



GAHC010072562021

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

Case No. : WP(C)/2683/2021

HCC-CPL (JV)

A JOINT VENTURE GROUP HAVING ITS PROJECT OFFICE SITUATED AT
MADAN MOHAN APARTMENT, NEAR SHANI MANDIR, JAIL ROAD
(SHILLONG PATTY), SILCHAR-01, ASSAM, REP. BY THE REGIONAL HEAD
(NE) SRI SHAIK MOULALI, S/O. JOHN SAHEB, R/O. BLOCK NO.3, FLAT
NO.302, NEW MALHAR SAHARA ESTATES MANSOORABAD, LB NAGAR,
RANGAREDDI, TELANGANA-500068.

VERSUS

THE UNION OF INDIA AND 9 ORS.
REP. BY THE SECRETARY, MINISTRY OF RAILWAYS, RAILWAY BOARD,
ROOM NO.256-A, RAIL BHAVAN, RAISINA ROAD, NEW DELHI, DELHI-
110001, INDIA.

2:THE GENERAL MANAGER

CONSTRUCTION
N.F. RAILWAY
MALIGAON
GUWAHATI
ASSAM
PIN-781011.

3:THE CHIEF ADMINISTRATIVE OFFICER

CONSTRUCTION-III
N.F. RAILWAY
MALIGAON
GUWAHATI
ASSAM
PIN-781011.



4:THE CHIEF ENGINEER

CONSTRUCTION-VII
N.F. RAILWAY
MALIGAON
GUWAHATI
ASSAM
PIN-781011.

5:THE CHIEF ACCOUNTS OFFICER/C-1

N.F. RAILWAY
MALIGAON
GUWAHATI
ASSAM
PIN-781011.

6:THE PRINCIPAL FINANCIAL ADVISOR

CONSTRUCTION
N.F. RAILWAY
MALIGAON
GUWAHATI
ASSAM
PIN-781011.

7:THE DY. FINANCIAL ADVISOR AND CAO/CONSTRUCTION-II

N.F. RAILWAY
MALIGAON
GUWAHATI
ASSAM
PIN-781011.

8:THE DIRECTOR

CIVIL ENGINEERING (G)
RAILWAY BOARD
ROOM NO.256-A
RAIL BHAVAN
RAISINA ROAD
NEW DELHI
DELHI-110001
INDIA.

9:RAILWAY BOARD
INDIAN RAILWAY



REPRESENTED BY ITS DIRECTOR
NEW DELHI.

10:THE PRINCIPAL COMMISSIONER
GST
KEDAR ROAD
MACHKHOWA
GUWAHATI

ASSAM. PIN-781001
GUWAHATI

Advocate for the Petitioner : MR. D MOZUMDER

Advocate for the Respondent : SC, NF RLY

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER(CAV)

Date : 26/06/2023

Heard Mr. D.Mazumdar, the learned Senior Counsel assisted by Mr. B.D. Deka, the learned counsel for the Petitioner and Mr. G. Goswami, the learned Standing Counsel appearing on behalf of the NF Railway as well as Mr. S.C. Keyal, the learned counsel appearing on behalf of the GST Department.

2. The issue involved in the instant writ petition is as to whether the Petitioner would be entitled to the reimbursement of the GST on the differential amount of price variation on steel.

3. The facts involved in the instant case is that the Petitioner which is a joint venture participated in the tender process for construction of a Single Line BG Tunnel No.12 from CH.105840.00 to 115391.00 at CH.112623 and Adit-2 at CH.115391 between Tupul -- Imphal in connection with a construction of a new railway line project from Jiribam to Tupul. The Petitioner having emerged as a



successful tenderer was awarded the contract vide a letter of acceptance issued by the Respondent No. 3 on 20/7/2015 for a total cost of Rs.784,87,54,402.79 (Rupees Seven Hundred Eight-Seven Crores Eighty-Seven Lakhs Fifty-Four Thousand Four Hundred Two and Seventy-Nine paise only). Subsequent to the letter of acceptance, the Petitioner entered into an agreement with the Respondents through the Respondent No.3 on 31/12/2015.

4. From a perusal of the said contract agreement dated 31/12/2015, it reveals that the general conditions of the contract and the specifications of the North East Frontier Railway, 1998 edition corrected up-to-date and the special conditions and special specifications, if any in conformity with the drawings enclosed therewith formed a part of the Agreement.

5. For the purpose of the instant dispute, Clause 46A of the Indian Railway Standard General Conditions of Contract, which is in Chapter IV is relevant. Clause 46A is the Price Variation Clause(PVC). It stipulates that price variation clause shall be applicable only for tenders of value as prescribed by the Ministry of Railways through instructions/Circulars issued from time to time and irrespective of the contract completion period. It was mentioned that the materials supplied free of cost by the Railways to the contractors shall fall outside the purview of the PVC. In terms with the PVC, the base month shall be taken as the month of opening of the tender, including extensions, if any, unless otherwise stated elsewhere. The quarter for applicability of the PVC shall commence from the month following the month of opening of the tender and the price variation shall be based on the average price index of the quarter under consideration. It further reveals from the said Clause in components of various items in the contract wherein variation in price was admissible. Amongst the components of various items, steel was one of such component. The said

Clause 46A of the Indian Railway Standard General Conditions of Contract further details out as to how the PVC would be worked out. As the instant writ petition relates to price variation on steel, the formula for working out the price variation so mentioned in Clause 46A.7(vi) which is as under :

$$Ms=O \times (Bs -- Bso)$$

Ms—Amount of Price Variation in steel.

‘Bs’ : SAIL’s (Steel Authority of India Limited) ex-works price plus Excise duty thereof [in rupees per tonne] for the relevant category of the steel supplied by the contractor as prevailing on the first day of the month in which the “steel” was purchased by the contractor (or) as prevailing on the first day of the month in which “steel” was purchased by the contractor or as prevailing on the first day of the month in which “steel” was brought to the site by the contractor, whichever is lower.

‘O’ : Weight of steel in tones supplied by the contractor as per the ‘on account’ bill for the month under consideration.

‘Bso’ : SAIL’s ex-works price plus Excise duty thereof [in Rs per tonne] for the relevant category of the steel supplied by the contractor as prevailing on the first day of the month in which the tender was opened.”

6. Therefore from the above formula and the definition of Bs and Bso, it would show that the price therein were plus the excise duty. For the sake of convenience, the said formula can be illustrated as under :-

If “O” i.e. the total quantity of steel procured is 1,000

Metric Tonnes;

Bso i.e. the Base Price of Steel is --- Rs.100/-;

Bs i.e. the price of steel for the period

under consideration is ----- Rs. 120/-

and the rate of applicable excise duty is ----- 18%

Then applying the formula as mentioned in Clause 46A.7 (iv) :- i.e.:-

$$\begin{aligned} Ms (PVC) &= O \times (Bs - Bso) \\ &= 1,000 \times [(120 + 18\%) - (100 + 18\%)] \\ &= 1,000 \times (141.6 - 118) \\ &= 1,000 \times 23.6 \\ &= 23,600/- \end{aligned}$$

7. The above being the formula, there was no difficulty in settling the PVC claims. However, with the Parliament enacting the Central Goods and Service Tax Act, 2017, a confusion arose as to how to apply the PVC w.e.f. 01/07/2017. It reveals that the Respondent No. 9 had issued a Circular dated 5/7/2017. This Circular however was only relevant to those tenders invited on or after 01/07/2017. Be that as it may, there were certain amendments brought into effect to Clause 46A.7 of Clause 46 Part-II of the Indian Railway Standard General Conditions of Contract, July, 2014. In terms with the said amendments, Clause 46A.7 was amended as under :

“46A.7 : Formula :

*SQ SAIL's (Steel Authority of India Limited) ex-works price plus **applicable GST and Cess on GST (if any)** (in rupees per tonne) for the relevant category of steel supplied by the contractor, as prevailing on the first day of the month in which the steel was purchased by the contractor(or) as prevailing on the first day of the month in which steels was brought to the site by the contractor, whichever is lower.*

In case, there is no notification by SAIL for the month under consideration, the price of steel, as notified in the last available month shall be taken.

*SB SAIL's ex-works price plus **applicable GST and Cess on GST (if any)** thereof (in Rs. per tonne) for the relevant category of steel supplied by the contractor, as prevailing on the first day of the month in which the tender*



was opened.

In case, there is no notification by SAIL for the month under consideration, the price of steel, as notified in the last available month shall be taken."

8. As already stated, the said Circular dated 5/7/2017 was not applicable in respect to those tenders which were awarded prior to 01/07/2017, but the reference to the said Circular is only made to understand the action taken by the respondents in respect to those tenders which were awarded post 01/07/2017 and continued after 01/07/2017.

9. It further reveals from the records that the Respondent No. 6 had issued a Joint Procedural Order (JPO) on 16/12/2019. Clause 10 of the said Joint Procedural Order (JPO) relates to price adjustment in steel items. In terms with Clause 10.1 of the said JPO, it was mentioned that as per the GCC-2013 and GCC-2014, ex-works price of steel plus excise duty will be applicable. It was further stipulated that if the base period is before 01/07/2017, excise duty is added in the base price of steel. However, if the "period under consideration is after 01/07/2017 then GST was applicable". It further stipulated that in such cases, for fair comparison only ex-work price of sale both for the base period and the period under consideration shall be taken for payment of the PVC on steel and in the meantime, the matter may be referred to the Railway Board for clarification. The final PVC bill will be paid after getting clarification of the Railway Board. Before delineating on the further developments which had taken place as to how the PVC claim is to be ascertained in respect to those cases similar to the present one, this Court finds it relevant to refer to certain facts involved in the instant case.

10. It is the case of the petitioner herein that in view of the lack of clarity,

several PVC bills of the Petitioner were kept pending by the Respondent Railway Authorities. The Petitioner therefore submitted a representation on 23/12/2019 to the Respondent No. 4 ventilating the grievances of such non-payment. Pursuant to the said representation, the Respondent No. 7 herein had issued a notification relating to price variation bills (works contract -- evaluation, recording and checking of price variation bills).

11. Clause 11 of the said notification dated 22/5/2020 is pertinent to the present dispute. The said Clause 11 is quoted as herein under :-

“11. Certificate regarding checking of issue of "Excise Duty" in that contract in which "base period" falls in Pre-GST and "period" under consideration "falls in post-GST period".

For "steel", it has been mentioned in the PVC clause that, SAIL's ex-works price plus Excise duty thereof (in rupees per ton) for the relevant category of steel supplied by the contractor, as prevailing on the first day of the month in which the "steel" was purchased by the contractor(or) as prevailing on the first day of the month in which "steel" was brought to the site by the contractor, whichever is lower, shall be taken.

GST implemented w.e.f. 1st July'2017. Under GST, all the central and state taxes are subsumed and a single tax on all commodities. In post-GST period, excise duty does not exist. In pre-GST period, the taxes levied on "Iron and Steel" Excise duty, VAT/CST, Entry tax/octroi/surcharge etc. The rate of excise duty, VAT and CST were normally 12.5%, 5% and 2% respectively in pre-GST period. Thus, total taxes in pre-GST period on "Iron & Steel" were in range of around 18% to 20%. Now, GST rate on "Iron & Steel is 18% . Therefore, it is seen that there is slight reduction in total taxes on "Iron & Steel" due to introduction of GST. However, for working out price variation, rate of "steel" without considering any taxes on pre-GST and post-GST period may be taken for such contracts while evaluation of all PVC bills (excluding final PVC bill) till issue of policy guidelines on this issue.

12. From a perusal of the above quoted Clause 11, it would transpire for



working out the price variation, rate of steel without considering any taxes on pre-GST and post-GST period may be taken for such contracts while evaluation of all PVC bills(excluding final PVS bills) till issue of policy guidelines on the issue. Therefore, from the above Clause 11, it would be seen that there was no clarity as to how to work out the PVC claims in respect to payment of the GST amount and as such the direction was specific that the payment of the PVC claim should be made without considering any taxes on the pre-GST and post-GST period.

13. The Petitioner being aggrieved by the delay in settling its PVC claims submitted yet another representation on 15/06/2020. As nothing was forthcoming from the Respondent-Railway Authorities, two writ petitions were filed before this Court, which were registered and numbered as W.P. (C)No.2836/2020 and W.P.(C)No.2842/2020. In W.P.(C)No. 2842/2020, the Deputy Chief Engineer/2, Imphal filed an affidavit-in-opposition on behalf of the Respondent Nos. 2 and 4 therein. In the sub-para of Paragraph No. 6 of the said affidavit-in-opposition, it was mentioned that since the matter of GST on steel after 01/07/2017 needed some clarification from the Railway Board, the matter was referred to the Railway Board. It was further mentioned that at present only the ex-work price of sale both for "base period" and the "period under consideration" shall be taken up for payment. The final PVC bill would be paid after getting clarification of the Railway Board. It further reveals from the records that in view of the said specific stand, as the Petitioner was in urgent need of money, the Petitioner submitted the PVC bills without including the GST components on the premise that the reimbursement of the GST would be done only after the clarifications are issued by the Railway Board. Accordingly, pursuant to the submission of the said PVC bills without including the GST



components, the Petitioner's PVS bills were cleared on 14/9/2020 and 23/10/2020. Under such circumstances, the Petitioner withdrew both the writ petitions i.e. W.P.(C) No. 2836/2020 and W.P.(C) No.2842/2020 with a liberty to file a fresh writ petition on 31/3/2021 in view of the pendency of the claim relating to the GST component. It is under such circumstances that the instant writ petition was filed claiming the reimbursement of the GST on the differential amount of price variation of steel. In the instant writ petition, the Petitioner has also assailed the Joint Procedural Order dated 16/12/2019 and the Notification dated 22/5/2020 on the ground that the said Joint Procedural Order dated 16/12/2019 as well as the Notification dated 22/5/2020 have withheld the entitlement of the Petitioner in respect to the GST component till final clarifications are issued by the Board.

14. The record reveals that an affidavit-in-opposition was filed by the Respondent No. 7 on 19th of August,2021. A perusal of the said affidavit-in-opposition reveals that the PVC claims of the Petitioner were paid by the Railway Authorities without considering any taxes on the pre-GST and post-GST period. It was mentioned in the affidavit-in-opposition that the JPO dated 16/12/2019 and the Notification dated 22/5/2020 did not supersede the provisions of the GCC clause but without getting the clarifications from the Railway Board, it was difficult for which the Respondent NF Railway had written letters dated 19/6/2020 and 7/1/2021 relating to payment of price variation in works contract. The Railway Board gave a clarification vide its letter bearing No. 2020/CE-I/CT/10E/CG/GCC Policy dated 24/2/2021. The clarification so given insofar as PVC on steel in the Communication dated 24/2/2021 being relevant is quoted herein under :-

Clarification Sought by Railways	Board Clarification
<p>For contracts with price variation clause 46.A.7 of GCC-2013 or earlier guidelines issued from the Railway Board, for "Steel", it has been mentioned in the PVC clause that, SAIL's ex-work price plus Excise duty thereof [in rupees per ton] for the relevant category of the steel supplied by the contractor, as prevailing on the first day of the month in which the "steel" was purchased by the contractor or as prevailing on the firstday of the month in which "steel" was purchased by the contractor or as prevailing on the first day of the month in which "steel" was brought to the site by the contractor, whichever is lower, is shall be taken.</p> <p>GST was implemented w.e.f. 1st July, 2017. Under GST, all the Central and State taxes are subsumed and a single tax is levied on all commodities. In post-GST period, excise duty does not exist. If the "base period" falls in pre-GST period and "Period under consideration" falls in post-GST period, then how to calculate PVC, needs to be clarified.</p>	<p>For payment of PVC for steel, if the base period is of before GST implementation i.e. before 01.07.2017 and period under consideration is post GST implementation i.e. after 01.07.2017, Railways can work out PVC for steel, considering steel cost exclusive of excise duty before 01.07.2017, and steel cost exclusive of GST after 01.07.2017, keeping in view the provisions of Para 1265 of Engineering Code.</p>

15. From a perusal of the above clarification, it reveals that if the base period is before the GST implementation i.e. before 1/7/2017 and the "period under consideration" is post-GST implementation i.e. after 1/7/2017, the Railways can work out the PVC for steel, considering the steel cost exclusive of the excise duty before 1/7/2017 and the steel cost exclusive of the GST after 1/7/2017 keeping in view the provisions of Para 1265 of the Engineering Code.

16. Para 1265 of the Engineering Code was enclosed as Annexure-3 to the



said affidavit-in-opposition dated 19/8/2021. A perusal of the said Para 1265 of the Engineering Code shows that the power to vary the terms of the contract lies only upon the volition of the actual parties thereto and the contractor and his sureties, if any. Therefore the consenting parties have to agree to all variations which should be subject of a subsidiary agreement stating what is to be varied and what will remain unchanged in the original contract. It further stipulates that such subsidiary agreement should be regarded as a fresh contract and entered into before giving effect to the variation. Sub-Clause (b) of Para 1265 relates to variation of the rates or items and Sub-Clause (d) of Para 1265 relates to variation of the items. The said Communication dated 24/2/2021 however have not been put to challenge in the instant writ petition.

17. The petitioner thereupon filed their Affidavit-in-Reply on 8th of October, 2021. It was mentioned in paragraph 10 of the Affidavit-in-Reply that the clarification so given by Railway Board vide its communication dated 24/2/2021 was a clarification on the procedure and payment of the PVC on steel but failed to consider the request of the Petitioner for payment of the GST component to be paid on the PVC on steel. It was mentioned that the Notification dated 22/5/2020, JPO dated 16/12/2009 as well as the clarification dated 24/2/2021 only specifies for the method of calculating and payment of PVC on steel. The said notification, JPO as well as the clarification do not disentitle the petitioner for payment of the GST on such price variation. It was reiterated that the Respondent Authorities have been withholding that amount payable to the Petitioner under the head of tax component GST on such price variation. The statements made in the affidavit-in-opposition to the effect that the GST neutralization is being paid separately to the Petitioner through GST on the PVC bills were denied as false and misleading. It was also denied that the entire



repercussion of the GST in the post-GST era was being neutralized. In that regard, reference was drawn to the effect that on one hand, the Railway Authorities have been withholding the GST component on the PVC bills, however, the GST on such Running Account (R.A.) bills have been paid to the Petitioner. It was reiterated that as per the contract condition the Petitioner is entitled to receive the PVC alongwith the taxes, which was duly admitted by the Respondents that the contract talked about payment of the excise duty.

18. The Respondent No. 4 had filed an affidavit on 27th of May,2022. In the said affidavit, it was mentioned that the contract agreement involved in the present writ proceedings was signed before the GST implementation i.e. before 1/7/2017 and hence in the contract agreement the formula for calculating the PVC for steel was based on the excise duty and the base price of steel for calculating the price variation. It was stated that after the implementation of the GST w.e.f. 1/7/2017, excise duty has been abolished and the GST was introduced. Under these circumstances, payment of the PVC for steel items by applying the formula as contained in the contract agreement was no longer possible. Reference was again made to a clarification given by the Railway Board dated 24/2/2021. It was mentioned that the Petitioner is also eligible for reimbursement of the additional tax liability due to implementation of the GST i.e difference on the tax liability in the pre-GST regime and the post-GST regime as per the instructions of the Ministry of Railways dated 27/10/2017. In that regard, reference was made to another Joint Procedural Order (JPO) in compliance to the Railway Board's letter dated 27/10/2017 issued vide a letter dated 29/1/2021. It was mentioned that the Petitioner was duly compensated for the additional cost if any on account of the variation in the base price of steel and also on account of the changes in the applicable taxes on steel as per

the orders of the Ministry of Railways and of the NF Railway. It was further mentioned that the orders of the Ministry of Railways dated 29/1/2017 and 24/2/2021 were binding on all Zonal Railways and also being followed by all Zonal Railways including North East Frontier Railway. To the said Affidavit-in-Opposition, the Circular dated 27/10/2017 issued by the Ministry of Railways was enclosed as Annexure-1. Clause 2, 3.1, 3.2, 3.4, 3.5 & 3.7 being relevant to the issue are quoted herein below : -

“2.Considering the above, it has been decided to make existing works contracts awarded before implementation of GST, as GST neutral after carefully taking into account the input tax credit available to the contractor, on a case to case basis, on production of documentary evidence. This exercise may involve reimbursement to contractors or recovery from contractors depending upon the tax liability of the contractor before GST and after GST including input tax credit available to the contractor after GST.

3. Zonal Railways/Production Units may therefore work out modalities through a procedure order with the approval of General Manager in consultation with Principal Financial Advisor & legal cell. Following should be kept in view while framing the procedure order:

3.1-For dealing with impact of GST in individual contracts, a supplementary agreement is to be entered into with the contractor in consultation with financial advisor in terms of Para 1265 of the Engineering Code.

3.2 A clause is to be added in the supplementary agreement to state that in case there is any further change in the GST tax structure till the date of completion of work or any error is noticed in the calculation of amount payable/recoverable till the release of Final Bill amount to contractor, the same shall be paid by the Railways or recovered from the contractor's bills/security deposit or any other dues of contractor with the Govt. of India.

3.3 In case while awarding the contracts, the reasonability of rates was justified by Tender committee considering the impact of GST, such compensation would not apply.

3.4-For neutralizing GST impact on the works contracts awarded before implementation of GST; along with documentary evidence, the contractor should submit work sheet of tax liability before GST and after GST duly certified by chartered accountant engaged by him.



3.5 The rate reasonability and quantities of input materials for which ITC shall be available to the contractor, should be ensured by the executive with due care in consultation with associate finance.

3.7 Recovery, if any, which is required to be done from the contractors, may be regulated as per Section 171(1) of CGST Act, 2017.'

19. A perusal of the above quoted clauses in the circular dated 27/10/2017 would show that the Railway Board had decided to make existing works contract awarded before implementation of GST, as GST neutral after taking into account the input tax credit available to the contractor on a case to case basis, by virtue of documentary evidence. It was mentioned that this exercise may involve reimbursement to the contractors or recovery from the contractors depending upon the tax liability of the contractors before GST and after GST including input tax credit available to the contractors after GST. How it is to be worked out was mentioned in Clause 3.4. Clause 3.1 and 3.2 relates to entering into a supplementary agreement and what the contents of the supplementary agreement should be and this very aspect of the matter could also be seen from the clarification dated 24/2/2021 which was enclosed to the Affidavit-in-Opposition filed on 19th of August, 2021.

20. It further reveals from Annexure-II of the affidavit filed by the Respondent No. 4 that another Joint Procedural Order No. 1/2020 was issued on 29/1/2021. This JPO was issued in supersession of the JPO dated 21/9/2018. It further reveals from a perusal of the JPO dated 21/9/2021 that the JPO dated 29/1/2018 was reviewed ab-initio in the light of certain representations received from the contractors contending that the said JPO dated 29/1/2018 did not fully neutralize the impact of the GST. Accordingly, the JPO dated 29/1/2021 superseded the JPO dated 29/1/2018 and any GST neutralization bill already



processed and paid were directed to be reviewed in the light of the JPO No.1/2020 dated 29/1/2021. The following clauses of the said JPO dated 29/1/2021 are relevant i.e. Clause 2, 6, 7, 12 and 13 which are reproduced below :-

“2. GST neutralisation shall also be payable for PVC bills for the contracts covered in para (1) above to the contractors and the amount shall be equal to difference of GST payable on the PVC bill and the VAT payable on that bill in the pre-GST regime.

6. The review of GST neutrality is to be done on a case to case basis on production of various documents which is detailed in the following paragraphs.

7. The tax liability of the contractor before implementation of the GST is to be reckoned irrespective of whether the same was actually paid or not. The net effect of GST neutrality may involve either reimbursement to the contractors or recovery from the contractors after comparing the tax liability in pre and post GST regimes.

12. The difference in amount of tax liability arrived as per the Pre-GST taxes and Post GST shall be certified by the Chartered Accountant engaged by the agency and forwarded by the Executive to the Bills section of Associate Accounts Office for internal check and arranging payment. (Format at Annexure-B).

13. The final impact of GST shall also be worked out again at the time of final bill by the Executive to be scrutinized in internal check by Associate Accounts Office. Contractor cannot claim for compensation of GST neutralization once the final bill is passed and contractor submits a no claim certificate. However, in case a contractor is not able to submit bill of GST neutralization before submitting the final bill, his final bill will be cleared by Railway provided contractor mentions in the 'No Claim Certificate' that he has No Claims against Railways except for GST neutralization amount and also that he is agreeable to Railways withholding the Security Deposit for recovery (if any) on account of GST neutralization by Railway, till such time GST neutralization amount is settled by Railways "



21. From a perusal of the above quoted Clauses, it would reveal that the Railways shall pay the GST neutralization for the PVC bills for contracts of the present nature to the contractors and the amount shall be equal to the difference of the GST payable on the PVC bills and the VAT payable on that bill in the pre-GST regime. It further reveals that the review of the GST neutrality is to be done on a case to case basis on a production of various documents as mentioned in the said JPO. It further stipulates that the tax liability of the contractors before implementation of the GST is to be reckoned irrespective of whether the same was actually payable or not. It was stipulated that the net effect of the GST neutrality may involve either reimbursement to the contractors or recovery from the contractors after comparing the tax liability in pre-GST and post-GST regime.

22. Clause 12 is very relevant for the purpose of the instant dispute which stipulates that the difference in the amount of tax liability arrived at as per the pre-GST and post-GST regimes was required to be certified by the Chartered Accountant engaged by the agency and forwarded by the executive to the bill section of the Associate Accounts Office for internal checking and arranging payment. It is pertinent herein to mention that the JPO No. 1/2020 dated 21/1/2021 is not a subject-matter of challenge. Annexure-B to the said JPO dated 29/1/2021 gives an illustration as to how the GST neutrality was to be worked out.

23. The Petitioner submitted an affidavit-in-reply on 22/6/2022. In the said affidavit-in-reply, it was mentioned that the Petitioner was not only deprived of the differential tax liability in the pre-GST and post-GST period, rather the entire tax component on price variation after introduction of the GST have been withheld by the Respondent Authorities in an arbitrary and unfair manner. It was



further stated that the claim of the petitioner is no limited to the differential tax liability in the pre-GST and post-GST period alone but the entire tax component which were set apart for calculation of the PVC on steel. It was further stated that no supplementary agreement was executed between the Petitioner and the Respondent Authorities. Referring to Annexure-I and II of the said affidavit filed by the Respondent No. 4, it was stated that the same are relevant for calculating only the differential tax liability that may have occurred after introduction of the GST but the same does not by any stretch of imagination imply that the tax component concerning PVC shall not be paid.

24. It further reveals from the records that another additional affidavit was filed by the Respondent No. 4. In the said affidavit, it was mentioned that the Petitioner in the instant proceeding have claimed reimbursement of the goods and service tax on the differential amount of price variation. It was mentioned that the Petitioner is not entitled to such reimbursement due to the fact that apart from getting the benefit of GST neutralisation, the Petitioner is also getting input tax credit which can be verified from the documents submitted by the Petitioner to the Railway Authorities while claiming the PVC bills. It was further mentioned that from Annexure-1 (colly) to the said additional affidavit filed by the Respondent No. 4, it would be clearly established that the Petitioner is getting the input tax credit and hence the Railway is not required to reimburse the tax to the Petitioner after coming of the GST i.e. after 01/07/2017. It was further mentioned that the instruction submitted by the GST Department was contrary to the actual position of the Petitioner as they are in fact availing ITC. It is relevant to take note of that Annexure-1(colly) is a set of documents which were submitted by the Petitioner through his Chartered Accountant. A Communication dated 2/8/2019 is a part of the Annexure-1



(colly). The said communication dated 2/8/2019 is a document submitted by the Petitioner making a claim of Rs.21,81,27,548/- relating to reimbursement of the GST for the contract agreement supported with the claim as per the Annexure-A alongwith the worksheet duly signed by the Chartered Accountant as Annexure-B. From a perusal of the Annexure-B, it reveals that the Petitioner's claim that they have received an amount of 31,26,03164.12 as input tax credit/refund post-GST and the Net Tax Liability post-GST was Rs.64,18,69,204.79p. It is relevant to take note that a perusal of Annexure-B shows that the said document to CC Bill and not PVC Bill.

25. Taking into account the specific stand taken in the Additional Affidavit, this Court therefore vide an order dated 14/3/2023 gave an opportunity to the Petitioner to rebut to the allegations made therein. On 27/3/2023, an Affidavit-in-Reply was filed by the Petitioner. The contents of the said Affidavit-in-Reply are very pertinent for the purpose of the instant dispute, more so, when there was no challenge to the Circular dated 27/10/2017 and the JPO dated 29/1/2021. It was stated in paragraph No.5 of the said Affidavit-in-Reply that the input tax credit on purchase of steel available to the Petitioner was passed on to the Respondent Railways by the Petitioner by deducting it from GST neutralization on CC bills at the time of submission of the GST neutralization on CC bills in terms with the JPO dated 29/1/2018 and therefore the Petitioner only claims 7.04% as reimbursement of the GST on the CC bills. It was further stated that the Respondent Railway Authority thereafter issued two JPOs dated 22/11/2019 and 29/1/2021 under which they stopped paying GST neutralization to the Petitioner any further. It was further mentioned that the Petitioner had deducted the input tax credit from its GST neutralization of CC bills raised so as to comply with Section 171(1) of the CGST Act, 2017 in order to pass on the



ITC benefit to the Respondent Railway Authority. It was further stated that the Petitioner would adjust such further input tax credit so availed by them against the final bill or regular bills of GST neutralization of CC bills which will be raised by them from time to time in terms with Section 171(1) of the CGST Act, 2017. It was further mentioned that the receipt or availing of input tax credit and then passing on the said ITC to the Respondent Authorities had no bearing on the claim of the Petitioner under the PVC Clause. It was stated that the Petitioner by way of the instant writ petition had prayed for realization of the entire PVC and the Respondents have no legal basis to contend that since the Petitioner is availing input tax credit, it is not entitled to payment of PVC in its entirety. It was further mentioned that the Annexure-1(colly) to the additional affidavit filed by the Respondent No. 4 clearly depicts that the Petitioner had submitted/declared the Input Tax Credit amount so availed by them as was required under Clause 10 of the JPO dated 29/1/2018 and accordingly deducted the ITC from the Tax Post GST and claimed the difference of tax payable (i.e. after Net Tax Liability Post GST minus Net Tax Liability Pre-GST) which came out to 7.04%. It was further mentioned that the Petitioner would submit the exact amount of the input tax credit (if so any) in the GST neutralization for CC bills and make necessary deductions in terms with Section 171(1) of the CGST Act, 2017 and also as per the JPO dated 29/1/2021 as and when the input tax credit is availed by the Petitioner. The Joint Procedural Order dated 29/1/2018 was enclosed to the Affidavit-in-Reply filed by the Petitioner dated 27/3/2023.

26. I have heard the learned counsels for the parties and the materials on record are duly noted.

27. Before analyzing the dispute as regards the entitlement of the Petitioner, this Court finds it relevant to take into account a very pertinent aspect of the



matter. Though the learned counsels for the Petitioner and the Respondents submitted on the basis of the pleadings but there was no clarity on one aspect as to whether the Petitioner would be entitled to the input tax credit on purchase of steel in respect to which PVC claims have been made. Under such circumstances, this Court had made a specific query upon the learned senior counsel appearing on behalf of the Petitioner as to whether the Petitioner would be entitled to input tax credit on the purchase of steel. The learned senior counsel appearing on behalf of the Petitioner upon instructions submitted that the Petitioner are entitled to input tax credit on the purchase of steel.

28. In the backdrop of the above, let this Court therefore analyze the entitlement of the Petitioner on the basis of the provisions contained in the Central Goods and Service Tax, Act, 2017(for short 'CGST Act, 2017').

29. The GST legislation came into existence within the purview of a modern economy as a destination based tax. The idea which permeates GST legislation globally is to impose a multi-stage tax under which each point in supply chain is potentially taxed. As a result, the suppliers are entitled to avail credit of the tax paid at an anterior stage. In other words, GST fulfils the description of a tax which is based on value addition. The value addition is intended to achieve fiscal neutrality and to obviate a cascading effect of taxation which traditional tax regimes were liable to perpetuate. Therefore, the purpose of the tax on value addition is not dependent on the distribution or manufacturing model. The tax which is paid at an anterior stage of the supply chain is adjusted. The object therefore is to achieve both neutrality and equivalence by the grant of seamless credit of the duties paid at an anterior stage of the supply chain. It is further relevant to note that the State VAT legislations represented a significant stage in the evaluation of fiscal legislations based on the principle of value addition.

However, there was an absence of seamless flow of credit, particularly between Central and State levies. In fact, the background materials antecedent to the adoption of the constitutional and legal structure underlying GST in the country indicates the importance which was ascribed to developing a tax regime which would achieve a continuous chain of set off from the original producer and service provider's point up to the retailer's level in the supply chain and eliminate the burden of cascading tax effects.

30. Taking into account the issue involved herein, this Court finds it relevant to take note of some of the definitions in the CGST Act, 2017.

(a) Section 2 (62) defines input tax credit which is quoted herein under :-

*“2.(62) **“input tax”** in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes –*

(a) the integrated goods and services tax charged on import of goods ;

(b) the tax payable under the provisions of sub-sections (3) and (4) of Section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of Section 9 of the respective State Goods and Services Tax Act;

or

(e) the tax payable under the provisions of sub-sections (3) and (4) of Section 7 of the Union territory Goods and Services Tax Act, but does not include the tax paid under the composition levy”

The expression 'input tax' in relation to a registered person therefore means (i) the Central, State, Integrated or Union Territory tax ; (ii) charge on any supply of goods or services or both made to a registered person.

(b) Section 2(63) defines 'input tax credit' to mean the credit of input tax. Therefore to understand the expression of 'input tax' as defined in Section 2(62), the same has to be read into Section 2(63) in understanding the ambit of the expression 'input tax credit'.

(c) Section 2(67) defines 'inward supply' to mean in relation to a person, receipt of goods, service or both whether by purchase or acquisition or any other means with or without consideration.

(d) Section 2(82) defines 'output tax' to mean in relation to a taxable person, the tax chargeable under the Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis.

(e) Section 2(83) defines 'outward supply' to mean in relation to a taxable person, supply of goods or services or both, whether by sale, transfer, barter, exchange, license, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course of furtherance of business.

31. A conjoint reading of the definitions of 'inward supply', 'output tax' and 'outward supply', would show that the expression 'outward supply' incorporates the supply of goods or service or both. The expression 'output tax' in other words means imposition of tax chargeable under the Act on the taxable supply of goods or service or both.

32. Section 16 is comprised in Chapter V and is titled as 'Input Tax Credit'. The marginal note to Section 16 indicates that the provision relates to eligibility and conditions for taking Input Tax Credit (ITC).

33. It is seen from a perusal of Section 16(1) that every registered person, shall subject to such conditions and restrictions as may be prescribed and in the

manner specified in Section 49 be entitled to take credit of the input tax charged on any supply of goods or service or both to him which are used or intended to be used in the course of furtherance of his business and the said amount will be credited in the electronic ledger of such person. Sub-section (2) of Section 16 spells out the conditions, upon the fulfillment of which, the entitlement to the credit of input tax in respect to supply of goods or services can be availed. It further stipulates that the credit of input tax charged on any supply of goods or services, or both, can be availed of by a registered person subject to the conditions which are set out in the provisos. The credit of input tax is therefore, relatable both to the supply of goods and services. Whether tax is paid on the supply of goods or services, the recipients receive input tax credit in a similar manner. Taxes on goods and services are identifiable but upon credit to the electronic ledger, they form a common pool for utilization. As already stated above, Section 16(1) indicates the manner in which input tax credit can be utilized is spelt out in Section 49.

34. Section 49 stipulates the payment of tax, interest, penalty, fee and other amounts. Sub-Section (3) of Section 49 envisages that the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of Act or its Rules in the manner and subject to the conditions and within such time as is prescribed. Similarly Sub-Section (4) of Section 49 stipulates that the amount available in the electronic credit ledger can be used for making payment towards output tax under the CGST Act, 2017 or under the Integrated Goods and Services Tax Act, 2017 in such manner and subject to the conditions and within such time as is prescribed. Sub-Section (5) of Section 49 spells out the priorities according to which the amount of ITC available in the electronic credit



ledger can be utilised. In terms with sub-section (6) of Section 49, the balance in the electronic cash ledger or the electronic credit ledger after payment of tax, interest, penalty, fees or any other amount payable under the Act or the Rules made thereinunder may be refunded in accordance with the provisions of Section 54.

35. At this stage, this Court also finds it relevant to take note of Section 49A which stipulates that notwithstanding anything contained in Section 49, the ITC on account of Central tax, State tax or Union Territory tax shall be utilised towards payment of Integrated tax, Central tax, State tax or Union Territory tax, as the case may be, only after the ITC available on account of Integrated Taxes has first been utilized fully towards such payment. Section 49B further empowers the Government, on recommendations of the Council but subject to the provisions of Clause (e) and (f) of Sub-section (5) of Section 49 to prescribe the order and manner of utilization of the input tax credit on account of integrated tax, central tax, State tax or Union Territory tax, as the case may be, towards payment of any such tax.

36. The Supreme Court in the case of **Union of India vs. V.K.C. Footsteps India Private Ltd.** reported in **(2022) 2 SCC 603** observed at paragraph 73 as to what transpires from a conjoint reading of Section 16 read with Section 49 of the CGST Act, 2017 which is quoted herein below :-

“73. The provisions of Section 16 and Section 49 indicate the following position :

73.1. The ITC in the electronic credit ledger may be availed of for making any payment towards output tax under the CGST Act or under the IGST Act.

73.2 The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount

payable under the CGST Act or its Rules.

73.3. The balance in the electronic cash ledger or electronic credit ledger after the payment of tax, interest, penalty, fees or any other amount payable under the Act or Rules may be refunded in accordance with the provisions of Section 54.

73.4 Sub-section (6) of Section 49, in other words contemplates a refund of the balance which remains in the electronic cash ledger or electronic credit ledger in the manner stipulated by the provisions of Section 54."

37. From the above quoted paragraphs, it transpires that the input tax credit in the electronic credit ledger may be availed of for making any payment towards output tax under the CGST Act or under the IGST Act. Furthermore, the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the CGST Act or its Rules. The balance in the electronic cash ledger or the electronic credit ledger after payment of the tax, interest, penalty, fees or any other amount payable under the Act or the Rules may be refunded in accordance with the provisions of Section 54. In the backdrop of the above, let this Court analyse and consider in the facts of the instant case whether the Petitioner would be entitled to claim refund of the input tax credit availed on the purchase of steel which was used to pay the output tax while affecting the outward supply of steel to the Railway Authorities.

38. It is relevant to take note of the Joint Procedural Order No. 1/2017 enclosed as Annexure-12 to the affidavit-in-reply filed by the Petitioner dated 27/3/2023 as well as the Joint Procedural Order No. 1/2020 dated 29/1/2021. A perusal of the Joint Procedural Order No. 1/2017 is silent on PVC Claims. However, by the Joint Procedural Order No. 1/2020, the Joint Procedural Order



No. 1/2017 was superseded. Clause 2 of the Joint Procedural Order No. 1/2020 as quoted herein above categorically mandates GST neutralisation shall also be payable for PVC bill for contracts of the present kind to the contractors and amount shall be equal to the difference of the GST payable on the PVC bill and the VAT payable on that bill in the pre-GST regime. In terms with Clause 7, the tax liability of the contractor before implementation of the GST is to be reckoned irrespective of whether the same was actually paid or not. It was further stipulated in the said Clause that the net effect of the GST neutrality may involve either reimbursement to the contractor or recovery from the contractor after comparing the tax liability in pre and post GST regime.

39. Clause 12 of the said JPO No. 1/2020 categorically mandates that the difference in amount of the tax liability arrived as per the Pre-GST taxes and the post-GST taxes shall be certified by a Chartered Accountant engaged by the Agency and forwarded by the Executive to the Bill Section of the Associate Accounts Office for internal check and arranging payment. The same needs to be done in terms with Annexure-B to the JPO No. 1/2020. A perusal of Annexure-B makes it clear as to how the GST neutralisation is to be worked out. Clause 6 of the Explanation to Annexure-B further mandates that the GST neutralisation shall be payable for the PVC bills. Therefore, a reading of Clause 2, 7 and 12 read with the Annexure-B to the Joint Procedural Order No.1/2020 makes it clear that the Petitioner herein would be entitled to the GST neutralisation in respect to the difference in the amount of the liability arrived at as per the Pre-GST Taxes and Post-GST Taxes in the manner to be worked out as per Annexure-B to the Joint Procedural Order dated 29/1/2021.

40. However, the most pertinent question is whether the Petitioner would be entitled to the refund of the Input Tax Credit availed upon purchasing of steel



which was used for the purpose of payment of the Output Tax in effecting the outward supply of steel to the Railways. This question has arisen in view of the specific and categorical submission of the learned counsel for the Respondents inasmuch as, it was submitted that as the Petitioner is getting the benefit of the Input Tax Credit, the question of reimbursement of Input Tax Credit availed do not arise. It was submitted that the Petitioner would get double benefit, inasmuch as on one hand the Petitioner would get the benefit of Input Tax Credit and on the other hand would get the benefit of GST neutralization and as such hit by Section 171 of the CGST Act, 2017.

41. In the previous segments of the instant judgment, this Court categorically observed the object and the frame work behind the Input Tax Credit. The GST legislation as observed earlier is a destination based tax meaning thereby GST is a consumption based tax and would effectively tax the consumer of such goods or services or both at the destination thereof or as the case may be at the point of consumption. The supply of steel by the Petitioner to the Railways makes the Railways the end user and therefore the Railways are required to bear the brunt of the final tax amount upon the supply of steel. The definition of 'input of tax', 'inward supply', 'input tax credit' 'output tax' and outward supply' read alongwith Section 16 and 49 of the Act makes it clear that the Petitioner who had paid the input tax on the purchase of steel would receive input tax credit which shall be credited to the Petitioner's electronic credit ledger. It is relevant to note that the input tax credit is credited to the Petitioner's electronic credit ledger as the Petitioner had paid from its resources the input tax. Merely because the Petitioner uses the input tax credit which is credited to his electronic credit ledger for payment of the output tax, which is a permissible mode of payment as per Section 49, it would be completely contrary to the frame work of the GST

Act to accept the contention of the Railways that the Petitioner would not be entitled to the reimbursement of the Input Tax Credit which the Petitioner used for payment of the Output Tax Credit. This Court therefore finds it relevant to take again the illustration in paragraph No. 6 of the instant judgment but applying to the post GST period.

$$\begin{aligned}O \text{ (weight)} &= 1000 \text{ Metric Tonnes.} \\Bso \text{ (Base Price of Steel)} & \text{ --- Rs. 100/-} \\Bs \text{ (Price in the period under consideration)} & \text{ --- Rs. 120/-} \\Excise Duty prior to GST & \text{ --- 18\%} \\GST & \text{ ---- 18\%} \\PVC &= O \times (Bs - Bso) \\&= 1,000 \times [(120+18\%) - (100+18\%)] \\&= 1000 \times [(120 +21.6) -100+18\%)] \\&= 1,000 \times (141.6-118) \\&= 1,000 \times 23.6 \\&= 23,600/-\end{aligned}$$

42. In the above illustration, the supplier at the time of inward supply had paid Rs.120/- per MT alongwith GST of 18%. Accordingly, the supplier would receive input tax credit of the amount of GST paid while purchasing the steel. The said input tax credit by dint of Section 16 of the Act would be credited to the electronic credit ledger of the supplier. In view of Section 49, the said amount lying in the electronic credit ledger can be used for payment of output tax, penalty etc. Therefore, when the supplier pays the output tax from its electronic credit ledger, it would amount that the supplier had paid the output tax which is reimbursable. In that view of the matter, the amount paid from the electronic credit ledger has to be taken into consideration while computing the PVC Claim. Therefore, if this Court accepts the contention of the Respondent



Railways, it would result in the supplier getting reimbursed an amount which would be less than the purchase price during the period under consideration.

43. This Court at this stage, finds it relevant to refer to a judgment of the Division Bench of the Gujrat High Court in the case of Bhagwati Construction vs. Union of India (C/Special Civil Application No. 15114 of 2021) dated 13/4/2022. The issue therein was similar and related to the Joint Procedural Order dated 21/1/2018 passed by the Western Railways in terms with the Circular dated 27/10/2017 passed by the Railway Board. Paragraphs 32 to 34 being relevant are quoted herein below :

32. It is unfortunate to note that the respondents have not been able to understand the basic scheme of the GST Act. The input tax credit is admissible under Section 16(1) of the GST Act of the tax paid on goods and services used in the course of the business. The input tax credit claimed by a taxable person gets credited into his electronic credit ledger. Such amount is the actual tax such taxable person has paid to his supplier, which is further paid to the Government treasury. Thereafter, while making the payment of the output tax, Section 49 of the GST Act entitles a taxable person to utilize the balance available in the electronic credit ledger. Thus, the tax which was already paid by a taxable person is effectively allowed to be set off against the output tax liability.

33. Therefore, the tax payment through the electronic credit ledger is a legally recognized mode of payment under the GST Act. In fact, it is settled legal position that the input tax credit is 'as good as tax paid' by the assessee. A reference may be made to a judgment of the Supreme Court in the case of Jayaswal Neco Ltd. (supra), wherein the following was observed after relying upon the earlier decisions :

“17. In clause (b) of Rule 173-G, a duty has been cast on the manufacturer to maintain an account current with the Commissioner for the purpose of

discharging his duty liability by debiting such account current. This clause also provides that duty can be discharged by utilising CenVAT credit in the manner mentioned in the said clause. Thus, insofar as mode of payment is concerned, it can be through account current or by utilising CenCAT credit. Both the methods are permissible. The mode of payment of duty through CenVAT credit is as good as making payment through account current.

18. *This Court in CCE v. Dai Ichi Karkaria Ltd. [(1999) 7 SCC 448 : (1999) 112 ELT 353] described credit under the ModVAT scheme to be as good as tax paid'. The reasons for the aforesaid view taken by the Court are contained in paras 18 and 19 of the judgment which may be recapitulated as under : (SCC pp. 458-59)*

18. *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 that requisite declaration and obtains an acknowledgment 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 utilised, 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 co-relation 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.*

19. *It is, therefore, that in Eicher Motors Ltd. v. Union of India . [(1999) 2 SCC 361 : (1999) 106 ELT 3] this Court said that a credit under*

the ModVAT Scheme was 'as good as tax paid'."

34. *Thus, the payment of tax by utilization of the tax credit is a valid mode of payment. The denial to release refund/reimbursement on the ground that only part amount has been paid by the writ-applicants through the electronic cash ledger is not legally tenable. The entire amount of the output tax paid under the GST Act in relation to the contract in respect of which the supplementary agreement has been entered into with the writ-applicants needs to be forthwith released irrespective of the fact, whether such amount has been paid through electronic cash ledger or through electronic credit ledger."*

44. This Court is therefore of the opinion that the Petitioner herein would be entitled to his PVC claim in terms with the contract and GST paid by the Petitioner from its electronic credit ledger has to be taken into consideration while computing the PVC Claims of the Petitioner. The Petitioner would be well advised therefore to take steps in terms with the JPO dated 29/1/2021 for making its PVC claims, if not already done and the Respondent Railways shall pay the PVC claims on the basis of the contract. It is yet again reiterated that on the ground that the Petitioner had paid the output tax through its electronic credit ledger by using its input tax credit, the same shall not be a ground to deny the entitlement of the Petitioner to the reimbursement of the GST. The said exercise of the PVC Bills of the Petitioner be completed within one month from the date a certified copy of this judgment is served upon the Respondent No. 7.

45. With the above observations and directions, the petition stands allowed to the extent indicated above.

JUDGE

Comparing Assistant