

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 10TH DAY OF JANUARY, 2018

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

W.P.Nos.58917-58928/2016, W.P.Nos.26349-26360/2017,
W.P.Nos.27983-27994/2016, W.P.Nos.27995-28006/2016,
W.P.Nos.28796/2016 & 28997 – 29007/2016,
W.P.Nos.31159-31170/2016, W.P.Nos.31430-31441/2016,
W.P.Nos.33906-33917/2016, W.P.Nos.34001/2016 &
36313-36323/2016, W.P.Nos.35703-35708/2016,
W.P.No.36404/2016, W.P.Nos.37148-37159/2016,
W.P.Nos.39369-39380/2016, W.P.Nos.46927-46938/2016,
W.P.Nos.46927-46938/2016, W.P.Nos.46939-46950/2016,
W.P.Nos.53182-53193/2016, W.P.Nos.55050/2016 &
58511-58521/2016, W.P.Nos.59250-59261/2016,
W.P.Nos.4199-4210/2017, W.P.Nos.8042/2017 & 19016-
19062/2017, W.P.No.8044/2017, W.P.Nos.8045/2017 &
25845-25855/2017, W.P.Nos.8046/2017 & 25856-
25866/2017, W.P.Nos.8183-8194/2017,
W.P.Nos.8206/2017 & 10601-10611/2017, W.P.Nos.11384-
11395/2017, W.P.Nos.11674-11685/2017,
W.P.Nos.12165/2017 & 16929-16940/2017,
W.P.Nos.20454-20465/2017, W.P.Nos.26337-26348/2017,
W.P.Nos.26361-26372/2017, W.P.Nos.26779-26790/2017,
W.P.Nos.26899-26910/2017, W.P.Nos.27451/2017 &

32900-32910/2017, W.P.Nos.10544/2017 & 10977-
10987/2017, W.P.Nos.14220-14231/2017,
W.P.No.16192/2017, W.P.No.21657/2017, W.P.Nos.28464-
28475/2017, W.P.No.11463/2017, W.P.Nos.16441/2017 &
16895-16905/2017, W.P.Nos.10545/2017 & 10965-
10975/2017, W.P.No.38502/2017, W.P.No.38503/2017,
W.P.No.36730/2017, W.P.No.46532/2017,
W.P.No.9849/2017, W.P.Nos.10562/2017 & 10914-
10924/2017, W.P.Nos.36403/2016 & 26429-26439/2017,
W.P.Nos.37729/2016 & 26481-26491/2017,
W.P.No.55140/2017, W.P.Nos.57971/2016 & 14974-
14984/2017, W.P.Nos.1227-1238/2018 (T-RES)

W.P.Nos.58917-58928/2016

Between:

Kirloskar Electric Co. Ltd.
Plot No.5555, Rajajinagar
Industrial Suburb Malleshwaram West
Bengaluru-560 055
Represented herein by its
Assistant Manager (Finance – CFD)
Mr. Karibasappa K.R.

...Petitioner

**(By Mr. K.P. Kumar, Senior Counsel for
Mr. T. Suryanarayana, Advocate)**

And:

1. The State of Karnataka
Represented herein by the
Principal Secretary – Finance
Department, Government of Karnataka
Vidhana Soudha, Bengaluru-560 001.

2. The Deputy Commissioner of
Commercial Taxes, (Audit-2.4)
Room No.606, 6th floor, VTK-2
(B' Block) 80 Feet Road
Near National Games Village
Koramangala, Bengaluru-560 047.
... Respondents

**(By Mr. A.S. Ponnanna, Addl. Advocate General
Along with Mr. T.K. Vedamurthy, AGA)**

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to declaring that Section 10(3) of the KVAT Act has already been read down by the this Hon'ble Court in such a manner that the Petitioner is permitted to calculate its net tax liability by deducting the input tax paid on its purchase from its output tax liability, irrespective of the month in which the selling dealer raises invoices and, therefore, the impugned reassessment order dated 29-04-2016, bearing VAT CAS Order No.229761714 (Annexure 'C'), passed by the 2nd Respondent under Section 39(1) read with Section 36(1) of the Karnataka Value Added Tax Act, 2003, for the tax periods April 2009 to March 2010 are ex facie illegal and unsustainable & etc.,

W.P.Nos.26349-26360/2017:

Between:

Micromatic Grinding Technologies Ltd.,
No.5/A, Sy.No.71, 103, 106 & 107

Somapura Village,
Dobaspeth Indl. Area
Nelamangala Taluk,
Bangalore-562111
Represented herein by its Manager
Finance and Accounts Mr. S. Armugam.

.. Petitioner

**(By Mr. K.P. Kumar, Senior Counsel for
Mr. T. Suryanarayana, Advocate)**

And:

1. The State of Karnataka
Represented herein by the
Principal Secretary -- Finance
Department, Government of Karnataka
Vidhana Soudha, Bengaluru-560 001.
2. Assistant Commissioner of
Commercial Taxes, LVO-065 (Addl.)
DVO-6, Bangalore, 1st Floor, B Block
KIADB Building, 14th Phase, 14th Cross
Peenya 2nd Stage, Bangalore-560 058.
3. Assistant Commissioner of Commercial Taxes
(Audit & Recovery) – 6.8 DVO-6, Bangalore
No.488, 3rd Floor,
KIADB Building
14th Cross, 4th Phase
Peenya 2nd Stage,
Bangalore-560 058.

... Respondents

**(By Mr. A.S. Ponnanna, Addl. Advocate General A/W
Mr. T.K. Vedamurthy, AGA)**

These Writ Petitions are filed under Article 226 of the
Constitution of India, praying to declaring that Section 10(3)
of the KVAT Act envisages computation of a dealer's net tax

liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of the month in which the selling dealer raises invoices, as has already been held by this Hon'ble Court, and therefore, declare that the impugned proceedings dated 26-10-2016 passed by the 2nd Respondent under Sections 10(5) and 20 of the KVAT Act read with Rule 128 of the KVAT Rules for the tax periods April 2013 to March 2014 (Annexure F) are ex facie illegal and unsustainable & etc.,

W.P.Nos.27983 – 27994/2016:

Between:

M/s RMC Readymix (India) Pvt. Ltd.,
(Presently part of M/s Prism Cements Ltd.,)
Harlur Village, Varthur Hobli,
Sarjapur Road, Bangalore-560034
(Represented by Mr. K.R.Sudhakar,
Authorized Signatory)

... Petitioner

(By Mr. G.Shivadass, Advocate.)

And:

1. State of Karnataka
Through its Principal Secretary,
Finance Department,
Vidhana Soudha,
Bangalore-560 001
2. The Commissioner of Commercial Taxes
Vanijya Therige Karyalaya,
Gandhinagar,
Bangalore-560009
3. Commercial Tax Officer

6/123

(Audit and Recovery)-4.4,
DVO-4, Koramangala,
Bangalore.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to interpreting or reading down provisions of Sections 10(3) of the KVAT Act, prior to its amendment vide the Karnataka Value Added Tax (Amendment) Act, 2015 in such a manner as to permit availment of input tax credit irrespective of the month in which the purchase is effected; or in the alternative hold that, by virtue of the Amendment Act 2015, the petitioner is entitled to avail input tax credit of purchase relating to immediately preceding five tax periods and etc.

W.P.Nos.27995 -- 28006/2016:

Between:

M/s Lenovo (India) Private Limited
Ferns Icon, Level-2,
Doddenakundi Village Post,
Marathahalli Outer Ring Road,
Bangalore-560037
Represented by its Authorised signatory
Mr. Baminee Viswanat,
Company Secretary.

... Petitioner

(By Mr. G.Shivadass, Advocate.)

And:

1. State of Karnataka
Through its Principal Secretary,

7/123

Finance Department,
Vidhana Soudha,
Bangalore-560001

2. The Commissioner of Commercial Taxes
Vanijya Therige Karyalaya,
Gandhinagar, Bangalore-560 009
3. The Assistant Commissioner of
Commercial Taxes, (Audit-5.3)
DVO-5, Bangalore-09.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to interpreting or reading down provisions of Sections 10[3] of the KVAT Act, prior to its amendment vide the Karnataka Value Added Tax [Amendment] Act, 2015 in such a manner as to permit availment of input tax credit irrespective of the month in which the purchase is effected.

W.P.Nos.28796/2016 & 28997 - 29007/2016:

Between:

M/s Bharat Fritz Werner Ltd.,
Peenya, Yeshwanthpur Post,
Bengaluru-560 022,
Represented by its Chief Financial Officer,
Mr. Sujoy Das Gupta,
Aged about 47 years,
S/o Sri M.K.Das Gupta

... Petitioner

**(By Mr. Rabinathan G &
Mr. M.Thirumalesh, Advocates)**

And:

1. State of Karnataka
Represented by Additional
Chief Secretary and Principal
Secretary to Government,
Finance Department,
Government of Karnataka,
Vidhana Soudha,
Bengaluru-560 001.
2. Commissioner of Commercial Taxes Karnataka
Vanijya Therige Karyalaya,
Gandhinagar, Bengaluru-560 009.
3. Asst. Commissioner of Commercial
Taxes, Local VAT Officer 050,
KIADB Building, Peenya 2nd Stage,
Bengaluru-560 053.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to set aside the proceedings dated 06.05.2016 passed by the Asst. Commissioner of Commercial Taxes Local VAT Officer 050, the R-3 herein, under Section 10(5) of Karnataka Value Added Tax Act, 2003 r/w Rule 128 of Karnataka Value Added Tax Rules, 2005 for the tax periods April, 2014 to March 2015 - Annex-C and etc.

W.P.Nos.31159 - 31170/2016

Between:

ORIX Auto Infrastructure Services Ltd.,
No.1, Katha No.106

Bandappa Colony
Old Madras Road
New Byappanahalli Extension
Gangalore-560038
Represented herein by its
General Manager
Mr. Mitul Malaviya

... Petitioner

**(By Mr. K.P.Kumar, Senior Counsel for
Mr. V.Vinay Giri, Advocate)**

And:

1. The State of Karnataka
Represented herein by the
Principal Secretary – Finance Department
Government of Karnataka
Vidhana Soudha, Bangalore-560001
2. The Deputy Commissioner of
Commercial Taxes, (Audit) – 5.3
DVO-5, VTK-2, Koramangala
Bangalore-560047.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to declaring that Section 10(3) of the KVAT Act has already been read down by this Hon'ble Court in such a manner that the petitioner is permitted to calculate its net tax liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of the month in which the selling dealer raises invoices and, therefore, the impugned reassessment order dated 30.04.2016 bearing CAS order No.297762727 (Annexure-E) passed by respondent No.2 under Section 39(1) read with

10/123

Section 36(1) and 72(2) of the Karnataka Value Added Tax Act, 2003 for the tax periods April 2009 to March 2010 are ex facie illegal and unsustainable and etc.

W.P.Nos.31430 – 31441/2016:

Between:

M/s Triveni Turbine Ltd.,
No.12-A, Peenya Industrial Area
Bengaluru-560 058
Represented by its
Vice President & CFO,
Mr. Deepak Kumar Sen,
Aged about 57 years,
S/o Sri D.C.Sen

... Petitioner

(By Mr. M.Thirumalesh, Advocate.)

And:

1. State of Karnataka
Represented by Additional Chief Secretary
and Principal Secretary to Government
Finance Department,
Government of Karnataka
Vidhana Soudha
Bangalore - 560001
2. Commissioner of Commercial
Taxes Karnataka
Vanijya Therige Karyalaya,
Gandhinagar, Bengaluru - 560009
3. Asst. Commissioner of Commercial
Taxes, LVO 075, DVO-6, B Block,

11/123

KIADB Building, 14th Cross,
Peenya Industrial Area,
Bengaluru - 560058

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to set aside the proceedings dated 16.05.2016 passed by the Asst. Commissioner of Commercial Taxes Local VAT Officer 075, the R-3 herein, under Section 10(5) of Karnataka Value Added Tax Act, 2003 r/w Rule 123 of Karnataka Value Added Tax Rules, 2005 for the tax periods April 2013 to March 2014 disallowing the claims of the petitioner to input tax deduction of the total amount of Rs.6,19,64,097 - Annex-C and etc.

W.P.Nos.33906 – 33917/2016:

Between:

Colourplus Fashions Ltd.,
No.78, Residency Road
Residency Chambers
Bangalore-560 025
Represented herein by its
Manager - Indirect Taxation
Mr. N.Nagaraj
Aged about 43 years

... Petitioner

**(By Mr. K.P.Kumar, Senior Counsel for
Mr. T.Suryanarayana, Advocate.)**

And:

1. The State of Karnataka
Represented herein by the
Principal Secretary - Finance Department
Government of Karnataka
Vidhana Soudha
Bangalore-560 001
2. The Deputy Commissioner of
Commercial Taxes (Audit) - 1.7
DVO-1, Yeshvanthapura
Bangalore-560 022

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to declare that Section 10(3) of the KVAT Act has already been read down by this Hon'ble Court in such a manner that the petitioner is permitted to calculate its net tax liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of the month in which the selling dealer raises invoices and therefore, the impugned reassessment order dated 31.05.2016 bearing CAS Order No.245779264 vide Annx-D passed by the R-2 under Section 39(1) read with Sections 36(1) and 72(2) of the Karnataka Value Added Tax Act, 2003, for the tax periods April 2013 to March 2014 is Ex Favie illegal and unsustainable.

W.P.Nos.34001/2016 & 36313 - 36323/2016:

Between:

M/s Consolidated Construction Consortium Ltd.,
No.173, 3rd Main Road,
4th Phase, Dollars Layout,
J.P. Nagar, Bangalore-560 078,
(Represented by S.Mahaesvar),
Regional Accounts Manager)

... Petitioner

(By Mr. G.Shivadass, Advocate.)

And:

1. State of Karnataka
Through its Principal Secretary,
Finance Department,
Vidhana Soudha,
Bangalore-560001
2. The Commissioner of Commercial Taxes
Vanijya Therige Karyalaya,
Gandhinagar,
Bangalore-560009
3. Deputy Commissioner of Commercial Taxes
Audit-3.6, DVO-3,
Bangalore-560027.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to interpreting or reading down provisions of Section 10(3) of the KVAT Act, prior to its substitution vide the Karnataka Value Added Tax (Amendment) Act, 2015 in such a manner as to permit

14/123

availment of input tax credit irrespective of the month in which the purchase is effected.

W.P.Nos.35703 – 35708/2016:

Between:

M/s TD Power Systems Pvt. Ltd.,
Plot No.27, 28 & 29
KIADB Industrial Area
Dabaspeta, Nelamangala Taluk
Bengaluru - 562111
Represented by its Company Secretary
Mr. N.Srivatsa,
Aged about 57 years
S/o Late Sri V.R.Nagaraj Rao

... Petitioner

**(By Mr. G. Rabinathan &
Mr. M.Thirumalesh, Advocates.)**

And:

1. State of Karnataka
Represented by Additional Chief Secretary
and Principal Secretary to Government
Finance Department,
Government of Karnataka
Vidhana Soudha
Bangalore - 560001
2. Commissioner of Commercial
Taxes Karnataka
Vanijya Therige Karyalaya,
Gandhinagar, Bengaluru - 560009
3. Asst. Commissioner of Commercial
Taxes, LVO 065 (Addl.)
B Block, 1st Floor,
KIADB Building, 14th Cross,

15/123

Peenya Industrial Area,
Bengaluru - 560058

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to set aside the proceedings dated 27.02.2016 passed by the Asst. Commissioner Of Commercial Taxes Local Vat Officer 065 (Addl.) the R-3 herein, under Section 10 (5) of Karnataka Value Added Tax Act, 2003 read with Rule 128 of Karnataka Value Added Tax Act Rules 2005 for the tax periods October, 2014 and January 2015 to March 2015 disallowing the claims of the petitioner to input tax deduction of the total amount of Rs.78,77,984 Annexure-A & B.

W.P.No.36404/2016:

Between:

M/s GCL Private Limited
Represented by its Managing Director,
Shri Harish B. Kamath,
No.A-419/420, 10th Main Road,
2nd Stage, Peenya Industrial Estate,
Bangalore-560058

... Petitioner

(By Mr. Jagadeesha Gowda, Advocate.)

And:

1. The State of Karnataka
Through its the Principal Secretary,
Finance Department,
Vidhana Soudha,

16/123

Dr. B.R.Ambedkar Road,
Bangalore-560 001

2. The Assistant Commissioner of
Commercial Taxes,
LVO-75, DVO-6, B Block,
KIADB Industrial Area,
Bangalore-560058

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to declare that the proviso to Section 10(3) of the KVAT Act, 2003 inserted by the Karnataka Value Added Tax (Amendment) Act, 2016 is illegal, ultra vires and unreasonable; or in the alternative issue writ, order or direction declaring that the proviso to Section 10(3) of the KVAT Act, 2003 inserted by the Karnataka Value Added Tax (Amendment) Act, 2016 is not applicable for the period prior to 01.04.2015 and etc.

W.F.Nos.37148 - 37159/2016

Between:

Weir Minerals India Pvt. Ltd
No.471/D-1, 3rd Main, 4th Phase
Peenya Industrial Area
Bangalore - 560058
Represented herein by its
Manager Mr. Shama Rao H.,
Aged about 45 Years.

... Petitioner

**(By Mr. K.P.Kumar, Senior Counsel for
Mr. T.Suryanarayana, Advocate)**

And:

1. The State of Karnataka
Represented herein by the
Principal Secretary – Finance Department
Government of Karnataka
Vidhana Soudha, Bangalore-560001
2. Deputy Commissioner of
Commercial Taxes
LVO-75, DVO-6
Peenya Industrial Area
Bangalore-560058.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to declare that Section 10(3) of the KVAT Act has already been read down by this Hon'ble Court in such a manner that the petitioner is permitted to calculate its net tax liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of the month in which the selling dealer raises invoices and, therefore, the impugned proceedings dated 06.5.2016 (Annexure-J) concluded by the respondent No.2 under Sections 10(5) and 20 of the Karnataka Value Added Tax Act, 2003, for the tax periods April 2014 to March 2015 are ex facie illegal and unsustainable and etc.

W.P.Nos.39369 – 39380/2016

Between:

Sobha Projects and Trade Private Limited
No.23/01, Sonnenahalli Village

18/123

Brook Field, Mahadevapura Post
Bengaluru – 560048
Represented herein by its
Senior General Manager (Operations)
Mr. Pradeep Sukumaran
Aged about 53 Years.

... Petitioner

**(By Mr. K.P.Kumar, Senior Counsel for
Mr. T.Suryanarayana, Advocate)**

And:

1. The State of Karnataka
Represented herein by the
Principal Secretary – Finance Department
Government of Karnataka
Vidhana Soudha, Bangalore-560001
2. Deputy Commissioner of
Commercial Taxes (Audit & Recovery) -5.7
6th Floor, A-Block, VTK-2
Rajendranagara, Koramangala
Bengaluru-560047.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to declare that Section 10(3) of the KVAT Act has already been read down by this Hon'ble Court in such a manner that the petitioner is permitted to calculate its net tax liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of

19/123

the month in which the selling dealer raises invoices and therefore the impugned reassessment order dated 13.05.2016 bearing CAS 257768613 at Annexure-B passed by respondent No.2 under Section 39(1) read with Section 36(1) and 72(2) of the Karnataka Value Added Tax Act, 2003 for the tax periods April 2012 to March 2013 as rectified by the order dated 21.06.2016 bearing CAS order No.257768613.01 AO at Annexure-E are ex facie illegal and unsustainable and etc.

W.P.Nos.46927 - 46938/2016

Between:

M/s. Rollon Hydraulics P. Limited
No.271, 4th Phase, 8th Cross
Peenya Industrial Area
Bangalore-560058.
(Represented by
Mr. Venkatesh Koteswar.N
Director – Finance).

... Petitioner

(By Mr. Dakshina Murthy .R, Advocate)

And:

1. The State of Karnataka
(Represented by its Finance Secretary)
Vidhana Soudha, Bangalore-560001
2. The Assistant Commissioner of
Commercial Taxes (Audit – 6.3)
DVO-6, M.S. Complex, 2nd Block
3rd Floor, 4th Phase,
Peenya Industrial Area

20/123

Bangalore-560058.

3. The Assistant Commissioner of
Commercial Taxes, LVO-75, DVO-6
“B” Block, KIADB Building
14th Cross, Peenya Industrial Area
Bangalore-560058.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to quash the reassessment order dated 27.8.2015 in Annexure-E, demand notice dated 27.8.2015 in Annexure-E1, Re-assessment order dated 30.9.2015 in Annexure-F, Re-assessment order dated 17.5.2016 in Annexure-R and demand notice dated 17.5.2016 in Annexure-R1, endorsement dated 2.7.2016 in Annexure-U and endorsement dated 23.7.2016 in Annexure-V as being illegal and untenable in Law and etc.

W.F.Nos.46939 - 46950/2016:

Between:

M/s Rollon Hydraulics P. Limited
No.271, 4th Phase, 8th Cross
Peenya Industrial Area
Bangalore-560 058
(Represented by Mr. Venkatesh Koteswar N.,
Director -Finance)

... Petitioner

(By Mr. R.Dakshina Murthy, Advocate.)

And:

21/123

1. The State of Karnataka
(Represented by its Finance Secretary)
Vidhana Soudha,
Bangalore-560 001
2. The Assistant Commissioner of
Commercial Taxes, (Audit-6.3),
DVO-6, M.S. Complex, 2nd Block
3rd Floor, 14th Cross, 4th Phase,
Peenya Industrial Area
Bangalore-560 058
3. The Assistant Commissioner of
Commercial Taxes, LVO-75
DVO-6, B Block, KIADB Building
14th Cross, Peenya Indl. Area
Bangalore-560 058

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to quash the order dated 24.02.2016 in Annexure-G in so far as rejection of refund amount of Rs.7,79,597 is concerned and endorsement dtd:23.7.2016 in Annexure-J and as being illegal and untenable in law.

W.P.Nos.53182 - 53193/2016:

Between:

Hindustan Unilever Limited
C/o Modern Food Industries (I) Ltd.,
(Bakery Division), NO-30/30A

22/123

Industrial (Bakery Division), Suburb
Stage-II, Yeshwanthapura
Bangalore-560022
Represented herein by its
Finance Manager
Mr. Raghuram K. Hegde.

... Petitioner

**(By Mr. K.P.Kumar, Senior Counsel for
Mr. T.Suryanarayana, Advocate)**

And:

1. State of Karnataka
Represented herein by the
Principal Secretary – Finance Department
Government of Karnataka
Vidhana Soudha, Bangalore-560001
2. The Deputy Commissioner of
Commercial Taxes (Audit – 6.8),
DVO-6, KIADB Building, 3rd Floor
14th Cross, 4th Phase, Peenya 2nd Stage
Bangalore-560058.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to declare that Section 10(3) of KVAT Act has already been read down by this Hon'ble Court in such a manner that the petitioner is permitted to calculate its net tax liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of the month in which the selling dealer raises invoices and therefore, the impugned reassessment order dated 06.09.2016 at Annexure-C passed by respondent No.2 under Section 39(1) read with Section 36(1) of the Karnataka Value Added Tax Act, 2003 for the tax periods April 2013 to March 2014 is ex facie illegal and unsustainable and etc.

W.P.Nos.55050/2016 & 58511 - 58521/2016:

Between:

M/s Maini Precision Products Ltd.,
B-165, 3rd Cross,
Peenya Industrial Estate,
Bangalore-560 058,
(Represented By V.Sridhar,
Chief Finance Officer)

... Petitioner

(By Mr. G.Shivadass, Advocate.)

And:

1. State of Karnataka
Through its Principal Secretary,
Finance Department,
Vidhana Soudha,
Bangalore-560 001.
2. The Commissioner of Commercial Taxes
"Vanijya Therige Karyalaya",
Gandhinagar, Bangalore-560 009.
3. Assistant Commissioner of Commercial Taxes
(Audit & Recovery)-6.8, DVO-6,
Bangalore-560 058.
4. Assistant Commissioner of Commercial Taxes
LVO-75, DVO-6, Peenya II Stage,
Bangalore-560 058.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

24/123

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to interpreting or reading down provisions of Sections 10(3) of the K-VAT ACT, prior to its substitution vide the Karnataka Value Added Tax (Amendment) Act, 2015 in such a manner as to permit availment of input tax credit irrespective of the month in which the purchase is effected.

W.P.Nos.59250 – 59261/2016:

Between:

Strides Shasun Limited
Strides House, Opposite IIM-B
Bannerghatta Road
Bangalore-560076
Represented herein by its
Senior Vice President - Finance and Taxation
Mr. Sudhir Krishna Kanchan

... Petitioner

**(By Mr. K.P.Kumar, Senior Counsel for
Mr. T.Suryanarayana, Advocate)**

And:

1. State of Karnataka
Represented herein by the
Principal Secretary – Finance Department
Government of Karnataka
Vidhana Soudha, Bangalore-560001
2. The Deputy Commissioner of
Commercial Taxes (Audit & Rec) – 4.8,
DVO-4, A-Block, 6th Floor
Vanijya Therige Karyalaya – 2
Rajendranagara, Koramangala
Bangalore-560047.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

25/123

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to declare that Section 10(3) of KVAT Act has already been read down by this Hon'ble Court in such a manner that the petitioner is permitted to calculate its net tax liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of the month in which the selling dealer raises invoices and therefore the impugned reassessment order dated 04.11.2016 at Annexure-F passed by respondent No.2 under Section 39(1) read with Section 36(1) and 72(2) of the Karnataka Value Added Tax Act, 2003 for the tax periods April 2013 to March 2014 is ex facie illegal and unsustainable and etc.

W.P.Nos.4199 - 4210/2017:

Between:

ISS Facility Services India Private Limited
No.25/3, Cpp. Malgudi Dhaba,
Chinnappanahalli, Marathalli,
K.R. Puram Hobli, Bangalore - 560 037
Represented herein by its Senior Manager
Mr. Bhaskara Sathyanarayana Bhaskara

... Petitioner

**(By Mr. K.P. Kumar, Senior Counsel for
Mr. T. Suryanarayana, Advocate.)**

And:

1. The State of Karnataka
Represented herein by the

26/123

Principal Secretary – Finance Department
Government of Karnataka
Vidhana Soudha, Bangalore - 560 001.

2. The Commercial Tax Officer
(Audit - 5.3) DVO-5,
R.No.604, 6th Floor, A Block,
VTK-2, Koramangala,
Bangalore - 560 047.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to declare that Section 10(3) of the KAVAT Act has already been read down by this Hon'ble Court in such a manner that the petitioner is permitted to calculate its net tax liability by deducting the input tax paid on its purchases from its output tax liability irrespective of the month in which the selling dealer raises invoices and therefore, the impugned reassessment order dated 26.12.2016, vide Anenx-D passed by the R-2 under Section 39(1) read with Section 36(1) of the Karnataka Value Added Tax Act, 2003, for the tax periods April 2014 to March 2015 is exfacie illegal and unsustainable.

W.P.Nos.8042/2017 & 19016 – 19062/2017:

Between:

M/s Consolidated Construction Consortium Ltd.,
No.173, 3rd Main Road,
4th Phase, Dollars Layout,
J.P. Nagar, Bangalore-560078
{Represented by B.Kishor Kumar
Regional Manager}

... Petitioner

(By Mr. Shivadass G, Advocate)

And:

1. State of Karnataka
Through its Principal Secretary,
Finance Department,
Vidhana Soudha,
Bangalore-560001
2. The Commissioner of Commercial Taxes
“Vanijya Therige Karyalaya”,
Gandhinagar,
Bangalore-560009
3. Joint Commissioner of Commercial Taxes
Appeals-3, B.M.T.C Building
2nd Floor, Shanthinagar,
Bangalore-560027
4. Deputy Commissioner of Commercial Taxes
Audit-3.1, DVO-3, B.M.T.C Building
2nd Floor, Shanthinagar
Bangalore-560027.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to interpreting or reading down provisions of Sections 10(3) of the K-VAT Act, prior to its substitution vide the Karnataka Value Added Tax (Amendment) Act, 2015 in such a manner as to permit availment of input tax credit irrespective of the month in which the purchase is effected and etc.

W.P.No.8044/2017:

Between:

M/s Consolidated Construction Consortium Ltd.,
No.173, 3rd Main Road,
4th Phase, Dollars Layout,
J.P. Nagar, Bangalore-560078
(Represented by B.Kishor Kumar
Regional Manager)

... Petitioner

(By Mr. Shivadass G, Advocate)

And:

1. State of Karnataka
Through its Principal Secretary,
Finance Department,
Vidhana Soudha, Bangalore-560001
2. The Commissioner of Commercial Taxes
Vanijya Therige Karyalaya,
Gandhinagar, Bangalore-560009
3. Joint Commissioner of Commercial Taxes
Appeals-3,
Bangalore-560009
3. Deputy Commissioner of Commercial Taxes
Audit-3.1, DVO-3,
Bangalore-560055.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

29/123

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to direct interpreting or reading down provisions of Sections 10(3) of the K-VAT ACT, prior to its substitution vide the Karnataka Value Added Tax (Amendment) Act, 2015 in such a manner as to permit availment of input tax credit irrespective of the month in which the purchase is effected.

W.P.Nos.8045/2017 & 25845 - 25855/2017:

Between:

M/s Consolidated Construction Consortium Ltd.,
No.173, 3rd Main Road,
4th Phase, Dollars Layout,
J.P. Nagar, Bangalore-560078
(Represented by B.Kishor Kumar
Regional Manager) ... Petitioner

(By Mr. Shivadass G, Advocate)

And:

1. State of Karnataka
Through its Principal Secretary,
Finance Department,
Vidhana Soudha, Bangalore-560001
2. The Commissioner of Commercial Taxes
Vanijya Therige Karyalaya,
Gandhinagar, Bangalore-560009
3. Joint Commissioner of Commercial Taxes
Appeals-3, Bangalore-560009

30/123

4. Deputy Commissioner of Commercial Taxes
Audit-3.1, DVO-3, Bangalore-560055.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to interpret or read down provisions of Sections 10(3) of the K-VAT Act, prior to its substitution vide the Karnataka Value Added Tax (Amendment) Act, 2015 in such a manner as to permit availment of input tax credit irrespective of the month in which the purchase is effected and etc.

W.P.Nos.8046/2017 & 25856 - 25866/2017:

Between:

M/s Consolidated Construction Consortium Ltd.,
No.173, 3rd Main Road,
4th Phase, Dollars Layout,
J.P. Nagar, Bangalore-560078
(Rep. by B.Kishor Kumar
Regional Manager)

... Petitioner

(By Mr. Shivadass G, Advocate)

And:

1. State of Karnataka
Through its Principal Secretary,
Finance Department,
Vidhana Soudha, Bangalore-560001
2. The Commissioner of Commercial Taxes
Vanijya Therige Karyalaya,

31/123

Gandhinagar, Bangalore-560009

3. Joint Commissioner of Commercial Taxes
Appeals-3, Bangalore-560009
4. Deputy Commissioner of Commercial Taxes
Audit-3.1, DVO-3, Bangalore-560055.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to direct interpreting or reading down provisions of Sections 10(3) of the K-VAT Act, prior to its substitution vide the Karnataka Value Added Tax (Amendment) Act, 2015 in such manner as to permit availment of input tax credit irrespective of the month in which the purchase is effected.

W.P.Nos.8183-8194/2017:

Between:

Mcnally Sayaji Engineering Ltd
Maruthi Tower, 3rd Floor, New No.2
(Old No.771), 9th Main, Ex-Chairman Layout
Banaswadi, Bangalore-560 043
Represented herein by its
Associate General Manager – Finance
Mr. Shantaram Naik.

... Petitioner

**(By Mr. K.P. Kumar, Senior Counsel for
Mr. Suryanarayana T, Advocate)**

And:

1. The State of Karnataka
Represented herein by the
Principal Secretary
Finance Department
Government of Karnataka
Vidhana Soudha,
Bangalore-560001.
2. The Commercial Tax Officer
(Audit) – 5.4, DVO-5, Bangalore
R.No.604, 6th Floor, 'A' Block
VTK-2, Koramangala, 8th Block
Bangalore-560 047.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to declaring that Section 10(3) of the KVAT Act has already been read down by this Hon'ble Court in such a manner that the Petitioner is permitted to calculate its net tax liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of the month in which the selling dealer raises invoices and therefore, the impugned reassessment order dated 31-01-2017, bearing CAS Order No.291955117 (Annexure 'C'), passed by the 2nd Respondent under Section 39(1), 36(1) and 72(2) of the Karnataka Value Added Tax Act, 2003, for the tax periods April 2011 to March 2012 is ex facie illegal and unsustainable & etc.,

W.P.Nos.8206/2017 & 10601-10611/2017:

Between:

M/s. Toyota Kirloskar Motor Pvt. Ltd.
Plot No.1, Bidadi Industrial Area, Bidadi
Ramanagar District-562109, Karnataka
(Represented by General Manager –
Accounting, Taxation & Impex Divisions
Mr. Arun Velayudhan).

... Petitioner

(By Mr. Shivadass G, Advocate)

And:

1. State of Karnataka
Through its Principal Secretary
Finance Department,
Vidhana Soudha, Bangalore-560001
2. The Commissioner of Commercial Taxes
"Vanijya Therige Karyalaya"
Gandhinagar, Bangalore-560009
3. Deputy Commissioner of Commercial Taxes
Audit-2.1, DVO-2, Bangalore-560001.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to interpreting or reading down provisions of Sections 10(3) of the KVAT Act, prior to its substitution vide the Karnataka Value Added Tax (Amendment) Act, 2015 in such a manner as to permit availment of input tax credit irrespective of the month in which the purchase is effected & etc.,

W.P.Nos.11384-11395/2017:

Between:

Bright Point India Private Limited
Plot No.14, Survey No.5/2
Bareten Agrahara, NH 7
Hosur Main Road, Bengaluru-560100
Represented herein by its
Director-Taxation, Mr. Vikash Khannah.

... Petitioner

**(By Mr. K.P. Kumar, Senior Counsel for
Mr. Suryanarayana T, Advocate)**

And:

1. The State of Karnataka
Represented herein by the
Principal Secretary
Finance Department
Government of Karnataka
Vidhana Soudha,
Bangalore-560001.
2. The Assistant Commissioner of
Commercial Taxes
(Audit) – 4.2, DVO-4,
Bangalore
R.No.403, 6th Floor, 'A' Block
VIK-2, Koramangala,
8th Block
Bangalore-560 047.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

35/123

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to declaring that Section 10(3) of the KVAT Act envisages computation of a dealer's net tax liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of the month in which the selling dealer raises invoices, as has already been held by this Hon'ble Court and that, therefore, the impugned reassessment order dated 28-02-2017, bearing CAS Order No.269989501 (Annexure 'D'), passed by the 2nd Respondent under Section 39(1) of the Karnataka Value Added Tax Act, 2003, for the tax periods April 2010 to March 2011 is ex facie illegal and unsustainable & etc.,

W.P.Nos.11674-11685/2017:

Between:

ABB India Ltd
Plot Nos. 5 & 6, Phase II
Peenya Industrial Area
Bangalore-560 058
Represented herein by its
Senior Vice President - Taxation
Mr. Santosh Kumar.

... Petitioner

**(By Mr. K.P. Kumar, Senior Counsel for
Mr. Suryanarayana T, Advocate)**

And:

1. The State of Karnataka
Represented herein by the
Principal Secretary
Finance Department
Government of Karnataka
Vidhana Soudha, Bangalore-560001.
2. The Deputy Commissioner of Commercial Taxes
(Audit) – 6.3, DVO-6, 3rd Floor

36/123

KIADB Building,
Peenya 2nd Stage
Bangalore-560 058.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to declaring that Section 10(3) of the KVAT Act envisages computation of a dealer's net tax liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of the month in which the selling dealer raises invoices, as has already been held by this Hon'ble Court and that, therefore, the impugned reassessment order dated 27-02-2017, bearing CAS Order No.265985744.01 (Annexure 'C'), passed by the 2nd Respondent under Section 39(1), 36(1) & 72(2) of the Karnataka Value Added Tax Act, 2003, for the tax periods April 2014 to March 2015 is to the extent questioned herein, is ex facie illegal and unsustainable & etc.,

W.P.Nos.12165/2017 & 16929-16940/2017:

Between:

M/s. Motherson Sumi Systems Ltd.,
No.31-B, Phase-I, Industrial Area
Kumbalgodu, Mysore Road
Bangalore-560074
(Represented by Shivendra Gopalmathur
Associated Vice President)

... Petitioner

(By Mr. Shivadass G, Advocate)

And:

1. State of Karnataka
Through its Principal Secretary

37/123

Finance Department,
Vidhana Soudha,
Bangalore-560001

2. The Commissioner of Commercial Taxes
"Vanijya Therige Karyalaya"
Gandhinagar,
Bangalore-560009
4. Assistant Commissioner of Commercial Taxes
Audit-2.5, DVO-2,
Bangalore.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to interpreting or reading down provisions of Sections 10(3) of the KVAT Act, prior to its substitution vide the Karnataka Value Added Tax (Amendment) Act, 2015 in such a manner as to permit availment of input tax credit irrespective of the month in which the purchase is effected & etc.,

W.P.Nos.20454-20465/2017:

Between:

M/s. Toyota Boshoku Automotive
India Private Limited
No.41, Bhimenahalli, M.N.Halli PO, Bidadi
Ramanagar District-562109

38/123

Represented by its Managing Director
Mr. Manabu Uchiwa
Aged about 57 years
S/o Sri. Nobuichi Uchiwa.

... Petitioner

(By Mr. Rabinathan G, Advocate)

And:

1. State of Karnataka
Represented by Additional Chief Secretary
And Principal Secretary to Government
Finance Department, Government of Karnataka
Vidhana Soudha, Bangalore-560001
2. Commissioner of Commercial Taxes Karnataka
Vaniya Therige Karyalaya
Gandhinagar, Bengaluru-560009
3. Deputy Commissioner of Commercial Taxes
(Audit)-2.3, DVO-2, VTK-2
Near National Games Village
Koramangala, Bengaluru-560 047.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 & 227 of the Constitution of India, praying to issue a writ of certiorari or a declaration in the nature of writ of certiorari setting aside the reassessment order dated 31-3-2017 passed by Deputy Commissioner of Commercial Taxes (Audit)-2.3, the third respondent herein, under Section 39(1) of KVAT Act, 2003 for the tax periods April, 2010 to March, 2011 and the notice of demand issued in Form VAT 180 in pursuance thereof demanding payment of tax, penalty and interest in the aggregate of Rs.37,75,335 – Annexure 'A' & etc.,

W.P.Nos.26337-26348/2017:

Between:

Micromatic Grinding Technologies Ltd.,
No.5/A, Sy.No.71, 103, 106 & 107
Somapura Village, Dobaspet Indl. Area
Nelamangala Taluk, Bangalore-562111
Represented herein by its
Manager – Finance and Accounts
Mr. S. Armugam.

... Petitioner

**(By Mr. K.P. Kumar, Senior Counsel for
Mr. T. Suryanarayana, Advocate)**

And:

1. The State of Karnataka
Represented herein by the
Principal Secretary – Finance Department
Government of Karnataka
Vidhana Soudha, Bangalore-560001.
2. Assistant Commissioner of Commercial Taxes
LVO – 065 (Addl.), DVO-6, Bangalore
1st Floor, B Block, KIADB Building
14th Phase, 14th Cross
Peenya 2nd Stage, Bangalore-560 058.
3. Deputy Commissioner of Commercial Taxes
(Audit) – 6.3, DVO-6, Bangalore
3rd Floor, KIADB Building
Peenya 2nd Stage, Bangalore-560 058.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

40/123

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to declaring that Section 10(3) of the KVAT Act envisages computation of a dealer's net tax liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of the month in which the selling dealer raises invoices, as has already been held by this Hon'ble Court, and therefore, declare that the impugned proceedings dated 26-10-2016 passed by the 2nd Respondent under Sections 10(5) and 20 of the KVAT Act read with Rule 128 of the KVAT Rules for the tax periods April 2011 to March 2012 (Annexure 'E') are ex facie illegal and unsustainable & etc.,

W.P.Nos.26361-26372/2017:

Between:

Micromatic Grinding Technologies Ltd.,
No.5/A, Sy.No 71, 103, 106 & 107
Somapura Village, Dobaspet Indl. Area
Nelamangala Taluk, Bangalore-562111
Represented herein by its
Manager – Finance and Accounts
Mr. S. Armugam.

... Petitioner

**(By Mr. K.P. Kumar, Senior Counsel for
Mr. T. Suryanarayana, Advocate)**

And:

1. The State of Karnataka
Represented herein by the
Principal Secretary – Finance Department
Government of Karnataka
Vidhana Soudha, Bangalore-560001.
2. Asst. Commissioner of Commercial Taxes
LVO – 065 (Addl.), DVO-6, Bengaluru
1st Floor, B Block, KIADB Building
14th Phase, 14th Cross

41/123

Peenya 2nd Stage,
Bangalore-560 058.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to declaring that Section 10(3) of the KVAT Act envisages computation of a dealer's net tax liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of the month in which the selling dealer raises invoices, as has already been held by this Hon'ble Court, and therefore, declare that the impugned proceedings dated 26-10-2016 passed by the 2nd Respondent under Sections 10(5) and 20 of the KVAT Act read with Rule 128 of the KVAT Rules for the tax periods April 2014 to March 2015 (Annexure 'D') are ex facie illegal and unsustainable & etc.,

W.P.Nos.26779-26790/2017:

Between:

Orix Auto Infrastructure Services Ltd.,
No.1, Katha No.106, Bandappa Colony
Old Madras Road, New Byappanahalli
Extension, Bangalore-560 038
Represented herein by its
General Manager, Mr. Mitul Malaviya.

... Petitioner

**(By Mr. K.P. Kumar, Senior Counsel for
Mr. T. Suryanarayana, Advocate)**

And:

1. The State of Karnataka
Represented herein by the

42/123

Principal Secretary – Finance Department
Government of Karnataka
Vidhana Soudha,
Bangalore-560001.

2. The Deputy Commissioner of
Commercial Taxes, (Audit-5.5)
DVO-5, Bangalore, 5th Floor
VTK-2, Near NGV, 80 Feet Road
Koramangala, Bangalore-560 047.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to declaring that Section 10(3) of the KVAT Act envisages computation of a dealer's net tax liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of the month in which the selling dealer raises invoices, as has already been held by this Hon'ble Court, and therefore, the impugned reassessment order dated 27-04-2017 bearing No.DCCT/AUDIT-5.5/VAT/10-11, CAS No.208053411 and Demand No.129490473 (Annexure 'C') passed by the 2nd Respondent under Section 39(1) read with Sections 36(1) and 72(2) of the Karnataka Value Added Tax Act, 2003, for the tax periods April 2010 to March 2011 is ex facie illegal and unsustainable & etc.,

W.P.Nos.26899-26910/2017:

Between:

Hindustan Unilever Limited
C/o Modern Food Industries (I) Ltd.
(Bakery Division), No.30/30A
Industrial (Bakery Division) Suburb

43/123

Stage-II, Yeshwanthapura
Bangalore-560 022
Represented herein by its
Legal Manager
Ms. Vidya Chandrasekar.

Also at:
Pond's House
No.101, Santhome High Road
Chennai-600 028.

... Petitioner

**(By Mr. K.P. Kumar, Senior Counsel for
Mr. T. Suryanarayana, Advocate)**

And:

1. The State of Karnataka
Represented herein by the
Principal Secretary – Finance Department
Government of Karnataka
Vidhana Soudha, Bangalore-560001.
2. The Asst. Commissioner of Commercial Taxes
(Audit) – 6.3, DVO-6, Bangalore
MS Complex, B Block, 3rd Floor
KIADB Building, 14th Cross, 4th Phase
Peenya Industrial Area,
Bangalore-560 058.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Article 226 of the
Constitution of India, praying to declaring that Section 10(3)

of the KVAT Act envisages computation of a dealer's net tax liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of the month in which the selling dealer raises invoices, as has already been held by this Hon'ble Court, and therefore, the impugned reassessment order dated 22-05-2017 bearing VATCAS No.208076206 and DEMAND No.133494812 (Annexure 'C') passed by the 2nd Respondent under Section 39(1) read with Sections 36(10 and 72(2) of the Karnataka Value Added Tax Act, 2003, is ex facie illegal and unsustainable & etc.,

W.P.Nos.27451/2017 & 32900-32910/2017:

Between:

M/s. Flowserve India Controls Pvt. Ltd.,
Plot No.4, 1-A, EPIP Whitefield
Bengaluru-560 066
Represented by its Asst. Manager
Mr. H.S. Mahadevappa
Aged about 39 years
S/o Sri. Shivappa.

... Petitioner

(By Mr. Thirumalesh M, Advocate)

And:

1. State of Karnataka
Represented by Additional Chief Secretary
And Principal Secretary to Government
Finance Department, Government of Karnataka
Vidhana Soudha, Bangalore-560001.
2. Commissioner of Commercial Taxes Karnataka
Vanijya Therige Karyalaya
Gandhinagar, Bengaluru-560009.
3. Dy. Commissioner of Commercial Taxes
(Audit)-5.2, VTK-2, 'B' Block, 5th Floor

45/123

Rajendra Nagar
Koramangala, Bengaluru-560 047.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 & 227 of the Constitution of India, praying to issue a writ of certiorari or a declaration in the nature of writ of certiorari declaring that the provisions of section 10(3) of the KVAT Act, prior to its amendment vide the Karnataka Value Added Tax (Amendment) Act, 2015, does not restrict the petitioner to claim input tax credit in the month of purchase effected by accounting in the books of accounts irrespective of the month in which the purchase invoices were issued by the selling dealers & etc.,

W.P.Nos.10544/2017 & 10977-10987/2017:

Between:

M/s. Daimler Financial Services
India Private Limited
No.831, Survey No.77/1 & 77/2
Opposite R.V. College of Engineering
Vaiaerahalli Village, Kengeri Hobli
Bengaluru-560 059
(Represented by Hiren Negandhi (Director))

... Petitioner

(By Mr. Naveen Kumar K.S. Advocate)

And:

1. The State of Karnataka
(Represented by its Finance Secretary)
Vidhana Soudha, Bangalore-560 001.
2. The Assistant Commissioner of Commercial Taxes,
(Audit2.3), DVO-2, Room No.606

46/123

6th Floor, VTK-2, "B" Block, Rajendranagar
Near National Games Village Complex
Koramangala, Bengaluru-560 047.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 & 227 of the Constitution of India, praying to issue a writ of certiorari, or any other writ, order or direction as this Hon'ble Court may deem fit and proper, by quashing the re-assessment order CAS Order No.212905045 dated 30-11-2016 for the year 2011-12 passed by Respondent No.2 in Annexure D, Rectification Order No.ACCT (Audit) – 2.3/T/1536/16-17 dated 7-2-2017 passed by Respondent No.2 in Annexure H and demand notice dated 23-2-2017 issued by Respondent No.2 in Annexure J as being illegal and untenable in law & etc.,

W.F.Nos.14220-14231/2017:

Between:

M/s. Makino India Pvt. Limited
No.11, EPIP, Whitefield Road
Opp. Satya Sai Baba Super Speciality Hospital
Bengaluru-560 066
(Represented by D.A. Biradar
Vice President – Finance HR & MIS & Director)

... Petitioner

(By Mr. Dakshina Murthy R, Advocate)

And:

1. The State of Karnataka
(Represented by its Finance Secretary)

47/123

Vidhana Soudha, Bangalore-560 001.

2. The Deputy Commissioner of Commercial Taxes
(Audit-5.1), DVO-5, 5th Floor, VTK-2
"B" Block, Rajendranagara
Koramangala, Bengaluru-560 047.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 & 227 of the Constitution of India, praying to issue a writ of certiorari, or any other writ, order or direction as this Hon'ble Court may deem fit and proper, by quashing the re-assessment order in CAS Number 230006417 dated 14-3-2017 for the year 2010-11 passed by the Respondent No.2 in Annexure C and demand notice No.194466043 dated 14-3-2017, issued by Respondent No.2 in Annexure D, as being illegal and untenable in law & etc.,

W.P.No.16192/2017:

Between:

M/s. Bharat Heavy Electricals Ltd.,
P.E.No.2606, Electronics Division
Mysore Road, Bengaluru-560026
(Represented by
M. Theerthagiri DGMIF)

... Petitioner

(By Mr. Shivadass G, Advocate)

And:

1. State of Karnataka
Through its Principal Secretary
Finance Department
Vidhana Soudha

48/123

Bangalore-560 001.

2. The Commissioner of Commercial Taxes
“Vanijya Therige Karyalaya”
Gandhinagar, Bangalore-560 009.
3. Deputy Commissioner of Commercial Taxes
Audit-2.5, DVO-2, Bangalore-560 022
... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

This Writ Petition is filed under Article 226 of the Constitution of India, praying to interpreting or reading down provisions of Sections 10(3) of the KVAT, Act, prior to its substitution vide the Karnataka Value Added Tax (Amendment) Act, 2015 in such a manner as to permit availment of input tax credit irrespective of the month in which the purchase is effected & etc.,

W.P.No.21657/2017:

Between:

M/s. Avery Dennison (India) Pvt. Ltd.,
No.90/91, 7th Main Road
Peenya Industrial Area
3rd Phase Industrial Area
Bangalore
(Represented by Santosh Kumar
Head of Finance)

... Petitioner

(By Mr. Shivadass G, Advocate)

And:

1. State of Karnataka
Through its Principal Secretary

49/123

Finance Department
Vidhana Soudha
Bangalore-560 001.

2. The Commissioner of Commercial Taxes
“Vanijya Therige Karyalaya”
Gandhinagar, Bangalore-560 009.
3. Deputy Commissioner of Commercial Taxes
Audit-6.8, DVO-6, Bangalore.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

This Writ Petition is filed under Article 226 of the Constitution of India, praying to interpreting or reading down provisions of Sections 10(3) of the KVAT, Act, prior to its substitution vide the Karnataka Value Added Tax (Amendment) Act, 2015 in such a manner as to permit availment of input tax credit irrespective of the month in which the purchase is effected & etc.,

W.P.Nos.28464-28475/2017:

Between:

Mylan Laboratories Ltd.
(previously Agila Specialties Pvt. Ltd.)
Global Centre, No.32/1 to 32/2, 34/1 to 34/4
7th Floor, Prestige Platina, Block 3
Kadubesanahalli Village, Varthur Hobli
Outer Ring Road, Bangalore-560087
Represented herein by its Manager
Indirect Taxes, Mr. C. Ramu.

... Petitioner

**(By Mr. K.P. Kumar, Senior Counsel for
Mr. Vinay Giri, Advocate)**

And:

1. The State of Karnataka
Represented herein by the
Principal Secretary – Finance Department
Government of Karnataka
Vidhana Soudha, Bangalore-560001.
2. The Assistant Commissioner of Commercial Taxes,
(Audit)-4.2, DVO-4, Bangalore
VTK-2, Room No.403, 4th Floor, 'A' Block
Rajendra Nagar, Koramanga
Bangalore-560047.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Article 226 of the Constitution of India, praying to declaring that Section 10(3) of the KVAT Act envisages computation of a dealer's net tax liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of the month in which the selling dealer raises invoices, as has already been held by this Hon'ble Court and therefore, the impugned reassessment order the impugned reassessment order dated 31-3-2017, bearing CAS Order No.278034332 and No.ACCT/Audit-4.2/2016-17 (Annexure 'C') passed by the 2nd Respondent for the tax periods April 2010 to March 2011 is ex facie illegal and unsustainable & etc.,

W.P.No.11463/2017:

Between:

M/s. Marico Ltd.,
No.13 (New Block) P.V. Shetty & Co.,
(Ware House Division), Pattanagere

51/123

R.R. Nagar, Bengaluru-560 098
Represented by its Authorised
Representative Mr. T.N. Venkatesh Babu
Aged about 53 years
S/o Sri. T. Narasimhulu.

... Petitioner

(By Mr. Thirumalesh M, Advocate)

And:

1. State of Karnataka
Represented by Additional Chief Secretary and
Principal Secretary to Government
Finance Department, Government of Karnataka
Vidhana Soudha, Bengaluru-560 001.
2. Commissioner of Commercial Taxes Karnataka
"Vanijya Therige Karyalaya"
Gandhinagar, Bangalore-560 009.
3. Asst. Commissioner of Commercial Taxes
(Audit)-2.5, VTK-2, 'A' Block, 5th Floor
Room No.505, Koramangala
Bengaluru-560 047.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India, praying to issue a writ of certiorari or a declaration in the nature of writ of certiorari declaring that the provisions of section 10(3) of the KVAT Act, prior to its amendment vide the Karnataka Value Added Tax (Amendment) Act, 2015, do not restrict the petitioner to claim input tax credit in the month of purchase effected by accounting in the books of accounts irrespective of the

52/123

month in which the purchase invoices were issued by the
selling dealers & etc.,

W.P.Nos.16441/2017 & 16895-16905/2017:

Between:

Palladium Constructions Pvt Ltd
No.1, Industrial Suburb, Ward No.14
Nagapura, Opp. Vivekananda College
Dr. Rajkumar Road, Rajajinagar
Bengaluru-560 010
Asst. Vice President – Finance,
Accounts, K.V.S. Rammohan Guptha.

... Petitioner

(By Mr. Sivakumar S, Advocate)

And:

1. State of Karnataka
Through its Principal Secretary
Finance Department
Vidhan Soudha, Bengaluru-560 001.
2. The Commissioner of Commercial Taxes
Vanijya Therige Karyalaya
Gandhinagar, Bengaluru-560 009.
3. Commercial Tax Officer (Audit)-2.3
DVO-2, Koramangala, Bengaluru-560047.

... Respondents

**(By Mr. A.S.Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 & 227
of the Constitution of India, praying to interpreting or
reading down the provisions of Section 10(3) of the Act, prior

53/123

to its amendment vide the Karnataka Value Added Tax (Amendment) Act, 2015 in such a manner as to permit availment of input tax credit irrespective of the month in which the purchases are effected by the petitioner & etc.,

W.P.Nos.10545/2017 & 10965-10975/2017:

Between:

M/s. Daimler Financial Services
India Private Limited
No.831, Survey No.77/1 & 77/2
Opposite R. V. College of Engineering
Valagerahalli Village,
Kengeri Hobli
Bengaluru-560 059
(Represented by Hiren Negandhi, Director)

... Petitioner

(By Mr. Naveen Kumar K.S. Advocate)

And:

1. The State of Karnataka
(Represented by its Finance Secretary)
Vidhana Soudha, Bangalore-560 001.
2. The Assistant Commissioner of
Commercial Taxes
(Audit-2.3), DVO-2, Room No.606
6th floor, VTK-2, "B" Block
Rajendranagar, Near Nationa Games
Village Complex, Koramangala
Bengaluru-560 047.

... Respondents

**(By Mr. A.S. Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

54/123

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to issue a writ of certiorari, or any other writ, order or direction as this Hon'ble Court may deem fit and proper, by quashing the re-assessment order CAS No.254905063 Dt.30-11-2016 passed by Respondent No.2 in Annexure E, rectification order No.ACCT(Audit)-2.3/T/16-17 Dt.7.2.2017 in Annexure J passed by Respondent No.2 and demand notice Dt.23.2.2017 in Annexure K issued by Respondent No.2 as being illegal and untenable in law & etc.,

W.P.No.38502/2017:

Between:

M/s. Schneider Electric India Pvt. Ltd.,
No.12A, Attibele Industrial Area
Hosur Road, Bangalore-562107.
(Represented by Ravi Kumar R
Manager - Taxation)

... Petitioner

(By Mr. Shivadass G, Advocate)

And:

1. State of Karnataka
Through its Principal Secretary
Finance Department
Vidhana soudha, Bangalore-560 001.
2. The Commissioner of Commercial Taxes
"Vanijya Therige Karyalaya"
Gandhinagar, Bangalore-560 009.

55/123

3. Deputy Commissioner of Commercial Taxes
Audit-5.1, DVO-5, Bangalore-560 047.

... Respondents

**(By Mr. A.S. Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

This Writ Petition is filed under Article 226 of the Constitution of India, praying to interpreting or reading down provisions of Sections 10(3) of the KVAT Act, prior to its substitution vide the Karnataka Value Added Tax (Amendment) Act, 2015 in such a manner as to permit availment of input tax credit irrespective of the month in which the purchase is effected & etc.,

W.P.No.38503/2017:

Between:

M/s. Sam Machinery
Plot No.511, 4th Phase
4th Cross, Peenya Industrial Area
Bangalore-560058
(Represented by
Satish Anvekar, Proprietor)

... Petitioner

(By Mr. Shivadass G, Advocate)

And:

1. State of Karnataka
Through its Principal Secretary
Finance Department
Vidhana soudha, Bangalore-560 001.
2. The Commissioner of Commercial Taxes
"Vanijya Therige Karyalaya"
Gandhinagar, Bangalore-560 009.

56/123

3. Deputy Commissioner of Commercial Taxes
Audit-5.1, DVO-6, Bangalore.
4. Assistant Commissioner of Commercial
Taxes, LVO-75, Bangalore-560 075.

... Respondents

**(By Mr. A.S. Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

This Writ Petition is filed under Article 226 of the Constitution of India, praying to interpreting or reading down provisions of Sections 10(3) of the KVAT Act, prior to its substitution vide the Karnataka Value Added Tax (Amendment) Act, 2015 in such a manner as to permit availment of input tax credit irrespective of the month in which the purchase is effected & etc.,

W.P.No.36730/2017:

Between:

M/s. Ashvamedha Associates
Shop No.2 GF Property
No.3829, 50 Feet Road
Kumaraswamy Layout 2nd Stage
Bengaluru-560 078
Represented by its Prop
Kilari Prasad, aged 28 years.

... Petitioner

(By Mr. K.M. Shivayogiswamy, Advocate)

And:

1. State of Karnataka
Represented by Additional Chief Secretary and

57/123

Principal Secretary to Government
Finance Department, Government of Karnataka
Vidhana soudha, Bangalore-560 001.

2. Commissioner of Commercial Taxes Karnataka
Vanijya Therige Karyalaya
Gandhinagar, Bangalore-560 009.
3. The Joint Commissioner of Commercial Taxes
(Appeals)-3, Room No.220, "B" Block, 2nd Floor
TTMC, BMTC Building,
Shanthinagar
Bangalore-27.
4. The Commercial Tax Officer (Audit)-2.4
DVO-02, VTK-2, Koramangala
Bengaluru-560 047.

... Respondents

**(By Mr. A.S. Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India, praying to issue a writ of certiorari or a declaration in the nature of writ of certiorari declaring that the provisions of section 10(3) of the KVAT Act, prior to its amendment vide the Karnataka Value Added Tax (Amendment) Act, 2015 does not restrict the petitioner to claim input tax credit in the month of purchase effected by accounting in the books of accounts irrespective of the month in which the purchase invoice were issued by the selling dealers & etc.,

W.P.No.46532/2017:

Between:

Saint-Gobain India Private Limited
(formerly Saint-Gobain Gyproc India Limited)

58/123

Plot Nos.10-17, KIADB Industrial Area
Harohalli (V), Kanakapura (TQ)-562112
Represented herein by its
Regional Commercial Manager
Mr. Pavamana Nargund.

... Petitioner

**(By Mr. K.P. Kumar, Senior Counsel for
Mr. Suryanarayana T, Advocate)**

And:

1. The State of Karnataka
Represented herein by the
Principal Secretary – Finance Department
Government of Karnataka
Vidhana soudha, Bangalore-560 001.
2. The Commissioner of Commercial Taxes
Vanijya Therige Karyalaya, 1st Floor
Gandhinagar, Bangalore-560 009.
3. The Assistant Commissioner of
Commercial Taxes, (Audit) – 2.5
DVO – 2, Bangalore, 5th Floor
Room No.505, 'A' Block
Koramangala, Bangalore-560 047.

... Respondents

**(By Mr. A.S. Ponnanna, Addl. Advocate General a/w
Mr. T.K. Vedamurthy, AGA)**

This Writ Petition is filed under Article 226 of the
Constitution of India, praying to declare that Section 10(3) of
the KVAT Act envisages computation of a dealer's net tax
liability by deducting the input tax paid on its purchases
from its output tax liability, irrespective of the month in

59/123

which the selling dealer raises invoices, as has already been held by this Hon'ble Court and that therefore the impugned reassessment order dated 16-9-2017, bearing No.ACCT (A)-2.5/2017-18 and CAS Order No.237215746 (Annexure 'C'), passed by the 3rd Respondent under Section 39(1) read with Sections 36(1) and 72(2) of the Karnataka Value Added Tax Act, 2003, for the tax periods April 2012 to March 2013 is ex-facie illegal and unsustainable & etc.,

W.P.No.9849/2017:

Between:

M/s. Homag Machinery Bangalore Private Limited
Represented by its Managing Director
Shri. Deepak Y.K.
No.7/6, Veeranajipura Grama
Kasaba Hobli, Nelamangala Taluk
Bangalore Rural District – 562123.

... Petitioner

**(By Mr. Raghavendra B. Hanjer, for
Mr. H.Y. Raju, Advocate)**

And:

1. The State of Karnataka
Through its the Principal Secretary
Finance Department
Vidhana soudha
Dr. B.R. Ambedkar Road
Bangalore-560 001.
2. The Assistant Commissioner of
Commercial Taxes
LVO-065 (Additional), DVO-6
1st Floor, 'B' Block, KIADB Building
14th Cross, 14th Phase

60/123

Peenya 2nd Stage,
Bangalore-560 058.

... Respondents

**(By Mr. A.S. Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

This Writ Petition is filed under Article 226 of the Constitution of India, praying to issue writ, order or direction declaring that the proviso to Section 10(3) of the KVAT Act, 2003 inserted by the Karnataka Value Added Tax (Amendment) Act, 2016 is illegal, ultra vires and unreasonable & etc.,

W.P.Nos.10562/2017 & 10914-10924/2017:

Between:

M/s. HCL Infosystems Ltd.
A Company Incorporated under the
Companies Act, 1956
Having its Office at: No.144
Shubharam Complex, 3rd Floor
M.G. Road, Bengaluru-560 001
Represented herein by its
Authorised Signatory
Mr. Narendra Nautiyal (adult)

... Petitioner

**(By Mr. Tarun Gulati, for
Mr. Arun Sri Kumar &
Mr. Vipin Puadhyay, Advocates)**

And:

1. The State of Karnataka
Through its Secretary
Finance Department
Vidhana Soudha, Bangalore-560 001.

61/123

2. Commissioner of Commercial Taxes
Office of the Commissioner of Commercial Taxes
DVO 3, Bangalore-560 027.
3. Deputy Commissioner of Commercial Taxes
(Audit)-1.5, 5th Floor, BMTC Complex
Yeshwantpur, DVO-1,
Bengaluru-560 022.

... Respondents

**(By Mr. A.S. Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to issue a Writ of Certiorari, or a Writ in the nature of Certiorari, or any other appropriate Writ, Order or direction, quashing the Impugned Rectification Notice bearing No.DCCT (Audit-1.5)/T./2016-17 dated 09-01-2017 (for TIN 29680095280) passed by the Respondent No.3 (produced at Annexure A) & etc.,

W.P.Nos.36403/2016 & 26429-26439/2017:

Between:

M/s. Alutop
Represented by its Partner
Shri. Krishnappa K
No.P/26C, 10th Main, 3rd Stage
Peenya Industrial Estate
Bangalore-560 058.

... Petitioner

**(By Mr. Raghavendra B. Hanjer, for
Mr. H.Y. Raju, Advocate)**

And:

1. The State of Karnataka
Through it's the Principal Secretary
Finance Department
Vidhana Soudha
Dr. B.R. Ambedkar Road
Bangalore-560 001.
2. The Assistant Commissioner of
Commercial Taxes
LVO-75, DVO-6, 'B' Block
KIADB Industrial Area
Bangalore-560 058.

... Respondents

**(By Mr. A.S. Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to issue writ, order or direction declaring that the proviso to Section 10(3) of the KVAT Act, 2003 inserted by the Karnataka Value Added Tax (Amendment) Act, 2016 is illegal, ultra vires and unreasonable & etc.,

W.P.Nos.37729/2016 & 26481-26491/2017:

Between:

M/s. Vee Vee Controls Private Limited
Represented by its Director
Shir. T. Venkataprasad
Plot No.L-3 & L-4, 9th Cross
1st Stage, Peenya Industrial Estate

63/123

Bangalore-560 058.

... Petitioner

**(By Mr. Raghavendra B. Hanjer, for
Mr. H.Y. Raju, Advocate)**

And:

1. The State of Karnataka
Through it's the Principal Secretary
Finance Department
Vidhana Soudha
Dr. B.R. Ambedkar Road
Bangalore-560 001.
2. The Assistant Commissioner of
Commercial Taxes
LVO-75, DVO-6, 'B' Block
KIADB Industrial Area
Bangalore-560 058.

... Respondents

**(By Mr. A.S. Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to issue writ, order or direction declaring that the proviso to Section 10(3) of the KVAT Act, 2003 inserted by the Karnataka Value Added Tax (Amendment) Act, 2016 is illegal, ultra vires and unreasonable & etc.,

W.P.No.55140/2017:

64/123

Between:

Lincoln Helios (India) Limited
249 & 250, Bommasandra Industrial Area
Phase - 3, Hosur Road
Bengaluru-560 099
Represented herein by its
General Manager - Finance & Controlling
Mr. Jayant Barve.

... Petitioner

**(By Mr. K.P. Kumar, Senior Counsel for
Mr. Suryanarayana T, Advocate)**

And:

1. The State of Karnataka
Represented herein by the
Principal Secretary - Finance Department
Government of Karnataka
Vidhana Soudha, Bangalore-560 001.
2. The Deputy Commissioner of
Commercial Taxes, (Audit) - 5.1
DVO - 5, Bangalore, 5th Floor
B-Block, VTK-2, Near NGV
80 Feet Road, Koramangala
Bangalore-560 047.

... Respondents

**(By Mr. A.S. Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

This Writ Petition is filed under Article 226 of the
Constitution of India, praying to declaring that Section 10(3)

65/123

of the KVAT Act envisages computation of a dealer's net tax liability by deducting the input tax paid on its purchases from its output tax liability, irrespective of the month in which the selling dealer raises invoices, as has already been held by this Hon'ble Court and that, therefore, the impugned reassessment order dated 10-11-2017 bearing CAS No.274264733, Demand No.144536208 and T.No.674/17-18 (Annexure 'D') passed by the 2nd Respondent under Section 39(1) read with Sections 36(1) and 72(2) of the Karnataka Value Added Tax Act, 2003, for the tax periods April 2012 to March 2013 is ex facie illegal and unsustainable & etc.,

W.P.Nos.57971/2016 & 14974 14984/2017:

Between:

M/s. Shri Tirupathi Steel Cast Ltd.,
A Company incorporated under the
Companies Act, having its office at
Sathyanarayana Shetty Building
Shop No.3, Prashantha Nagar
B.H. Road, Gauribidanur-561 206
Represented by its director
Mr. Sunder Somani
S/o Mr. Begraj Somani
Aged about 50 years.

... Petitioner

(By Mr. Harish V.S. Advocate)

And:

1. The Assistant Commissioner of Commercial Taxes,
(Audit)-5.9, DVO-5, VTK-2, 'A' Block
6th Floor, Room No.604, Koramangala

66/123

Bangalore-560 034.

2. The Commissioner of Commercial Taxes
State of Karnataka
Vanijya Terige Karyalaya
Gandhinagar, Bangalore-560 009.
3. The State of Karnataka
Department of Finance
Vidhana Soudha
Ambedkar Veedhi
Bangalore-560 001
Represented by its Principal Secretary.

... Respondents

**(By Mr. A.S. Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to issue a writ of Certiorari or such other Writ of appropriate nature and quash the impugned order of re-assessment passed by the First Respondent U/s.39(1) r.w. Sec.72(2) and 36(1)/37 of the KVAT Act, dated 06-10-2016, for the Assessment period April 2014 to March 2015 and the consequential demand notice issued by the First Respondent in VAT Form 180, dated 06-10-2016, for the Assessment period April 2014 to March 2015, i.e., Annexures-‘C’ and ‘D’, respectively, in the interest of equity and justice & etc.,

W.P.Nos.1227-1238/2018:

Between:

M/s. Nagel Special Machines Pvt Ltd
27A, 2nd Phase, Peenya Industrial Area

67/123

2nd Phase, Peenya, Bangalore-560 058
(Represented by Mr. Nikhil Agrawal
Managing director)

... Petitioner

(By Mr. Dakshina Murthy R, Advocate)

And:

1. The State of Karnataka
(Represented by its Finance Secretary)
Vidhana Soudha, Bangalore-560 001.
2. The Deputy Commissioner of Commercial Taxes
(Audit-6.5), DVO-6, 3rd Floor, KIADB Complex
"B" Block, 14th Cross, IV Phase
2nd Stage, Peenya, Bangalore-560 058.

... Respondents

**(By Mr. A.S. Ponnanna, Addl. Advocate General a/w
Mr. T.K.Vedamurthy, AGA)**

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to issue a writ of certiorari, or any other writ, order or direction as this Hon'ble Court may deem fit and proper, by quashing the re-assessment order in CAS Number 246715286.01 dated 12-12-2017 for the year 2009-10 passed by the Respondent No.2 in Annexure J and demand notice No.139543273 dated 12-12-2017, issued by Respondent No.2 in Annexure K, as being illegal and untenable in law & etc.,

These Writ Petitions coming on for Final Disposal this day, the Court delivered the following:-

J U D G M E N T

1. The present batch of writ petitions is being disposed of by a common judgment as they involve common question of law.

2. The facts are illustratively taken from **Writ Petition Nos.58917-928/2016 (M/s. Kirloskar Electric Company Ltd. Vs. The State of Karnataka and another)** and a reference is made to the Statement of Objections filed by the Respondent State in **Writ Petition Nos.26337-348/2017 (Micromatic Grinding Technologies Ltd. Vs. The State of Karnataka and others).**

3. Though the controversy in hand has been dealt with and the relevant provisions of Section **10(3)** of the Karnataka Value Added Tax Act, ("**KVAT Act, 2003**" for short) had come up for interpretation before this Court

in some of the judgments rendered by this Court including the Division Benches, the controversy does not appear to have died-down even with these judgments, as the Assessing Authorities of the Respondent Department have continued to disallow the Input Tax Credit (ITC) under Section 10(3) of the **KVAT Act, 2003** on the ground that the claim of Input Tax Credit against the Output Tax Liability of the assesseees did not pertain to the same '**Tax period**' for which Output Tax Liability and Net Tax Liability was to be determined in accordance with Section 10(3) of the Act and assailing these assessment/re-assessment orders, this batch of several writ petitions came to be filed before this Court and after hearing both the sides, they are being disposed of by this common judgment.

4. The questions which arise are:

(i) Whether the claim of deduction or set off of Input Tax Credit against Output

70/123

Tax Liability of the dealer can be restricted or denied on the ground of any time frame within which such Sales Invoices on the basis of which ITC is claimed should pertain or information or record of such ITC Invoices should be informed in the Returns to be filed, particularly if such time frame is restricted to the period of 'Tax Period' which can be as short as a month or a quarter, or the period of filing of Returns being 20 days from the end of month concerned or maximum six months from the end of 'Tax period' even for filing of Revised Returns disclosing errors and omissions?

(ii) What is the true meaning and purport of Section 10(3) of the KVAT Act, 2003 vis-à-vis Section 35 of the same Act, 2003?

5. The KVAT Act, 2003, in supersession of the earlier Karnataka Sales Tax Act, 1957 was brought into force with effect from **01/04/2005** introducing the concept of Value Added Tax (VAT) to replace the erstwhile Single Point Sales Tax System by levy of Multiple Point Taxation on the sale of goods and to remove the cascading effect of the levy of sales tax at every point of sales, the concept of giving Input Tax Credit (ITC) was introduced in the VAT law enacted by various States including the State of Karnataka where under, against the Output Tax Liability in the hands of the assessee purchaser, the credit or deduction of input tax of the tax paid by his selling Dealer could be claimed as a deduction against his own Out put Tax Liability and only net of such tax liability was required to be paid by him and this is how ultimately removing the cascading effect of the tax of such Multiple Point Tax System under the VAT law, the ultimate consumer got the goods only with the net tax liability at the hands of

the last seller in the chain of sales on the basis of value or sale price of such goods which he charges from the customers.

6. The controversy in the present impugned assessment/re-assessment orders arose because of a rather narrow and distorted interpretation of Section 10(3) put by the Authorities of the Respondent - Commercial Taxes Department. The provisions of Section 10(3) of the KVAT Act, 2003 which was amended in the year **2015** and again in the year **2016** as it stood prior and after these two amendments is quoted below for ready reference.

**SECTION 10(3) OF THE KVAT ACT PRIOR
TO AMENDMENT IN 2015**

10. Output tax, input tax and net tax.

(1)

(3) *Subject to input tax restrictions specified in Sections 11, 12, 14, 17, 18 and 19, **the net tax payable** by a registered Dealer in*

respect of each tax period shall be the amount of **output tax payable** by him in that period **less the input tax deductible by him** as may be prescribed in that period, and shall be accounted for in accordance with the provisions of this Act.

SECTION 10(3) OF THE KVAT ACT AFTER
ITS SUBSTITUTION IN 2015
w.e.f. 1-4-2015

10. Output tax, input tax and net tax

(1)

(3) Subject to input tax restrictions specified in Section 11, 12, 14, 17,18 and 19, the net tax payable by a registered Dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period **and relatable to goods purchased during the period immediately preceding five tax periods of such tax period**, if input tax of such goods is not claimed in any of such five preceding tax

periods and shall be accounted for in accordance with the provisions of this Act.

**SECTION 10(3) OF THE KVAT ACT AFTER
ITS AMENDMENT IN 2016 w.e.f. 1-4-2016**

10. Output tax, input tax and net tax.

(1)

(3) *Subject to input tax restrictions specified in Sections 11, 12, 14, 17, 18 and 19, the net tax payable by a registered Dealer in respect of each tax period shall be the amount of output tax payable by him **in that period** less the input tax deductible by him as may be prescribed **in that period** and [...] shall be accounted for in accordance with the provisions of this Act.*

*[**Provided that,** a registered Dealer while calculating the net tax payable **on or after first day of April, 2015,** may claim input tax relatable to goods purchased during the **period immediately preceding five tax periods** of such tax period, if input tax of*

such goods is not claimed in any of such five preceding tax periods.”

7. It may be noted that the provisions of Section 10 of the KVAT Act, 2003, which prescribe how the Output Tax (OPT), Input Tax (IPT) and Net Tax (NT) payable by the Dealer will be calculated is part of **Chapter II** dealing with the **Incidence and Levy of tax** comprising of **Sections 3 to 21** of KVAT, Act, 2003. **Chapter III** comprises of **Sections 22 to 28 – Registration of Dealers**, **Chapter IV** comprising of **Sections 29 to 34** deal with the **Accounts of Documents** and **Chapter V** comprising of **Sections 35 to 57** deal with the **Administration and Collection of Tax.**

8. The provisions of Section 35 of the KVAT Act, 2003 deal with the filing of the **‘Returns’** by the Dealer and since the said provisions were mainly relied upon by the learned counsels for the Respondent - State for

supporting the impugned assessment/re-assessment orders, the said provisions are also quoted below for ready reference. Section 35 and its proviso read thus:-

“35. Returns:

(1) Subject to sub-sections (2) to (4), every registered dealer, and the Central Government, a State Government, a statutory body and a local authority liable to pay tax collected under sub-section (2) of Section 9, shall furnish a return in such form and manner, including electronic methods, and shall pay the tax due on such return within twenty days [or fifteen days] after the end of the preceding month or any other tax period as may be prescribed:

[Provided that the specified class of dealers as may be notified by the Commissioner shall furnish particulars for preparation of the return in the prescribed form [and] submit the return in the prescribed form, electronically

77/123

through internet in the manner specified in the said notification:

Provided further that *the specified class of dealers as may be notified by the Commissioner shall pay tax payable on the basis of the return, by electronic remittance through internet in the manner specified in the said notification.]*

(2) The tax on any sale or purchase of goods declared in a return furnished shall become payable at the expiry of the period specified in sub-section (1) without requiring issue of a notice for payment of such tax.

(3) Subject to such terms and conditions as may be specified, the prescribed authority may require any registered dealer. -

(a) to furnish a return for such periods, or

(b) to furnish separate branch returns where the registered dealer has more than one place of business.

[(4) If any dealer having furnished a return under this Act, other than a return furnished under sub-section (3) of Section 38, **discovers any omission or incorrect statement therein**, other than as a result of an inspection or receipt of any other information or evidence by the prescribed authority,

(a) he shall furnish a **revised return** within the time prescribed for filing the return for the succeeding tax period; and

(b) he shall furnish a **revised return any time thereafter but within six months from the end of the relevant tax period**, if so permitted by the prescribed authority.]”

“ **Rule 37. Tax period.** – The tax period for the purposes of **Section 35** shall be as follows, namely. –

(1) In the case of registered dealers, other than those dealers opting for payment of tax by way of

79/123

*composition under Section 15, whose [total turnover in a year does not exceed twenty-five lakh rupees], shall be a **quarter,***

*(2) In the case of other registered dealers, it shall be **one calendar month.***

Explanation. – *For the purposes of clause (1), a quarter shall mean any period ending on the final day of the months of March, June, September and December of calendar year.]”*

9. A brief about the facts of the case of **M/s. Kirloskar Electric Company Limited** in which re-assessment order under Section 39(1) of the KVAT Act, 2003 for the consolidated period from **April 2009 to March 2010** though ‘Tax Period’ is dependent upon each Calendar month, which was passed by the Respondent - Deputy Commissioner of Commercial Taxes on **29/04/2016** is challenged, are narrated below for ready reference.

10. The petitioner, **M/s. Kirloskar Electric Company Limited** engaged in the manufacture and sale of Electrical Motors, Generators, Transformers, etc. purchased materials such as Steel, Copper, Bearings and Consumables and other goods required from the local Registered Dealers as well as the Dealers from outside the State of Karnataka and in respect of the tax paid by them on such purchases at the rate of 4% and 12.5%, they claimed this Input Tax Credit (ITC) against the output tax liability in respect of the sales made by it, in the said tax period and the term '**Tax Period**' is defined under **Section 2(33)** of the KVAT Act, 2003 as defined under **Rule 37** of the Karnataka Value Added Tax Rules, 2005, which in the case of present petitioners meant each calendar month as a separate tax period.

11. The Respondent Assessing Authority denied the Input Tax Credit (ITC) on the ground that the ITC is deductible only in that **'Tax Period'** during which the invoices of the selling Dealer is raised and the accumulated VAT ITC available in the various months preceding the 'Tax Period' in question, could not be used/given by way of Input Tax Credit against the Output Tax (OPT) for the **'Tax period'** of a particular month.

12. The words **"in that period"** as employed in Section 10(3) of the KVAT Act, 2003, quoted above has been thus interpreted by the Assessing Authority to mean that the concerned ITC invoices should be of that very month or the 'Tax period'. The Respondent Assessing Authority has wholly relied upon the observations of the Division Bench of this Court in the judgment rendered in the case of **State of Karnataka Vs. Centum Industries Private Limited, Bangalore**

decided on **31/07/2014** as reported in
2014 (80) (Kar) Law Journal P.65, for the said
interpretation of Section 10(3) of the KVAT Act, 2003.

13. The other judgments relied upon by the
assessee petitioners to support their claim of ITC are:-

(i) **State of Karnataka Vs. K. Bond
Polymers Pvt. Ltd. (2013) 66 VST 369
(Kar) (DB) ;**

(ii) **State of Karnataka Vs Manyata
Promoters Pvt. Ltd. (2017) 97 VST 479
(Kar) (DB) ; and**

(iii) **Sonal Apparel Private Limited Vs.
State of Karnataka and another (2017)
97 VST 488 (Kar) (SB)** decided on
29/03/2016 by the learned Single Judge of
this Court.

14. Aggrieved by these assessment/re-assessment orders and consequential demand of Tax, Interest and Penalty raised against the petitioners, the petitioners assesseees directly filed these writ petitions before this Court by-passing the remedy by way of a Regular Appeal under the provisions of Section 62 of the KVAT Act, 2003 against such orders.

15. These writ petitions were entertained and notices were issued to the Respondent State and Commercial Taxes Department upon which they have filed their Statement of Objections in **Writ Petition Nos.26337-348/2017 (Micromatic Grinding Technologies Ltd. Vs. The State of Karnataka and others)** which the learned Additional Advocate General submitted that the same may be taken as the stand of the Respondent State in all these cases.

16. Before coming to the arguments raised on behalf of the learned counsels for the Respondent State, the contentions raised by the learned Senior Counsel, Mr.K.P. Kumar, on behalf of the petitioners – assesseees leading the arguments on behalf of the learned counsels for the petitioners assesseees may be noted as hereunder:-

17. Mr. K.P. Kumar, learned Senior Counsel urged that the claim of the Input Tax Credit cannot be restricted and denied to the petitioners assesseees merely on the ground that the Sale Invoice on the basis of which ITC was claimed pertained to a month or a period prior to 'Tax Period' in question, since Section 10(3) of the KVAT Act, 2003 prior to its amendment with effect from **01/04/2015** did not provide any time limit within which the claim of deduction of such ITC has to be made against the OPT of the particular 'Tax Period' in which such goods are sold and the Tax Periods and

85/123

assessment period involved in all the present Writ Petitions are admittedly prior to **01/04/2015**.

17.1. He submitted that the petitioner - Dealer records the purchases in question in his Books of Accounts maintained in regular course of business as is mandated by Section 31 of the KVAT Act, 2003 itself on the date when the goods are delivered to the purchaser and upon verification are found to be in order, in accordance with the Purchaser Order and are not liable to be returned to the Selling Dealer and once the purchase is so recorded in the Accounts to be maintained in the ordinary course of business, the ITC can be claimed as deduction against the Output Tax of any next '**Tax period**' for which such Output Tax and the same cannot be denied by the Assessing Authority.

17.2. Mr. Kumar also urged before the Court that the decision of the Division Bench in the case of

Centum Industries Private Limited (supra) has not restricted the claim of ITC by saying that if the ITC invoices did not pertain to that very '**Tax period**', but on the facts of that case, where the Sale Invoice pertained to the month of **June 2006**, but no ITC was claimed in the next month of July 2006, but was claimed only in the month of next February 2007, much after the lapse of the period of six months, which is the outer limit for filing of even the Revised Returns under Section 35 of the KVAT Act, 2003, the disallowance of such ITC made by the Department was upheld by the Division Bench of this Court on the ground of delay in making such claim of ITC. But, he submitted that no such facts exist in the present cases.

17.3. He urged that in the absence of any specific statutory time limit in Section 10 (3) of the KVAT Act, 2003, no such restriction for claiming the ITC in the next month itself could have been placed by the

Respondent Department. He submitted that as soon as the purchases were duly recorded in the Books of Accounts maintained by the petitioners Dealers as per the provisions of the KVAT Act, 2003, the information of ITC was duly given and claimed in the Returns filed under Section 35 of the KVAT Act, 2003.

17.4. Mr. Kumar further submitted that ITC is nothing but CENVAT Credit under Excise law or ITC on the basis of a valid Sale Invoice which goes to the pool of credit of tax, which can be claimed as “deduction or set off against the Output Tax Liability of the Dealer upon the sales made by it during a particular tax period irrespective of any time limit and there is no requirement of goods-to-goods matching of ITC claim against OPT liability on sales of particular goods and that tax already having been deposited by the Selling Dealers with the State, in discharge of their obligations under the law, the same cannot be forfeited by the

State in violation of **Article 265** of the Constitution of India, by disallowing such credit of the ITC in the hands of the present Purchasing Dealers against their OPT liability. In other words, he submitted that such disallowance of ITC would run absolutely contrary to the very concept of removing the cascading effect of tax on the multiple points of Sales under VAT law and neither any such statutory limitation could have been put nor it has been put in **Section 10 (3)** of the KVAT Act, 2003 and therefore such a restrictive interpretation cannot be put by the Respondent Assessing Authorities and the impugned orders are in contravention of the said clear provisions of the KVAT Act, 2003 and therefore deserve to be quashed and set aside by this Court.

17.5. Mr. Kumar relied upon the following decisions of this Court, a brief mention of which can be made hereunder immediately:-

(a) In **State of Karnataka Vs. K. Bond Polymers Pvt. Ltd. (2013) 66 VST 369 (Kar)**, the Division Bench of this Court headed by Hon'ble Justice N. Kumar (as his lordships then was) held that where the assessee purchased the goods during June 2005, July 2005, December 2005 and February 2006 paying tax at 4% under the KVAT Act 2003 as claimed by the supplier, but subsequently, the supplier charged a higher rate of tax at 12.5% and raising a Debit Note on **31/07/2006** which the assessee paid as the differential tax amount to Selling Dealer and claimed the Tax Rebate of that amount of differential Tax in the VAT Returns filed for the month of December 2006, and the Division Bench of this Court allowed the said claim of the assessee and rejected the Revision Petition filed by the State, by holding that once tax was paid under the KVAT Act, 2003, the assessee was entitled to the benefit of Input Tax. The delay in putting forth the claims of

90/123

such Rebate did not in any way affect his right to claim the said amount which was ultimately due to him under the KVAT Act, 2003, nor it amounts to a contravention resulting in liability to pay tax, interest and penalty, as was sought to be levied by the Assessing Authorities and the entire approach of the Assessing Authorities and the first Appellate Authority was contrary to law and run counter to the spirit of the KVAT Act, 2003.

(b) A similar view was expressed subsequently by another Division Bench of this Court later, in the case of **State of Karnataka Vs. Manyata Promoters Pvt. Ltd.** decided on **30/09/2015 (2017) 97 VST 479 (Kar)** and it was held by the Division Bench of this Court that under Section 10 (4) of the KVAT Act, 2003, the Input Tax Credit can be claimed only when the Input Invoice is with the Registered Dealer and nowhere in the KVAT Act, 2003, it has been specified that the Input Tax Credit (ITC) should be claimed in the month

in which the date of invoice by the Supplier or Vendor falls or that the Purchasing Dealer has to claim the Input Tax Credit in the same period in which the Bills have been raised by the Selling Dealer.

The said ratio of the Division Bench judgment in fact clinches the issue in favour of the assessee petitioners in the present cases as well.

The relevant portion from paragraph 11 of the said judgment in **Manyata's case (supra)** is quoted below for ready reference.

*“.....Under section 10(4) of the Act, the input-tax credit can be claimed only when the input invoice is with the registered dealer. **Nowhere in the Act has it been stated that the input-tax credit should be claimed in the month in which the date of the invoice of the supplier/vendor falls***

or the purchasing dealer has to claim input-tax credit in the same period in which the bills have been raised by the selling dealers. A reading of section 35 makes it very clear that there is no requirement for the purchasing dealers to claim input-tax credit in the same month in which the date of the invoice of the supplier or vendor falls. Section 35(1) makes it clear that every registered dealer shall furnish the return in such form and manner, and shall pay the tax due (**clearly the Net Tax = OPT - ITC**) on such return within 20 days or 15 days after the end of preceding month. **Nowhere in the said section has it been contemplated that the purchasing dealer shall claim input tax in the same month.** Section 35(4) contemplates that any dealer having furnished the return discovers any omission or incorrect statement therein, he may furnish the revised return at any time within a period of six months from the end of relevant tax period. The case on hand does not fall under section 35(4) of the KVAT Act.”

(c) In yet another judgment rendered by the learned Single Judge of this Court in the case of **Sonal Apparel Private Limited Vs. State of Karnataka and another (2017) 97 VST 488 (Kar)** decided on **29/03/2016**, in a very lucid manner and even explaining and distinguishing the Division Bench judgment in the case of **Centum Industries Private Limited** (supra), which is the sheet anchor of the argument of the State before this Court even now, the learned Single Judge noted the contention of the Revenue that, “if for any reason, Input Tax Credit could not be availed of in the month in which purchase invoice was raised, the Dealer could have filed a Revised Return within a period of six months under the provisions of Section 35 (4) with reference to the month in which the Seller’s invoice was raised” and this is precisely the contention raised before this Court even now, but negating the said contention, the learned Single Judge held in paragraph 20 that,

“This contention is wholly impermissible, impracticable and opposed to all canons of business accounting and commercial practices. Virtually every Dealer is liable to a Tax Audit and revising a Return for the month in which the seller raises his invoice would be incompatible with the Dealer’s Accounts, as the purchases are accounted for in a later month. Any such action by the Dealers would result in the rejection of the Dealer’s Books of Accounts leading to best judgment assessments being passed besides severe penal action.”

Upholding the claim of the Input Tax Credit of the assessee and discussing the Scheme of the KVAT Act, 2003 and the provisions of Section 10(3) of the KVAT Act, 2003, while distinguishing the observations of the Division Bench in the case of ***Centum Industries Private Limited*** (supra), the learned Single Judge further held as under:-

“ 35. *The Scheme of the KVAT Act being to provide for set off of all tax paid at the earliest points of purchase against the tax payable by him on his sales, **by compelling a dealer to avail of credit of tax paid on purchases only in the month in which the selling dealer raises invoices, the Scheme would be defeated and it may result in double taxation.***

36. *Under the provisions of the erstwhile Karnataka Sales Tax Act, 1957, tax was leviable only at the stage of first sale of goods.*

37. *Under the KVAT Act, tax is leviable on every sale of goods, irrespective of whether it is the first, second or third sale. However, in order to ensure that the Act does not fall foul of the prohibition placed by the Constitution of India on double taxation, the provisions of the Act permit a dealer to deduct the amount of tax paid by him on his purchases while calculating his net tax liability. **If the interpretation afforded by the Revenue to the meaning of section 10(3) were to be***

accepted, the petitioners would be deprived of the benefit of availing credit of tax paid on their purchases, it would result in tax being levied under the provisions of the same Act on the same commodity at multiple stages.

38. In **Centum Industries case [2015] 77 VST 117 (Karn); [2014] 80 KLJ 65**, this Court has interpreted section 10(3) to mean that a dealer is required to avail of credit of input tax in the month in which the “input tax” is paid by the purchasing dealer. **The said decision does not however, support the proposition that input tax must be availed of in the month in which the selling dealer raises his invoices. The Revenue is hence not justified in seeking to apply the said decision in support of its reasoning.”**

Again repelling the contention of the Revenue based on the requirement of filing Revised Returns to claim the Input Tax Credit for the tax period to which

ITC invoice or Sale Invoice pertains, the learned Single Judge negated the said construction by holding that the same would amount to an absurd construction. To quote again, the learned Single Judge held as follows:

*“ 40. A contention on behalf of the Revenue that **a dealer is permitted to avail of credit belatedly up to six months by revising the return** under section 35(4) of the KVAT Act, apparently drawing inspiration from the decision in **Centum Industries case** [2015] 77 VST 117(Karn.); [2014] 80 KLJ 65, is not relevant. **It would not be possible to hold that section 10(3) first restricts availment of credit to the same month as the month of purchase and then section 35(4) goes on to permit the same by way of revision of return would be an absurd construction.** Such an interpretation would lead to the conclusion that the KVAT Act encourages availment of credit by the dealer without ensuring the eligibility for the same, as delay in availment would result in denial of*

*credit altogether and thereafter rectifying any incorrect credit available by revising the return. **Such a view could not have been the intention of the Legislature as that would lead to a situation where filing of a revised return under section 35(4) would become a rule, rather than an exception.** In other words, every dealer may be necessarily required to file two returns for the same tax period, firstly an original return reflecting incorrect credit and then a revised return availing the eligible credit.*

*A case can be found in favour of the petitioners in the alternative as well. In that, it is not in dispute that from the inception of the KVAT Act, **section 10(3) was consistently interpreted by the Revenue to mean that a dealer is permitted to deduct the input tax paid on his purchases irrespective of the month in which the purchases were effected.** Based on the understanding that section 10(3) did not require dealers to avail credit only in the month in which the purchases were effected.*

They were held entitled to avail of such credit, as long as the claim of input-tax credit was supported by the prescribed documents. The ambiguity as to the purport of section 10(3) arose as a result of the Department's clouded interpretation of the Centum Industries case [2015] 77 VST 117 (Karn.); [2014] 80 KLJ 65. The newly substituted provision clears the air and puts to rest the ambiguity, it may hence be said that the amendment to section 10(3) is clarificatory and therefore could be given retrospective effect."

Against the said judgment of the learned Single Judge with which reasoning, this Court respectfully agrees and endorses the said view, the Revenue is said to have preferred an intra-Court Appeal namely, **Writ Appeal No.3176/2016** which has been admitted by the Division Bench of this Court on **20/06/2017**. However both the learned counsels fairly submitted that the prayer of the State for stay of the operation of the

judgment of the learned Single Judge was not accepted by the Division Bench of this Court and no interim order was granted, even after lengthy arguments made at the Bar.

Thus, the learned Senior Counsel for the petitioners, Mr. Kumar submitted before the Court that the impugned assessment/re-assessment orders passed in this batch of writ petitions to the extent they take a restrictive interpretation of Section 10(3) of the KVAT Act, 2003 and deny the claim of the Input Tax Credit merely on the ground that the ITC invoice did not pertain to that very 'Tax Period' or the calendar month or that ITC was not claimed immediately in the Returns filed, even though in that 'Tax Period', the purchases concerned were not even recorded in their Books of Accounts, deserves to be quashed and set aside and for other points or issues in the said orders, the matter may be remanded back to the Assessing Authority for

passing of the fresh assessment orders in accordance with law.

18. On the other hand, the learned Additional Advocate General, Mr. A.S. Ponnanna and the learned Additional Government Advocate, Mr. T.K. Veda Murthy, appearing for the Respondent State and Commercial Taxes Department were at pains to support the impugned assessment orders passed by the various Assessing Authorities solely relying upon the observations of the Division Bench of this Court in the case of ***Centum Industries Private Limited*** (supra) headed by Hon'ble Justice N. Kumar himself, in which taking a bit deviating route from the clear view earlier expressed by his lordships in the case of ***K. Bond Polymers Private Limited*** (supra), in the peculiar facts of the case of ***Centum Industries Private Limited*** (supra) before it, held that where the assessee paid the input tax for the month of June 2006 but in the

Returns filed in July 2006, he did not put forth any ITC claim nor did he file any revised returns within six months putting forth the said ITC claim and the period of six months prescribed under Section 35(4) of the KVAT Act, 2003 had lapsed but such claim was made only in the next February 2007, after the expiry of the said period of six months, the Appellate Tribunal had wrongly allowed the said ITC claim and while allowing the Revision Petition filed by the State, against the order of the Tribunal in favour of the assessee and quoting the observations of the Appellate Tribunal in para.14 of the judgment, the Division Bench observed in **Centum's case** as under:-

*"14. In the instant case, the assessee paid input tax for the month of **June 2006**. In the returns filed in **July 2006** he did not put forth any claim. He also did not file any revised return within 6 months putting forth the said claim. [Thus Dealer did not claim*

ITC though purchases recorded in the Books for six months against his OPT (Output Tax) Liability rendering his claim purportedly Stale or time barred]
That is the period prescribed under law under Section 35(1) and 35(4) of the Act. It is only in the return filed in the month of February 2007, after the expiry of the aforesaid period, he put for the said claim. Therefore, the Assessing Authority as well as the First Appellate Authority rightly held that the claim for input tax rebate put forth for the first time in February 2007 for the period of June 2006 cannot be allowed. However, the Tribunal without reference to the statutory provisions proceeds on the assumption that allowing input tax is a statutory promise made to the dealer buying the goods from the registered dealer by paying that tax mentioned in the tax invoice. There is nothing in law stipulating that if input tax is not claimed during the month succeeding the month in which purchase is effected, the dealer would forfeit his claim to claim input tax. [From the

words “allowing input tax is a statutory promise.....dealer would forfeit his claim to claim input tax” are the observations of the Tribunal quoted by the Division Bench, though not put the inverted commas, but then just following words... “On coming to the said conclusion, the Tribunal has not applied its mind”...makes it clear and has been verified by this Court as well from the order of the Tribunal] *In coming to the said conclusion, the Tribunal has not applied its mind to sub-section(3) of Section 10 which is the provision which determines the net tax payable by a registered dealer in respect of each tax period in arriving at tax liability the amount of output tax payable by the assessee in that period less the input tax deductible by him as may be prescribed in that period and accounted for in accordance with the provisions of the Act. **If the assessee is not putting forth** a claim for input tax deduction in the return filed in July 2006 nor as he put forth such a claim in a revised claim which he could have filed within 6 months there from*

his right to claim input deduction is lost. He cannot for the first time in the returns filed in February 2007 put forth a claim for input tax deduction as the said return was not related to the tax period during which the input tax was paid. [Thus, it is not the ratio decidendi, but an obiter by Division Bench while finding it to be a too belated a claim of ITC, not because of any restriction in Section 10 (3) but because the claim was made belatedly even after a reasonable period of six months, inferred as reasonable by maximum period for filing Revised Returns under Section 35 (4) of the KVAT Act, 2003.] In that view of the matter, the Tribunal has not applied its mind to the aforesaid provision and ignoring the mandate of law has allowed the said deduction erroneously. Therefore, the said finding recorded by the Tribunal cannot be sustained and accordingly it is hereby set aside. The question of law raised is answered in favour of the Revenue and against the assessee.”

The bracketed words of this Court's understanding of the context of **Centum's case** are given in between the aforesaid quote from the Division Bench decision in the case of **Centum Industries Private Limited** (supra).

19. A closer look at the contextual facts of the case and as explained in bracketed portion in the aforesaid quote from the Division Bench decision in **Centum Industries Private Limited case** in the light of the provisions of Section 10(3) and Section 35(4) of the KVAT Act, 2003, would reveal that the claim of ITC was disallowed by the Division Bench not on the basis of an interpretation of the substantive provisions contained in Section 10(3) of the KVAT Act, 2003, or any restriction of period to be read therein but because of the belated claim made by the assessee much after the lapse of a reasonable period viz., six months from the month of June 2006 in the month of February 2007

and while referring to the belated claim beyond six months, the Division Bench referred to Section 35 of the KVAT Act, 2003, which prescribes 20 days period for filing of the Returns for the month ended and in case of omissions or errors, the assessee is permitted to file a revised Return under Section 35 (3) and (4) of the KVAT Act, 2003, within a period of six months from the end of relevant tax period respectively.

20. In the aforequoted paragraph 14 of the judgment of the Division Bench in ***Centum Industries Private Limited case***, from the words “..... However, the Tribunal without reference to the statutory provisions proceeds on the assumption that *allowing input tax is a statutory promise made to the dealer buying the goods from the registered dealer by paying that tax mentioned in the tax invoice. There is nothing in law stipulating that if input tax is not claimed during the month succeeding the month in which purchase is*

effected, the dealer would forfeit his claim to claim input tax” appear to be the quotation from the order of the Karnataka Appellate Tribunal, though inverted commas (“ – ”) have not been used by the Division Bench in the said Paragraph 14 of its judgment, but immediately thereafter, the Division Bench says “In coming to the said conclusion, the Tribunal has not applied its mind to sub Section (3) of Section 10 ” makes it obvious. Therefore it appears that what precedes these words is the reasoning given by the Tribunal while deciding the Appeal in favour of the petitioner assessee which, however, the Division Bench of this Court did not approve as aforesaid, mainly for the reason of delay in making the claim of input tax credit beyond a period of six months. Though, with great respects, there was no such time period restriction in the substantive provisions of Section 10(3) of the KVAT Act, 2003 but on that aspect of the matter, this Court sitting singly cannot express a different view due to the judicial

discipline. But the facts and context before **Centum's case** were entirely different and therefore that judgment is of little help to the Revenue - Department in these cases.

21. The learned Additional Advocate General also contended before the Court that the amendments were effected in Section 10(3) of the KVAT Act, 2003 in the year **2015** and **2016**, though for the period of assessments in question before this Court in the present batch of writ petitions are admittedly and without any dispute from either side are much prior to these amendments in Section 10(3) and therefore the question of effect of these amendments upon the assessments in hand as challenged before this Court need not be even gone into. However, the learned Additional Advocate General pointed out that these amendments would only now after **01/04/2015** allow the Input Tax Credit to the dealers, if the input tax

pertains to a tax period of five months prior to the tax period in which such ITC is claimed, as how an amendment beneficial to the interest of the assesseees and realizing their practical difficulties, the State has effected these amendments to facilitate the claim of the ITC after these amendments. However, at the same time, the learned Additional Advocate General's argument is that, by necessary implication therefore for the previous periods, it should be inferred that since there was no such relaxation available to the assesseees, therefore unless the ITC invoice pertains to the same tax period, such ITC cannot be allowed.

This argument of the learned Additional Advocate General cuts the arguments of the learned AAG himself, when he submits that the amendment was effected to facilitate the claim of ITC by the State realizing the difficulties of the assesseees. If the restrictive and narrow interpretation put forth by the learned counsel

for the Respondents is accepted, the same would lead to absurd, impractical and totally unintended results. While on the one hand, the Dealer is enjoined with the legal obligation to maintain the Books of Accounts in the ordinary course of its business on a day-to-day basis as required under Section 31(1) of the KVAT Act and well settled Accounting Principles and he would record the purchases only when he purchases the goods and the goods are so received by him and depending upon the terms of contract, the contract is finally executed completely by recording such purchase in the Books of accounts, if on the other hand, the same is sought to be negated and Dealer is called upon to file a revised return to claim the ITC in the 'Tax period' to which ITC invoice or sale invoice pertains, that would not only render the reversal of these entries illegal and wrong but against all canons of the settled Accounting principles and would make the Books of Accounts a total mess, while there is no good reason to interpret

the provisions of Section 10(3) of the KVAT Act, 2003, in such a restrictive manner.

22. The substantive provision of Section 10(3) of the KVAT Act, 2003, did not lay down any such restrictive time frame for allowing the deduction of ITC against the OPT in a particular tax period to determine the net tax payable for that tax period and therefore there is no justification whatsoever to accept such an interpretation put forth by the learned counsels for the Respondent State. Such contentions had not only been negated and with great respects, rightly so by the learned Single Judge in the case of **Sonal Apparel Private Limited case**, but this Court is of the considered opinion that the Respondent Department is taking an unnecessarily distorted view of the observations made by the Division Bench of this Court in the case of **Centum Industries Private Limited**, where the Division Bench while disallowed the said

claim of ITC made at a belatedly stage and observed simply as an obiter that the claim of ITC should relate to the tax period in question. The Division Bench never said that the ITC Invoice or Sale Invoice should also be pertaining to the same tax period, in which the credit of such ITC is claimed by the Dealer.

23. The learned counsels for the Respondent State were at complete loss of words to the question put by the Court as to, under what authority of law the State can retain the tax paid by the selling Dealer to the State as collected under the Sale Invoice which is passed on to the purchasing Dealer who are the assesseees - petitioners before this Court, if ITC in respect of such sale invoice was to be disallowed, contrary to the very concept of VAT law and the unrestricted language of Section 10(3) of the KVAT Act, 2003 and in apparent violation of Article 265 of the Constitution of India, there was simply no answer on

behalf of the Respondent State to this query of the Court, except relying on the aforesaid obiter from the judgment of the Division Bench of this Court in **Centum Industries Private Limited case**, which as explained above, does not support the case of the Revenue at all.

24. In the peculiar facts of the Centum Industries Private Limited case, the claim of ITC credit was disallowed on the basis of the belated claim made by it and not while interpreting the substantive provisions of Section 10(3) of the Act in a narrower way, as is sought to be canvassed by the Respondent State before this Court even now.

25. The learned counsels for the Respondent State were again without any answer to the question of the Court as to how the machinery provisions of filing of the returns under Section 35 of the KVAT Act, 2003 for assessing the tax liability including the OPT, ITC and

Net Tax liability under Section 10 of the KVAT Act, 2003, can be allowed to override the substantive provisions of Section 10 of the KVAT Act, 2003, contained in chapter II of the said KVAT Act, 2003.

26. In the absence of any valid answer and submission on behalf of the Respondent State, this Court can safely conclude that the machinery provisions cannot be allowed to override and defeat the substantive claim of the Input Tax Credits under Section 10(3) of the KVAT Act, 2003, which without any restriction of the time frame, allowed such deduction or credit of the ITC against the OPT liability of the Dealer in question.

27. When the Assessing Authority could pass the impugned re-assessment order, **Annexure C** dated **29/04/2016** for the whole year in one go, disallowing the ITC claim illegally by restricting it on the basis of

monthly Tax Periods, what can be the justification for disallowing the same, without it being found to be an unverified claim, not supported by valid Sales Invoices ?
None - is the simple answer !

28. The Input Tax Credit under VAT law is *pari-materia* with the concept of CENVAT or MODVAT under Excise Law and dealing with a similar problem, the Hon'ble Supreme Court in the case of **Collector of Central Excise, Pune Vs. Dai Ichi Karkaria Ltd. 1999 (112) E.L.T. 353 (SC)** held in paragraph 17 as under:-

*“17. It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. **It is entitled to use the credit at any time thereafter when making***

payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilized, has to be paid for. We are here really concerned with credit that has been validly taken, **and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible.** It should also be noted that there is no correlation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available.”

29. Thus the claim of credit of input tax is indefeasible as was the case of CENVAT under Excise law and such credit of ITC under VAT law which is equivalent to tax paid in the chain of sales of the same goods, cannot be denied on the anvil of machinery provisions or even provisions relating to time frame which is law of limitation only bars the remedy rather than negating the substantive claims under the taxing statutes.

30. Both the questions framed above are therefore liable to be answered in favour of the petitioners assesseees. The claim of ITC cannot be restricted and denied on the stated grounds by Revenue. It cannot be denied only because ITC claim is not made in respect of Sale Invoices which are not pertaining to same Tax Period, nor it can be denied on the ground that such claim is not made immediately in the month or months following the month of purchase

of goods in question. The machinery provisions of filing of Returns under Section 35 of the KVAT Act cannot defeat the substantive claims under Section 10(3) of the Act. The Revenue is entitled only to verify that the Sale Invoices are genuine and valid and such ITC claim is not duplicate, fictitious or bogus. Article 265 of the Constitution of India does not entitle the State to retain such tax paid by Selling Dealers and deny the claim of ITC credit or set off in the hands of the Purchasing Dealers who claim such ITC against their Output Tax Liability when they sell goods further, incurring such Output Tax liability.

31. One wonders whether the subsequent amendments effected by the Respondent State in the year **2015** and **2016** though not applicable to the assessment period involved in this batch of writ petitions presently being decided by this Court, is a 'relaxation' or a 'restriction' and whether it is for the

benefit of the assesseees as contended by the Respondent State or seeks to restrict and defeat the claim of ITC in the period of assessment following such amendment. Be that as it may. Since that amendment is neither applicable to the facts of the present case nor any of the sides has called the same in question, this Court need not make any further analysis of these amendments.

32. This Court is, therefore of the considered opinion that the impugned assessment orders/re-assessment orders passed by the Respondent - Assessing Authorities to this extent of denying the claim of ITC to the petitioners assesseees are illegal and unsustainable and deserve to be quashed and set aside by this Court.

33. The writ petitions are accordingly allowed and the impugned orders are quashed and set aside. The

matters would stand restored to the file of the Respondent Assessing Authorities to pass fresh orders in accordance with law as interpreted above as far as claim of Input Tax Credit is concerned.

34. This Court is of the further opinion that despite more than one judgment interpreting the provisions of Section 10(3) of the KVAT Act, 2003, in favour of the assesseees, the tendency on the part of the Assessing Authorities of the Respondent Department to still keep on passing the orders contrary to these judgments is in utter disregard of the judicial and hierarchical discipline which they are bound to observe and it may also amount to a deliberate disobedience on their part and may invite contempt action and therefore to prevent any such further unnecessary litigation on this issue, at the behest of the different Authorities of the Department taking a contrary view, it is directed that the Head of the Respondent Department, namely,

the Commissioner of Commercial Taxes shall issue a Circular in terms of the various aforesaid judgments of this Court in favour of assesseees, for being followed by the Authorities through out the State to avoid any further multiplicity of litigation before this Court and Appellate Forums. Therefore, such a Circular shall be issued by the Respondent Commissioner of Commercial Taxes and the Respondent - Departmental Authorities, including the Appellate Authorities under the Act are cautioned that now onwards if any contrary view is found to be taken by such Authorities of the Department on aforesaid issue, this Court would initiate *suo motu* contempt proceedings against the Commissioner of Commercial Taxes as well as the concerned Authorities of the Respondent Department.

35. With these observations and directions, these writ petitions are allowed. All the impugned orders passed by the Assessing Authorities are set aside and

Date of Judgment 10-01-2018 W.P.Nos.58917-58928/2016
and Connected Matters
Kirloskar Electric Co. Ltd. & Ors. Vs.
The State of Karnataka & Ors.

123/123

the matters are restored to file of the respective
Assessing Authorities, for passing fresh orders in
accordance with law, as interpreted above. No costs.

**Sd/-
JUDGE**

BMV*