the Act.

2.1 The following substantial questions of law are admitted by this Court:

In STA No.03/2023

i) *"Whether ITC rightly claimed by the Appellant can be denied to it under the KVAT Act solely on the basis of the supplier allegedly being de-registered and / or not remitting the tax admittedly paid to it by the Appellant;*

ii) *Whether the 1^{st} Respondent is justified in placing reliance on the Hon'ble Supreme Court's judgment in Ecom Gill since, even assuming but not admitting that the ratio of the said decision were to applicable to the instance case, there is no dispute whatsoever that the goods in question were delivered to the Appellant as categorically held by the JCCT, and thus in the light of this factual finding, the ITC can by no stretch of imagination be denied to the Appellant?*

iii) *Whether the 1st Respondent is thus justified in re-opening and revising the JCCT's order under Section 64(1) of the KVAT Act on the incorrect premise that the said order was erroneous in so far as it is prejudicial to the interests of the Revenue although the jurisdictional requirements necessary to invoke the provisions of Section 64(1) of the KVAT Act are wholly absent in the instant case; and*

iv) *The Respondents were justified in directing the levy of penalty and in levying penalty under Section 72(2) of the KVAT Act on the erroneous premise that the levy of penalty under the said provision is automatic and mandatory?"*

In STA No.11/2022

i) *Whether on facts and in the circumstances of the case, the respondent was justified in invoking* *powers of revision under section 64 of the KVAT Act to set aside the re- assessment order, in the absence of satisfying the twin conditions adumbrated by the Legislature?"*

In STA No.12/2022

i) Whether on facts and in the circumstances of the case, the respondent was justified in invoking powers of revision under section 64 of the KVAT Act to set aside the re- assessment order, in the absence of satisfying the twin conditions adumbrated by the Legislature?

ii) Whether on the facts and in the circumstances of the case, whether the invoking of revision jurisdiction under section 64(3) is beyond the time limit prescribed under the Act?

iii) Whether the extension of time limit vide Removal of Difficulties Order (01/2020) in No.FD 27 CSL 2020 dated 17.04.2020 by the Respondent No.3 by an Executive Order is without jurisdiction in as much as the as the State Legislature itself had no power to amend the provisions of repealed KVAT Act, 2003?

iv) Whether on the facts and in the circumstances of the case, whether the disallowance of expenditure which is purely related to labour and service and addition of tax on URD purchases to output tax is sustainable, which was correctly allowed in the Re-assessment Order in CAS Order No.275307649 dated 22.12.2017 based on verification of books of accounts, vouchers and Returns filed?"

In STA Nos.2/2025 and 5/2025

i) *Whether the revisional authority was right in computing the limitation from the date of the original order U/s 39 of the KVAT Act and in rejecting/dismissing the appeal on the ground of limitation.*

ii) *Whether the revisional authority was right in coming to the opinion that the subject Endorsement merges with the order under Section 39 of the KVAT Act when rejecting the appeal on limitation.*

iii) *Whether the revisional authority was right in initiating the proceedings under Section 64 of the KVAT Act after the repeal of the KVAT Act, w.e.f. 30/06/2017.*

iv) *Whether the revisional authority was right in concluding that proceedings are not barred by limitation under Section 64(3)(c) of the KVAT Act.*

v) *Whether the revisional authority was right in passing the order after the substitution of Entry 54 of the VI Schedule to the Constitution of India."*

In STA No.7/2025:

i) *Whether the Additional Commissioner, after having issued notice on 08.01.2020 under Section 64(1) of the KVAT Act five years after the Rectification order putting the appellant on notice on a specific ground asserting an error resulting in prejudice to the Revenue's interest, could have exercised the jurisdiction to unsettle the order dated 28.02.2015 on another ground paving way*

> *for the first appellate authority's order dated 20.11.2024."*

FACTS

3. For the sake of convenience, the facts in STA No.03/2023 are referred to, as the issues raised in all the appeals are identical.

3.1 For the assessment period 2010-11, a re-assessment order was passed on 03.05.2014, and the said order was subject matter of an appeal before the Joint Commissioner of Commercial Taxes (Appeals), which came to be disposed of on 29.10.2018. For the purposes of Section 64 of the Act, the SMR Authority issued a letter calling for the records of the First Appellate Authority in respect of the order dated 29.10.2018.

3.2 Notice under Section 64(1) of the Act was issued by the SMR Authority on 05.08.2022. Thereafter, the SMR Authority, after considering the reply filed by the assessee, passed an order dated 16.11.2022 setting aside the order dated 29.10.2018 passed by the First Appellate Authority and issued consequential directions. The order passed by the SMR Authority is under challenge before this Court.

SUBMISSIONS

4. Sri Sumanth Sudharshan, learned counsel for Sri Annamalai S., learned counsel for the appellant in STA No.03/2023, submits that the re-assessment order was passed on 03.05.2014 after considering the documents on record. The said order was rectified on 28.07.2017. The order of rectification was the subject matter of an appeal before the First Appellate Authority, which came to be decided on 29.10.2018.

4.1 It is further submitted that the notice issued under Section 64(1) of the Act, proposing to revise the order dated 29.10.2018 passed by the First Appellate Authority, is barred by limitation. It is submitted that, in view of clause (c) of sub-section (3) of Section 64 of the Act, no order can be passed under Section 64 after four years from the date of the order sought to be revised. It is contended that the order sought to be revised is dated 29.10.2018, whereas the revisional order has been passed on 16.11.2022, i.e., beyond a period of four years, and is therefore barred by limitation.

4.2 It is also submitted that all powers conferred under Section 64 of the Act are required to be exercised within a period of four years. Accordingly, it is contended that the exercise of jurisdiction under Section 64 of the Act to revise the order dated 29.10.2018 is bad in law.

4.3 It is further submitted that an order under Section 64 of the Act has to satisfy the twin conditions, namely, that the order sought to be revised is erroneous and prejudicial to the interests of the Revenue. The absence of either of these conditions would invalidate the order. It is contended that the mere possibility of another view or opinion cannot constitute a ground to invoke Section 64 of the Act.

4.4 It is submitted that the order passed by the First Appellate Authority was made after considering all the material evidence on record and that the said order was neither erroneous nor prejudicial to the interests of the Revenue. According to the learned counsel, the proceedings have been initiated merely on a change of opinion. It is further submitted that the findings recorded by the SMR Authority on merits are without considering the submissions made on behalf of the assessee. It is also contended that the Input Tax Credit (ITC) cannot be denied merely on the premise that the genuineness of the transactions has not been proved.

5. Sri Chidanand Urs B.G., learned counsel appearing for the appellant-assessee in STA No.11/2022 and 12/2022 submits that all the powers conferred under Section 64 of the Act are required to be exercised within a period of four years. It is his specific contention that the entire proceedings, commencing from the calling for records till the passing of the order, are required to be completed within a period of four years.

5.1 It is submitted that, since the Act mandates maintenance of books of accounts only for a period of five years, any interpretation extending the period of limitation beyond four years would render the defence of the assessee ineffective and lead to absurd consequences. It is contended that the assessee cannot be expected to maintain books of accounts beyond the prescribed period of five years in anticipation of revisional proceedings under Section 64 of the Act. It is further submitted that any interpretation having the effect of extending the limitation beyond four years would lead to absurd results and leave the assessee defenceless.

5.2 In the alternative, it is submitted that treating the calling for records as initiation of proceedings within the period of four years would seriously affect the statutory protection available to the assessee. It is contended that the calling for records by the SMR Authority from the Assessing Authority or the First Appellate Authority is merely an internal correspondence and, therefore, cannot be accorded much evidentiary value.

5.3 It is further submitted that, even if the calling for records is made within a period of four years, the revisional proceedings must also culminate in the passing of an order within the said period. According to the learned counsel, the authorities, by taking undue advantage, have prolonged the proceedings either by delaying the issuance of notice under Section 64 of the Act or by delaying the conclusion of the proceedings by passing the final order, which would seriously prejudice and adversely affect the rights and defence of the assessee.

6. Sri Atul K. Alur, learned counsel for the appellant-assessee in STA Nos.02/2025, 05/2025 and 07/2025, in addition to the submissions made above, submits that the period of four years would commence from the date of knowledge of the order sought to be revised. It is contended that any other interpretation would lead to arbitrary exercise of jurisdiction and prejudice the rights and defence of the assessee.

6.1 It is further submitted that the mere calling for records does not amount to initiation of proceedings unless the same culminates in adjudication. According to the learned counsel, the proceedings commence only upon issuance of a show-cause notice under Section 64 of the Act and conclude upon the passing of an order under the said provision. It is submitted that if both the initiation and conclusion of the proceedings have not taken place within a period of four years from the date of the order sought to be revised, the proceedings would be liable to fail as being barred by limitation.

7. *Per contra*, Sri Aditya Vikram Bhat, learned Additional Government Advocate appearing for the respondent-

authorities/Revenue, submits that the question regarding limitation is no longer *res integra* in view of the pronouncements of this Court. In support of his submissions, reliance is placed on the judgments of this Court in ***M/s. Abhiram Infra Projects Pvt. Ltd. vs. Additional Commissioner of Commercial Taxes and Another*** in ***STA No.04/2023*** dated ***27.09.2024***, and ***M/s. Kalyan Jewellers Salem (Pvt.) Ltd. vs. Additional Commissioner of Commercial Taxes*** in ***STA No.06/2025*** dated ***02.07.2025***.

7.1 Placing reliance on the aforesaid judgments, it is contended that if any of the actions contemplated under Section 64 of the Act are commenced within a period of four years, there is no limitation prescribed for passing the final order. It is submitted that reading any such limitation into the provision would amount to re-writing the statute, which is impermissible.

7.2 Insofar as the merits are concerned, the learned Additional Government Advocate submits that the scope of enquiry undertaken and the findings recorded by the SMR Authority are in conformity with the law laid down by the

Hon'ble Supreme Court in the case of ***State of Karnataka v. Ecom Gill Coffee Trading (P) Ltd.***, ***(2023) 111 GSTR 1 (SC) / (2023) 18 SCC 809***, and are therefore justifiable.

7.3 With the above submissions, the learned Additional Government Advocate seeks dismissal of the appeals.

<u>RELEVANT STATUTORY PROVISION</u>

8. Section 64 of the Karnataka Value Added Tax Act, 2003 reads as under:

> ***"64. Revisional powers of Additional Commissioner and Commissioner.-***
>
> *(1) The Additional Commissioner may on his own motion call for and examine the record of any order passed or proceeding recorded under this Act and if he considers that any order passed therein by any officer, who is not above the rank of a Joint Commissioner, is erroneous in so far as it is prejudicial to the interest of the revenue, he may, if necessary, stay the operation of such order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or canceling the assessment or directing a fresh assessment.*
>
> *(2) The Commissioner may on his own motion call for and examine the record of any proceeding under this*

Act, and if he considers that any order passed therein by any officer subordinate to him 1[or the Authority for Clarification and Advance Rulings constituted under Section 60] is erroneous in so far as it is prejudicial to the interest of the revenue, he may if necessary, stay the operation of such order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or canceling the assessment or directing a fresh assessment.

(3) The Additional Commissioner or the Commissioner shall not exercise any power under sub-section (1) or sub-section (2), as the case may be, if.-

(a) the time for appeal against the order has not expired;

(b) the matter has been subject to an appeal under Section 63 or a revision in the High Court; or

(c) more than four years have expired after the passing of the order sought to be revised.

[Provided that in the case of an order passed by the Appellate Authority under Section 62 allowing the appeal preferred in full, the condition specified in clause (a) shall not apply.]

(4) Notwithstanding anything contained in sub-section (3), the Additional Commissioner or the Commissioner may pass an order under sub-section (1) or (2), as the case may be, on any point which has not been raised and decided in an appeal or revision referred to in clause (b) of sub-section (3), before the expiry of a period of one year from the date of the order in such

appeal or revision or before the expiry of a period of four years referred to in clause (c) of that sub-section, whichever is later.

(5) Every order passed in revision under sub-section (1) shall, subject to the provisions of sub-section (2) of this Section and Sections 66 and 67, be final.

(6) Every order passed in revision under sub-section (2) shall, subject to the provisions of Sections 65 and 66, be final.

(7) If the order passed or proceedings recorded by the appropriate authority referred to in sub-section (1) or (2), involves an issue on which the High Court has given its decision adverse to the revenue in some other proceedings and an appeal to the Supreme Court against such decision of the High Court is pending, the period spent between the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period referred to in clause (c) of sub-section (3).

(8) In computing the period of limitation for the purpose of sub-section (3), any period, during which any proceeding under this Section is stayed by an order or injunction of any court, shall be excluded.

(9) For the purposes of this Section, 'record' shall include all records relating to any proceedings under this Act available at the time of examination by the Additional Commissioner or the Commissioner. ***[Refer Rules 154 and 174]****."*

ANALYSIS

9. We have considered the submissions made by the learned counsel appearing for the parties.

10. The primary contention raised in all these appeals is that the issuance of a show-cause notice and the passing of an order under Section 64 of the Act are required to be completed within a period of four years from the date of the order sought to be revised. It is contended that the mere calling for records from the Assessing Authority or the First Appellate Authority for the purpose of revision under Section 64 of the Act, within a period of four years, would neither save nor extend the period of four years for issuing notice or passing an order under Section 64 of the Act.

11. This issue is no longer *res integra* in view of the judgments of this Court in ***M/s. Abhiram Infra Projects Pvt. Ltd.*** (*supra*) and ***M/s. Kalyan Jewellers Salem (Pvt.) Ltd.*** (*supra*). In both the cases, it has been held that the limitation of four years prescribed under Section 64 of the Act is for calling for records and initiating proceedings, and not for passing the final order. In the light of the aforesaid judgments

of this Court, if records are called for, or notice is issued under Section 64, within a period of four years, the mere fact that the order is passed after the expiry of four years would not render the proceedings barred by limitation. It has been held that the date of calling for records would be relevant for determining the period of limitation prescribed under sub-section (3) of Section 64 of the Act. The question is answered accordingly.

11.1 However, the contention of the respondent-Revenue that once records are called for within a period of four years, there would be no limitation whatsoever for passing an order under Section 64 of the Act cannot be accepted, particularly when the scheme of the Act is structured on the basis of prescribed timelines, both for the assessee and the Assessing Authority. The power to pass an order cannot remain unfettered and without any time limit. Such an interpretation would lead to unintended and adverse consequences. It would result in arbitrary exercise of power and harassment of taxpayers.

12. Moreover, Section 32 of the Act prescribes the period for retention of accounts. Every dealer/assessee is required to maintain books of accounts and other records until the

expiration of five years after the end of the relevant year or until the assessment attains finality, whichever is later. A plain reading of Section 32 would indicate that if assessment proceedings are concluded within four years, the books of accounts are required to be retained for a period of five years. If proceedings such as reassessment or appellate proceedings are concluded beyond four years, the obligation to retain accounts would continue till the expiry of the limitation period for challenging or appealing against such orders.

13. The exercise of power under Section 64 of the Act being in the nature of *suo motu* revision by the competent authority, the assessee cannot be kept on tenterhooks, anticipating uncertainty regarding the initiation of proceedings under Section 64 of the Act. The mere calling for records by the SMR Authority, by itself, would amount to initiation of proceedings.

14. The period consumed between the date of calling for records and the issuance of notice under Section 64 must, however, be reasonable. Though we have held that calling for records by the SMR Authority within a period of four years would satisfy the requirement of limitation under Section 64,

any unreasonable delay in concluding the proceedings would undoubtedly result in harassment and render the defence available to the assessee ineffective. In the absence of books of accounts and other relevant documents, the assessee may not be in a position to effectively defend its case. In many instances, the assessee may also be required to secure documents or transaction details from the other party to the transaction, who, in turn, cannot be expected to preserve such records beyond the statutorily prescribed period of five years.

15. The next question that arises for consideration is as to what would constitute a reasonable period for concluding the proceedings from the date of calling for the records. We find the answer on a conjoint reading of Sections 32 and 64 of the Act. A combined reading of Sections 32 and 64 of the Act would lead to the conclusion that the proceedings should ordinarily be concluded within a period of five years. The above analysis would necessarily imply and mandate that the proceedings be concluded within a reasonable time. Section 32 of the Act mandates the assessee to maintain books of account and other documents for a period of five years. Section 64 of the Act, in cases where an appeal or revision gives rise to revisional

jurisdiction, prescribes a period of four years, as provided under clause (c) of Section 64(3), or one year, whichever is later, for completion of the revision proceedings. A cumulative reading of these provisions would indicate that, in any event, the revision proceedings should be completed within a period of five years from the date of the order sought to be revised.

16. It is a settled position of law that where no limitation is prescribed for the initiation or conclusion of proceedings, such proceedings cannot be kept pending indefinitely to the detriment of the taxpayer and contrary to the scheme of the Act. The Hon'ble Supreme Court in ***State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd.***, ***(2007) 10 VST 180 / (2007) 11 SCC 363***, approved and prescribed a limitation in such situations. The principle laid down therein is as follows:

> *"15. Sub-section (1) of Section 11 provided for a three-year limitation. We may notice that the said period of limitation was introduced by reason of Punjab Act 12 of 1998 and prior thereto a period of five years was prescribed therefor. Sub-section (3) of Section 11 also provides for a three-year limitation. Sub-section (6) of Section 11 which is the residuary provision provides for five years' limitation.*
>
> *16. Sub-section (1) of Section 11 empowers the Commissioner to extend the period of three years for passing the order of assessment wherefor reasons are*

> *required to be recorded in writing subject, however, to the maximum period of five years. Ordinarily, therefore, a period of three years has been prescribed for completion of the assessment in terms of the provisions of the Act. We may also notice that in cases where an assessment order is to be reviewed, the same should be done within a period of one year.*
>
> *17. A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo motu power can be exercised at any time.*
>
> *18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.*
>
> *19. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of Section 11 of the Act is five years."*

16.1 The High Court of Delhi in the case of ***CIT v. NHK Japan Broadcasting Corpn., (2008) 305 ITR 137 / 2008 SCC OnLine Del 1433***, has held as under:

> *"10. There is no dispute that section 201 of the Act does not prescribe any limitation period for the assessee being declared as an assessee in default.*

11. Learned counsel for the Revenue relied upon Bharat Steel Tubes Ltd. v. State of Haryana, (1988) 70 STC 122 (SC) to contend that no period of limitation can be prescribed in a situation such as the present for initiating proceedings.

12. Learned counsel for the assessee relied upon State of Punjab v. Bhatinda District Co-op. Milk Producers Union Ltd., (2007) 11 SCC 363; (2007) 9 RC 637 to contend that if no period of limitation is prescribed, a statutory authority must exercise its jurisdiction within a reasonable period. What should be the reasonable period depends upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

13. Relying upon this decision, it is submitted by learned counsel for the assessee that since section 201 of the Act does not prescribe any period of limitation for initiating or for completing proceedings in declaring the assessee as an assessee in default, exercise of jurisdiction should commence in so far as the statutory authority is concerned within a reasonable period of time.

14. We are unable to agree with learned counsel for the Revenue inasmuch as the decision relied upon by him deals with reasonable time for completing the assessment or for completing the task on hand.

15. In Bharat Steel Tubes Ltd.(1988) 70 STC 122 (SC) the question that arose before the court (and which has been stated on page 130 of the report) is whether an order of assessment under section 11(3) of the Punjab General Sales tax Act, 1948, or section 28(3) of the Haryana General Sales tax Act, 1973, could now be completed or it would be barred by limitation. In that case, the assessment proceedings had been unduly delayed and the Supreme Court came to the conclusion that for completing the assessment proceedings there is no period of limitation prescribed and that would depend upon the facts of each case. Considering the facts of the case, the Supreme Court gave a direction to the assessing authority to complete all the pending assessments within a period of four months from the date of delivery of the judgment.

16. In so far as Bhatinda District Co-op. Milk Producers Union Ltd.(2007) 9 RC 637; 11 SCC 363 is concerned, the question that arose before the Supreme Court was regarding initiation of proceedings by exercise of jurisdiction by the statutory authority. The Supreme Court held that exercise of jurisdiction must be within a reasonable period of time and considering the provisions of the Punjab General Sales tax Act, 1948, it was held that a reasonable period of time for initiating proceedings would be five years.

17. There is a qualitative difference between Bharat Steel Tubes Ltd.(1988) 70 STC 122 (SC) and Bhatinda District Co-op. Milk Producers Union Ltd.(2007) 9 RC 637; 11 SCC 363. In the former case, the question pertained to completion of proceedings, while in the latter case is pertained to initiation of proceedings. We are concerned with initiation of proceedings.

18. In so far as the Income-tax Act is concerned, our attention has been drawn to section 153(1)(a) thereof which prescribes the time limit for completing the assessment, which is two years from the end of the assessment year in which the income was first assessable. It is well known that the assessment year follows the previous year and, therefore, the time limit would be three years from the end of the financial years. This seems to be a reasonable period as accepted under section 153 of the Act, though for completion of assessment proceedings. The provisions of reassessment are under sections 147 and 148 of the Act and they are on a completely different footing and, therefore, do not merit consideration for the purpose of this case.

19. Even though the period of three years would be a reasonable period as prescribed by section 153 of the Act for completion of proceedings, we have been told that the Income-tax Appellate Tribunal has, in a series of decisions, some of which have been mentioned in the order which is under challenge before us, taken the view that four years would be a reasonable period of time for initiating action, in a case where no limitation is prescribed.

20. The rationale for this seems to be quite clear—if there is a time limit for completing the assessment, then the time limit for initiating the proceedings must be the same, if not less. Nevertheless, the Tribunal has given a greater period for commencement or initiation of proceedings.

21. We are not inclined to disturb the time limit of four years prescribed by the Tribunal and are of the view that in terms of the decision of the Supreme Court in Bhatinda District Co-op. Milk Producers Union Ltd.(2007) 9 RC 637; 11 SCC 363 action must be initiated by the competent authority under the Income-tax Act, where no limitation is prescribed as in section 201 of the Act within that period of four years.

22. Learned counsel for the Revenue submitted that the Department came to know that the assessee was an assessee in default only in November, 1998, when a survey was conducted and it came to be known only then that when the assessee had not deducted tax at source on the global salary. We are of the opinion that the date of knowledge is not relevant for the purposes of exercising jurisdiction in so far as the provisions of the Income-tax Act are concerned. If it were so, the limitation period, as for example prescribed under section 147/148 of the Act would become meaningless if the concept of knowledge is imported into the scheme of the Act.

23. The second part of the argument of learned counsel for the Revenue in this regard was that the question of limitation did not at all arise because the assessee had itself admitted its liability and it voluntarily paid the tax and interest on that amount. Again, we are not in agreement with learned counsel for the Revenue in this regard.

24. It appears that the assessee paid the tax voluntarily as well as interest thereon but the acceptance of the liability by the assessee would not by itself extend the period of limitation nor would it extend the reasonable time that is postulated by the scheme of the Income-tax Act. The assessee cannot be put, in a sense, in a worse position merely because it has admitted its liability. If the assessee had denied its liability, the question that

> *would have arisen would be whether the Revenue could have initiated proceedings after a lapse of four years. The answer to that would of course have to be in the negative in view of the reason that we have already indicated above. The fact that the assessee agreed to pay the tax voluntarily cannot put the assessee in a situation worse than if it had contested its liability."*

17. In the light of the above principle, we deem it appropriate to hold that, under Section 64 of the Act, if the records are called for within a period of four years, the proceedings are validly initiated within time. The issuance of a show-cause notice and the passing of the final order shall be completed within a period of five years from the date on which the order sought to be revised was passed. In other words, the final order shall be passed within one year after the expiry of four years from the date on which the order sought to be revised was passed.

18. **CONCLUSION**

(a) The letter calling for the records issued by the SMR Authority within a period of four years from the date of the order sought to be revised constitutes a valid initiation of proceedings as per Section 64 of the Act.

(b) If the order under Section 64 of the Act is passed within a period of one year after the expiry of four years from the date of the order sought to be revised, the same shall nevertheless be valid, provided that the letter calling for the records was issued within the said period of four years.

19. We shall now examine the question of limitation in the light of the above observations in each of the cases before us.

19.1 **In STA No.03/2023-List of dates are as under:**

Sl. No.	Particulars	Dates
1.	Appeal order passed by the FAA which was sought to be revised under Section 64(1) of the Karnataka Value Added Tax, 2003.	29.10.2018
2.	Letter issued by the SMR Authority calling for records.	12.07.2022
3.	Notice issued by the SMR Authority under Section 64(1) of the KVAT Act.	05.08.2022
4.	Revision order passed by the SMR Authority under Section 64(1) of the KVAT Act.	16.11.2022

19.1.1 The order sought to be revised was passed on 29.10.2018. The letter dated 12.07.2022, issued by the SMR Authority calling for the records, is within a period of four years. The order dated 16.11.2022, passed under Section 64(1) of the Act, is within a period of five years from the date of the order sought to be revised and is, therefore, valid.

19.1.2 The assessee, a registered dealer engaged in the business of diamond, gold, and silver items, filed its return in Form VAT-100 for the tax period from April 2010 to March 2011. A reassessment order came to be passed under Section 39(1) of the Act. Subsequently, a rectification order was passed on the ground that the input tax credit claimed on purchases from M/s. Kushi Jewellers Pvt. Ltd. was not allowable, as M/s. Kushi Jewellers Pvt. Ltd. was found to be non-existent. Aggrieved thereby, the dealer preferred an appeal before the first appellate authority, which allowed the appeal and set aside the rectification order.

19.1.3 Thereafter, the SMR Authority issued a notice under Section 64 of the Act. Upon consideration of the reply filed by the assessee, it held that the burden cast upon the assessee under Section 70 of the Act to prove the genuineness of the input tax credit had not been discharged. It further held that input tax credit in respect of purchases made from a de-registered seller cannot be permitted. The SMR Authority also held that allowing input tax credit without the production of tax invoices, transaction details, and other requisite proof as contemplated under Section 70 of the Act is erroneous and prejudicial to the interests of the revenue.

19.1.4 It was further held that, in the absence of the original tax invoices and sufficient evidence of *bona fide* transactions, the grant of input tax credit is erroneous and contrary to the mandatory requirements of Section 70 of the Act. It was also noticed that no delivery notes in Form 505 had been issued by the seller, despite the high value of the transactions involved. According to the SMR Authority, the *bona fides* of the transactions remain in dispute unless it is established that the purchases were made from a registered selling dealer, the goods were in existence, the goods were transferred to the purchasing dealer, payment was made by the purchasing dealer, and the original tax invoices and delivery notes were available. In the absence of the aforesaid documents, the SMR Authority set aside the order of the first appellate authority and restored the order passed by the prescribed authority under Section 39 of the Act.

19.1.5 The manner and scope of discharge of the burden of proof and the requirements under Section 70 of the Karnataka Value Added Tax Act, 2003 have been considered by the Hon'ble Supreme Court in ***State of Karnataka v. Ecom Gill Coffee Trading (P) Ltd.***, ***(2023) 111 GSTR 1 (SC) / (2023) 18 SCC* 809.** The relevant paragraphs read as follows:

> ***".... 13.*** *Therefore, the short question which is posed for the consideration of this Court is,*
>
> *"Whether, in the facts and circumstances of the case, the second appellate authority as well as the High Court were justified in allowing the input tax credit?"*
>
> ***14.*** *While considering the aforesaid issue/question, Section 70 of the Karnataka Value Added Tax Act, 2003 is required to be referred to, which reads as under:*
>
> > *"**70. Burden of proof**.—(1) For the purposes of payment or assessment of tax or any claim to input tax under this Act, the burden of proving that any transaction of a dealer is not liable to tax, or any claim to deduction of input tax is correct, shall lie on such dealer.*
> >
> > *(2) Where a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed, or liable to tax at a lower rate, or that a deduction of input tax is available, the prescribed authority shall, on detecting such issue or production, direct the dealer issuing or producing such document to pay as penalty:*

(a) in the case of first such detection, three times the tax due in respect of such transaction or claim; and

(b) in the case of second or subsequent detection, five times the tax due in respect of such transaction or claim.

(3) Before issuing any direction for the payment of the penalty under this Section, the prescribed authority shall give to the dealer the opportunity of showing cause in writing against the imposition of such penalty."

15. *Thus, the provisions of Section 70, quoted hereinabove, in its plain terms clearly stipulate that the burden of proving that ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the Revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under Section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgment of taking delivery of goods, tax invoices and payment particulars, etc. The aforesaid information would be in addition to tax invoices, particulars of payment, etc.*

16. *In fact, if a dealer claims input tax credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices* *would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per Section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per Section 70 of the 2003 Act.*

17. *Even considering the intent of Section 70 of the 2003 Act, it can be seen that ITC can be claimed only on the genuine transactions of the sale and purchase and even as per Section 70(2) if a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed, or liable to take at a lower rate, or that a deduction of input tax is available, such a dealer is liable to pay the penalty. Therefore, as observed hereinabove, for claiming ITC, genuineness of the transaction and actual physical movement of the goods are the sine qua non and the aforesaid can be proved only by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgment of taking delivery of goods, tax invoices and payment particulars, etc. The purchasing dealers have to prove the actual physical movement of the goods, alleged to have been purchased from the respective dealers. If the purchasing dealer(s) fail(s) to establish and prove the said important aspect of physical movement of the goods alleged to have been purchased by it/them from the dealers concerned and on which ITC have been claimed, the assessing officer is absolutely justified in rejecting such ITC claim.*

18. *In the present case, the respective purchasing dealer(s) has/have produced either the invoices or payment by cheques to claim ITC. The assessing officer* *has doubted the genuineness of the transactions by giving cogent reasons on the basis of the evidence and material on record. In some of the cases, the registration of the selling dealers have been cancelled or even the sale by the dealers concerned has been disputed and/or denied by the dealer concerned. In none of the cases, the purchasing dealers concerned have produced any further supporting material, such as, furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgment of taking delivery of goods, tax invoices and payment particulars, etc. and therefore it can be said that the purchasing dealers concerned failed to discharge the burden cast upon them under Section 70 of the KVAT Act, 2003. At the cost of repetition, it is observed and held that unless and until the purchasing dealer discharges the burden cast under Section 70 of the KVAT Act, 2003 and proves the genuineness of the transaction/purchase and sale by producing the aforesaid materials, such purchasing dealer shall not be entitled to input tax credit.*

19. *Despite the findings of fact recorded by the assessing officer on the genuineness of the transactions, while refusing to allow ITC, which came to be confirmed by the first appellate authority, the second appellate authority as well as the High Court have upset the concurrent findings given by the assessing officer as well as the first appellate authority, on irrelevant considerations that producing invoices or payments through cheques are sufficient to claim ITC which, as observed hereinabove, is erroneous. As observed hereinabove, over and above the invoices and the particulars of payment, the purchasing dealer has to produce further material like the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgment of taking delivery of goods including actual physical movement of the goods, alleged to have been purchased from the dealers concerned.*

20. *Now so far as the reliance placed upon Rules 27 and 29 of the Karnataka Value Added Tax Rules, 2005 and the submission on behalf of the purchasing dealers that under the provisions of the 2005 Rules, more particularly under Rules 27 and 29, the only requirement is to issue the tax invoice and to produce the same and there is no other requirement is concerned, the aforesaid has no substance. Rule 27 cast an obligation on the dealers to issue tax invoice and the particulars of the tax invoice are provided under Rule 29. Merely because the tax invoice as per Rules 27 and 29 might have been produced, that by itself cannot be said to be proving the actual physical movement of the goods, which is required to be proved, as observed hereinabove. Producing the invoices as per Rules 27 and 29 of the 2005 Rules can be said to be proving one of the documents, but not all the documents to discharge the burden to prove the genuineness of the transactions as per Section 70 of the KVAT Act, 2003.*

21. *Now so far as the reliance upon the decision of the Delhi High Court in On Quest Merchandising India (P) Ltd. v. State (NCT of Delhi) [On Quest Merchandising India (P) Ltd. v. State (NCT of Delhi), 2017 SCC OnLine Del 11286] , relied upon by the learned counsel appearing on behalf of the purchasing dealers is concerned, at the outset, it is required to be noted that before the Delhi High Court, Section 9(2)(g) of the Delhi Value Added Tax Act was under consideration, which reads as under:*

> *"**9. (2)(g)** to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period."*
>
> *The burden of proof as per Section 70 of the KVAT Act, 2003 was not an issue before the Delhi High Court. How and when the burden of proof can be said to have been discharged to prove the*

genuineness of the transactions was not the issue before the Delhi High Court. As observed hereinabove, while claiming ITC as per Section 70 of the KVAT Act, 2003, the purchasing dealer has to prove the genuineness of the transaction and as per Section 70 of the KVAT Act, 2003, the burden is upon the purchasing dealer to prove the same while claiming ITC.

22. *In view of the above and for the reasons stated above and in absence of any further cogent material like furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgment of taking delivery of goods, tax invoices and payment particulars, etc. and the actual physical movement of the goods by producing the cogent materials, the assessing officer was absolutely justified in denying ITC, which was confirmed by the first appellate authority. Both, the second appellate authority as well as the High Court have materially erred in allowing ITC despite the purchasing dealers concerned having failed to prove the genuineness of the transactions and failed to discharge the burden of proof as per Section 70 of the KVAT Act, 2003. The impugned judgment(s) and order(s) passed by the High Court [State of Karnataka v. Tallam Apparels, 2021 SCC OnLine Kar 15785]' [State of Karnataka v. Ecom Gill Coffee Trading (P) Ltd., 2021 SCC OnLine Kar 15783]' [CCT v. Rajshree Impex, 2021 SCC OnLine Kar 15784]' [Transworld Star Manjushree v. CCT, 2021 SCC OnLine Kar 15782] and the second appellate authority allowing ITC are unsustainable and deserve to be quashed and set aside and are hereby quashed and set aside. The orders passed by the assessing officer denying ITC to the purchasing dealers concerned, confirmed by the first appellate authority are hereby restored."*

19.1.6 In the light of the above and the tests prescribed by the Hon'ble Supreme Court for determining the eligibility of input tax credit, this Court is of the view that the matter requires reconsideration by the SMR Authority. It is pertinent to note that the order passed by the SMR Authority is much prior to the pronouncement of the judgment of the Hon'ble Supreme Court in the case of ***Ecom Gill*** (*supra*). Since the Hon'ble Supreme Court has indicated the various facets, procedures, and modes of discharging the burden of proving the genuineness of the transactions, the assessee also deserves an opportunity to satisfy the said requirements.

19.1.7 However, it is made clear that, insofar as the validity of the proceedings initiated by the SMR Authority under Section 64 is concerned, the same is within the parameters of the Act and is sustainable. The order of remand is confined only to the limited extent of affording an opportunity to the assessee and requiring the SMR Authority to re-examine the matter in the light of the principles laid down in ***Ecom Gill*** (*supra*).

19.1.8 Accordingly, the order dated 16.11.2022 passed under Section 64 of the Act is set aside and the matter is remitted to the SMR Authority for fresh adjudication in accordance with law. Needless to observe that the assessee shall be at liberty to produce such further evidence, documents, and books of account as may be necessary to satisfy the tests laid down by the Hon'ble Supreme Court in the case of ***Ecom Gill*** (*supra*).

19.2 **In STA Nos.11 and 12/2022-List of dates are as under:**

Sl. No.	Particulars	Dates in STA No.11/2022	Dates in STA No.12/2022
1.	Re-assessment order passed by the AA which was sought to be revised under Section 64(1) of the Karnataka Value Added Tax, 2003.	14.06.2018	22.12.2017
2.	Letter issued by the SMR Authority calling for records.	12.11.2021	12.11.2021
3.	Notice issued by the SMR Authority under Section 64(1) of the KVAT Act.	24.01.2022	24.01.2022
4.	Revision order passed by the SMR Authority under Section 64(1) of the KVAT Act.	29.06.2022	28.06.2022

19.2.1 In both the cases, the letter calling for the records by the SMR Authority was issued within a period of four years from the date of the order sought to be revised. The order passed by the SMR Authority under Section 64(1) of the Act was also passed within a period of five years from the date of the order sought to be revised. Accordingly, the same are valid.

19.2.2 The Revisional Authority issued notice proposing revision in respect of nine heads of expenditure. Except for four issues, the remaining issues were dropped after considering the explanation offered by the assessee. Insofar as the denial of deduction towards security charges is concerned, the SMR Authority held that security charges would not fall within the scope of supply and labour and like charges eligible for deduction under Rule 3(2) of the Karnataka Value Added Tax Rules, 2005 (for short 'the Rules').

19.2.3 It is contended by the learned counsel for the assessee that security charges are in the nature of manpower supply and would, therefore, fall within the ambit of supply of labour. It is further contended that such expenditure is incurred in relation to the execution of the works contract and ought to be treated as labour and service charges for the purpose of deduction.

19.2.4 This Court finds merit in the contention urged by the learned counsel for the assessee. Rule 3(2)(l) of the Karnataka Value Added Tax Rules, 2005, reads as under:

*"**3. Determination of turnover.-** (1) The total turnover of a dealer, for the purposes of the Act, shall be the aggregate of .-*

xxxxx

(2) The taxable turnover shall be determined by allowing the following deductions from the total turnover.-

xxxxx

(l) All amounts actually expended towards labour charges and other like charges not involving any transfer of property in goods in connection with the execution of works contract including charges incurred for erection, installation, fixing, fitting out or commissioning of the goods used in the execution of a works contract."

19.2.5 As per clause (l) of sub-Rule (2) to Rule 3 of the Rules, all amounts actually expended towards labour charges and other like charges not involving any transfer of property in goods, in connection with the execution of a works contract, are liable to be deducted from the total turnover for the purpose of determining the taxable turnover. The expression "other like charges" has to be read *ejusdem generis* with "labour charges". Applying the principle of *ejusdem generis*, the expression "other like charges" must be assigned the same or similar meaning as that attributed to "labour charges". Labour charges are nothing but charges incurred towards the manpower employed in the execution of the work.

19.2.6 The security charges, undoubtedly being manpower charges, and there being no dispute with regard to the incurring of such expenditure in connection with the execution of the works contract, would clearly fall within the ambit of "other like charges". Hence, the finding recorded by the SMR Authority in this regard is not sustainable.

19.2.7 Insofar as the denial of deduction towards transportation charges is concerned, it is the case of the assessee that such charges were incurred towards transportation of capital goods, equipment, shuttering materials and other materials from one project to another. Such expenditure is not incurred towards the cost of the materials incorporated in the works contract. Any expenditure incurred in relation to goods, which does not involve transfer of property in goods in connection with the execution of the works contract, would be deductible from the total turnover under Rule 3(2) of the Rules.

19.2.8 The other issue relates to the denial of deduction towards fuel charges, which is governed by Explanation II to Rule 3(2) of the Rules. The labour and other like charges would include various expenses incurred, including the cost of consumables used in the execution of the works contract, the cost of establishment to the extent relatable to the supply of labour and services, and other similar expenses relatable to the supply of labour and services. Explanation II to Rule 3(2) of the Karnataka Value Added Tax Rules, 2005, reads as under:

> *"Explanation – II: For the purpose of clause (l), "labour and other like charges" include charges for obtaining, on hire or otherwise, machinery and tools used in the execution of a works contract, charges for planning, designing and architects' fees, cost of consumables used in the execution of the works contract, cost of establishment to the extent relatable to supply of labour and services and other similar expenses relatable to supply of labour and services."*

19.2.9 There is no dispute with regard to the incurring of these expenses. Fuel expenses would have been incurred for various activities in the course of execution of the works contract. In view of Explanation II, the finding recorded by the SMR Authority that such expenditure is not deductible under Rule 3(2) of the Rules is erroneous.

19.2.10 The last issue pertains to labour charges, which were admittedly not claimed during the re-assessment proceedings. The *suo motu* revisional jurisdiction can be invoked only when the order passed by the Assessing Authority or the First Appellate Authority is erroneous and prejudicial to the interests of the Revenue. The proceedings under Section 64 of the Act are not intended for the benefit of the assessee. Such proceedings cannot result in reduction of the tax liability of the assessee. Accordingly, it is held that the assessee is not entitled to claim any additional expenditure in the course of revisional proceedings under Section 64 of the Act.

19.2.11 Moreover, the orders subjected to revision is the re-assessment orders dated 14.06.2018 and 22.12.2017. The issues forming the subject matter of the revisional proceedings were examined in detail by the Assessing Authority. The assessee had furnished particulars of labour and other like charges incurred under various heads and had also produced copies of the relevant records. The assessee had further produced evidence of actual payments made to such labourers or labour contractors. Upon examination of the books of accounts and other supporting documents, and by applying the principles laid down by the Hon'ble Supreme Court in ***Gannon Dunkerley and Co. v. State of Rajasthan***, ***(1993) 88 STC 204 / (1993) 1 SCC 364***, the Assessing Authority allowed the deductions.

19.2.12 Section 64 of the Act can be invoked only when the order sought to be revised is both erroneous and prejudicial to the interests of the Revenue. These are the twin conditions required to be satisfied. The absence of either of these conditions would invalidate the exercise of jurisdiction under Section 64 of the Act. For an order to be regarded as erroneous, the view taken by the Assessing Authority must be impermissible in law. As a consequence of such erroneous view, there should also be a loss of revenue so as to render the order prejudicial to the interests of the Revenue. Mere loss of revenue, by itself, is not a sufficient ground to invoke Section 64 of the Act.

19.2.13 Useful reference may be made to the judgment of the Hon'ble Supreme Court in ***Malabar Industrial Co. Ltd. v.***

CIT, ***(2000) 2 SCC 718 / (2000) 243 ITR 83,*** wherein, it is held as under:

> ***"5.*** *To consider the first contention, it will be apt to quote Section 263(1) which is relevant for our purpose:*
>
> > *"263. Revision of orders prejudicial to Revenue.—(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous insofar as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.*
> >
> > *Explanation.—***"*
>
> ***6.*** *A bare reading of this provision makes it clear that the prerequisite to exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income Tax Officer is erroneous insofar as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent — if the order of the Income Tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue — recourse cannot be had to Section 263(1) of the Act.*
>
> ***7.*** *There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect*

application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind.

8. *The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The High Court of Calcutta in Dawjee Dadabhoy & Co. v. S.P. Jain [(1957) 31 ITR 872 (Cal)] , the High Court of Karnataka in CIT v. T. Narayana Pai [(1975) 98 ITR 422 (Kant)] , the High Court of Bombay in CIT v. Gabriel India Ltd. [(1993) 203 ITR 108 (Bom)] and the High Court of Gujarat in CIT v. Minalben S. Parikh [(1995) 215 ITR 81 (Guj)] treated loss of tax as prejudicial to the interests of the Revenue.*

9. *Mr Abraham relied on the judgment of the Division Bench of the High Court of Madras in Venkatakrishna Rice Co. v. CIT [(1987) 163 ITR 129 (Mad)] interpreting "prejudicial to the interests of the Revenue". The High Court held:*

> *"In this context, (it must) be regarded as involving a conception of acts or orders which are subversive of the administration of revenue. There must be some grievous error in the order passed by the Income Tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration."*

In our view this interpretation is too narrow to merit acceptance. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue.

> ***10.*** *The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue. (See Rampyari Devi Saraogi v. CIT [(1968) 67 ITR 84 (SC)] and in Tara Devi Aggarwal v. CIT [(1973) 3 SCC 482 : 1973 SCC (Tax) 318 : (1973) 88 ITR 323] .)"*

19.2.14 It is also a settled position of law that where the view taken by the Assessing Authority is one of the possible views, the mere existence of another possible view, or the fact that the Revisional Authority holds a different view, would not justify the exercise of *suo motu* revisional power.

19.2.15 In the present case, the Assessing Authority has allowed the deductions in terms of Rule 3(2) of the Rules by applying the principles laid down by the Hon'ble Supreme Court in ***Gannon Dunkerley and Co.*** (*supra*). The Revisional

Authority has not recorded any finding as to the inapplicability of the said judgment. In the light of the above, this Court is of the considered opinion that the orders passed under Section 64 of the Act suffers from a jurisdictional error. The view taken by the SMR Authority is merely a change of opinion, on which ground the revisional power cannot be exercised.

19.2.16 Accordingly, we hold that the orders passed under Section 64 of the Act suffers from jurisdictional error and is not sustainable in law. Consequently, the same are liable to be set aside.

19.3 **<u>In STA No.07/2025-List of dates are as under:</u>**

Sl. No.	**Particulars**	**Dates**
1.	Rectification order passed by the FAA that merges with the order in original which is sought to be revised under Section 64(1) of the Karnataka Value Added Tax, 2003.	28.02.2015
2.	Letter issued by the SMR Authority calling for records.	11.01.2018
3.	Notice issued by the SMR Authority under Section 64(1) of the KVAT Act.	08.01.2020
4.	Revision order passed by the SMR Authority under Section 64(1) of the KVAT Act.	30.04.2024

19.3.1 The order sought to be revised is dated 28.02.2015. The letter calling for records by the SMR Authority is dated 11.01.2018, and the same is within a period of four years from the date of the orders sought to be revised. However, the order passed by the SMR Authority under Section 64(1) is dated 30.04.2024, which is much beyond a period of five years from the date of the order sought to be revised. Therefore, the said order is not sustainable, being barred by limitation.

19.4 **<u>In STA No.05/2025-List of dates are as under:</u>**

Sl. No.	Particulars	Dates
1.	Appeal order passed by the FAA which was sought to be revised under Section 64(1) of the Karnataka Value Added Tax, 2003.	13.09.2019
2.	Letter issued by the SMR Authority calling for records.	21.12.2019
3.	Notice issued by the SMR Authority under Section 64(1) of the KVAT Act.	08.05.2024
4.	Revision order passed by the SMR Authority under Section 64(1) of the KVAT Act read with Section 9(2) of the CST Act.	21.10.2024

19.4.1 The order sought to be revised is dated 13.09.2019. The letter calling for records by the SMR Authority is dated

21.12.2019, and the same is within a period of four years from the date of the orders sought to be revised. However, the order passed by the SMR Authority under Section 64(1) of the Act is beyond a period of five years from the date of the order sought to be revised and is, therefore, clearly barred by limitation and not sustainable on that ground.

19.5 **In STA No.2/2025-List of dates are as under:**

Sl. No.	Particulars	Dates
1.	Appeal order passed by the FAA which was sought to be revised under Section 64(1) of the Karnataka Value Added Tax, 2003.	29.09.2018
2.	Letter issued by the SMR Authority calling for records.	04.04.2019
3.	Notice issued by the SMR Authority under Section 64(1) of the KVAT Act.	16.03.2024
4.	Revision order passed by the SMR Authority under Section 64(1) of the KVAT Act.	31.07.2024

19.5.1 The order sought to be revised is dated 29.09.2018. The letter calling for records by the SMR Authority is dated 04.04.2019, which is within a period of four years from the date of the orders sought to be revised. However, the order dated 31.07.2024 passed by the SMR Authority under Section 64(1) of the Act is beyond a period of five years from the date of the order sought to be revised and is, therefore, barred by limitation. Consequently, the said order is not sustainable on the ground of limitation.

20. For the reasons recorded and the discussion made hereinabove, we proceed to pass the following:

ORDER

In STA No.03/2023

(i) The appeal is ***allowed in part***.

(ii) The order of the SMR Authority dated 16.11.2022 is hereby set aside, and the matter is remitted for fresh consideration in the light of the observations made hereinabove.

(iii) In view of the order of remand, the substantial questions of law are left unanswered and kept open.

In STA No.11/2022

(i) The appeal is ***allowed***.

(ii) The substantial question of law is answered in favour of the assessee and against the Revenue.

(iii) The order of the SMR Authority dated 29.06.2022 stands set aside.

In STA No.12/2022

(i) The appeal is ***allowed in part***.

(ii) The first substantial question of law is answered in favour of the assessee and against the Revenue to the extent stated hereinabove.

(iii) The second, third, and fourth substantial questions of law are answered in favour of the Revenue and against the assessee.

(iv) The order of the SMR Authority dated 28.06.2022 stands set aside to the extent indicated above.

In STA Nos.02/2025 and 05/2025

(i) The appeals are ***allowed in part***.

(ii) The fourth substantial question of law is answered in favour of the assessee and against the Revenue.

(iii) In view of the answer to the fourth substantial question of law, the other substantial questions of law do not arise for consideration.

(iv) The orders of the SMR Authority dated 21.10.2024 and 31.07.2024 stand set aside.

In STA No.07/2025

(i) The appeal is ***allowed in part***.

(ii) In view of our finding that the order of the SMR Authority dated 30.04.2024 is barred by limitation, the same stands set aside. Consequently, the admitted substantial questions of law do not arise for consideration.

(iii) The order of the SMR Authority dated 30.04.2024 stands set aside.

Pending I.As' if any, stand disposed of.

We place on record our appreciation for the able assistance rendered by Sriyuths Sri Amaregouda Kellur, Research Assistant, and Sri Harshith A., Law Intern.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

DDU