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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPT No. 53 of 2024**

Bharat Aluminium Company Limited, Registered Address: Bharat Aluminium Company Limited, BALCO Plant, Korba, District – Korba (CG) PIN Code – 495 684 Through its Authorised Representative: Shri Rajiv Jain, S/o Shri Bimal Kumar Jain, Aged about 38 years, Presently posted as : Head – Taxation, Bharat Aluminium Company Limited, BALCO Plant, Korba, District – Korba (CG) PIN Code – 495 684.

---- **Petitioner**

**Versus**

1. Union of India Through : Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi, PIN Code – 110 001.
2. State of Chhattisgarh, through : Secretary, Department of Finance, Government of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, Raipur, District Raipur (CG) PIN Code 492 002.
3. Central Board of Indirect Taxes & Customs, Through its : Chairman, Ministry of Finance, Department of Revenue, North Block New Delhi PIN Code – 110 001
4. Joint Commissioner (Appeal), State Tax, Bilaspur (Chhattisgarh) O/o Joint Commissioner (Appeal), State Tax, Bilaspur (CG), Bilaspur - Division – II, Opposite New Hi Tech Bus Stand, Ambe Plaza Tifra, Bilaspur, District – Bilaspur (CG) PIN Code – 495 223
5. Assistant Commissioner (State Tax), Korba – Division – II, Commercial Tax Building, ITI, Rampur, Korba, District – Korba (CG) PIN Code 495 677
6. Director, Central Board of Indirect Taxes & Customs, Ministry of Finance, Department of Revenue, North Block New Delhi PIN Code – 110 001

---- **Respondents**

**WPT No. 54 of 2024**

Bharat Aluminium Company Limited, Registered Address : Bharat Aluminium Company Limited, Balco Plant, Korba, District Korba Through Its Authorised Representative Shri Rajiv Jain, S/o Shri Bimal Kumar Jain, Aged About 38 Yrs, Presently Posted As Head- Taxation, Bharat Aluminium Company Limited, Balco Plant, Korba, District- Korba (C.G.)



Pin Code 495684, District : Korba, Chhattisgarh

---- **Petitioner**

**Versus**

1. Union Of India Through Secretary, Department Of Revenue, Ministry Of Finance, North Block, New Delhi Pin Code- 110001
2. State Of Chhattisgarh Through Secretary Department Of Finance, Government Of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, Raipur, District- Raipur (C.G) Pin Code 492002, District : Raipur, Chhattisgarh
3. Central Board Of Indirect Taxes And Customs Through Its Chairman, Ministry Of Finance, Department Of Revenue, North Block, New Delhi Pin Code- 110001
4. Joint Commissioner (Appeal), State Tax Bilaspur (Chhattisgarh) O/o Joint Commissioner (Appeal), State Tax, Bilaspur (Cg) Bilaspur- Division- II Opposite New Hi Tech Bus Stand, Ambe Plaza Tifra, Bilaspur, District- Bilaspur (C.G.) Pin Code 495223, District : Bilaspur, Chhattisgarh
5. Assistant Commissioner (State Tax), Korba- Division-II Commercial Tax Building, I T I, Rampur, Korba, District Korba (C.G.) Pin Code 495677, District : Korba, Chhattisgarh
6. Director, Central Board Of Indirect Taxes And Customs, Ministry Of Finance, Department Of Revenue, North Block, New Delhi Pin Code- 110001, Delhi

---- **Respondents**

**WPT No. 55 of 2024**

Bharat Aluminium Company Limited, Registered Address Bharat Aluminium Company Limited, Balco Plant, Korba District Korba Chhattisgarh Pin Code -495684. Through Its Authorised Representative Shri Rajiv Jain S/o Shri Bimal Kumar Jain, Aged About 38 Years, Presently Posted As Head Taxation, Bharat Aluminium Company Limited, Balco Plant, Korba, District Korba Chhattisgarh. Pin Code -495684

---- **Petitioner**



**Versus**

1. Union Of India Through Secretary, Department Of Revenue, Ministry Of Finance, North Block, New Delhi. Pin Code -110001
2. State Of Chhattisgarh Through Secretary, Department Of Finance, Government Of Chhattisgarh Mantralaya Mahanadi Bhawan, Atal Nagar, Nava Raipur, Raipur District Raipur Chhattisgarh. Pin Code -492002.
3. Central Board Of Indirect Taxes And Customs, Through Its Chairman, Ministry Of Finance, Department Of Revenue, North Block New Delhi Pin Code -110001.
4. Joint Commissioner (Appeal), State Tax, Bilaspur Chhattisgarh O/o Joint Commissioner (Appeal), State Tax, Bilaspur Chhattisgarh Bilaspur Division -II, Opposite New Hi Tech Bus Stand, Ambe Plaza, Tifra, Bilaspur District Bilaspur Chhattisgarh Pin Code -495223.
5. Assistant Commissioner (State Tax), Korba Division - II, Commercial Tax Building, ITI Rampur, Korba, District Korba Chhattisgarh Pin Code - 495677.
6. Director, Central Board Of Indirect Taxes And Customs, Ministry Of Finance, Department Of Revenue, North Block, New Delhi. Pin Code - 110001.

---- Respondents

**WPT No. 56 of 2024**

Bharat Aluminium Company Limited Registered Address- Bharat Aluminium Company Limited Balco Plant, Korba, District- Korba, C.G. Pin Code- 495684. Through Its Authorised Representative- Shri Rajiv Jain, S/o Shri Bimal Kumar Jain, Aged About 38 Years, Presently Posted As- Head-Taxation, Bharat Aluminium Comapny Limited, Balco Plant, Korba, District Korba, C.G. Pin Code- 495684.

---- Petitioner

**Versus**

1. Union Of India Through Secretary, Department Of Revenue, Ministry Of Finance, North Block, New Delhi, Pin Code- 110001.



2. State Of Chhattisgarh Through Secretary, Department Of Finance, Government Of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, Raipur, District Raipur, Chhattisgarh, Pin Code- 492002.
3. Central Board Of Indirect Taxes And Customs Through Its- Chairman, Ministry Of Finance, Department Of Revenue, North Block, New Delhi Pin Code- 110001.
4. Joint Commissioner (Appeal), State Tax, Bilaspur, Chhattisgarh O/o Joint Commissioner (Appeal), State Tax, Bilaspur, C.G., Bilaspur- Division- II, Opposite New Hi Tech Bus Stand, Ambe Plaza, Tifra, Bilaspur, District- Bilaspur, C.G. Pin Code- 495223.
5. Assistant Commissioner (State Tax) Korba- Division- II, Commercial Tax Building, I T I, Rampur, Korba, District - Korba, C.G. , Pin Code- 495677.
6. Director, Central Board Of Indirect Taxes And Customs, Ministry Of Finance, Department Of Revenue, North Block, New Delhi, Pin Code- 110001.

---- Respondents

**WPT No. 57 of 2024**

Bharat Aluminium Company Limited Registered Address- Bharat Aluminium Company Limited Balco Plant, Korba, District- Korba, C.G. Pin Code- 495684. Through Its Authorised Representative- Shri Rajiv Jain, S/o Shri Bimal Kumar Jain, Aged About 38 Years, Presently Posted As- Head- Taxation, Bharat Aluminium Comapny Limited, Balco Plant, Korba, District Korba, C.G. Pin Code- 495684.

---- Petitioner

**Versus**

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2. State Of Chhattisgarh Through Secretary, Department Of Finance, Government Of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, Raipur, District Raipur, Chhattisgarh, Pin Code- 492002.
3. Central Board Of Indirect Taxes And Customs Through Its- Chairman, Ministry Of Finance, Department Of Revenue, North Block, New Delhi Pin





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4. Joint Commissioner (Appeal), State Tax, Bilaspur, Chhattisgarh O/o Joint Commissioner (Appeal), State Tax, Bilaspur, C.G., Bilaspur- Division- II, Opposite New Hi Tech Bus Stand, Ambe Plaza, Tifra, Bilaspur, District- Bilaspur, C.G. Pin Code- 495223.
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6. Director Central Board Of Indirect Taxes And Customs, Ministry Of Finance, Department Of Revenue, North Block, New Delhi, Pin Code- 110001.

---- Respondents

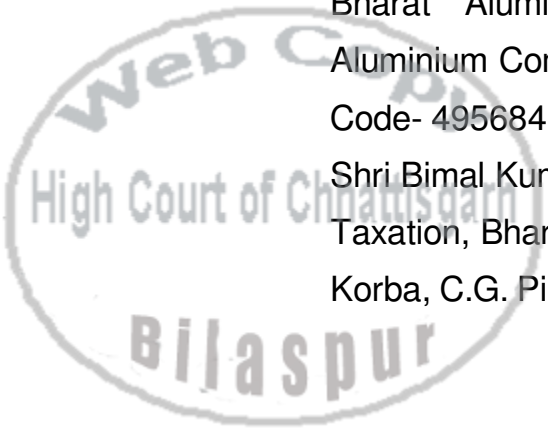
**WPT No. 58 of 2024**

Bharat Aluminium Company Limited Registered Address- Bharat Aluminium Company Limited Balco Plant, Korba, District- Korba, C.G. Pin Code- 495684. Through Its Authorised Representative- Shri Rajiv Jain, S/o Shri Bimal Kumar Jain, Aged About 38 Years, Presently Posted As- Head- Taxation, Bharat Aluminium Comapny Limited, Balco Plant, Korba, District Korba, C.G. Pin Code- 495684.

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2. State Of Chhattisgarh Through Secretary, Department Of Finance, Government Of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, Raipur, District Raipur, Chhattisgarh, Pin Code- 492002.
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6. Director Central Board Of Indirect Taxes And Customs, Ministry Of Finance, Department Of Revenue, North Block, New Delhi, Pin Code- 110001.

---- Respondents

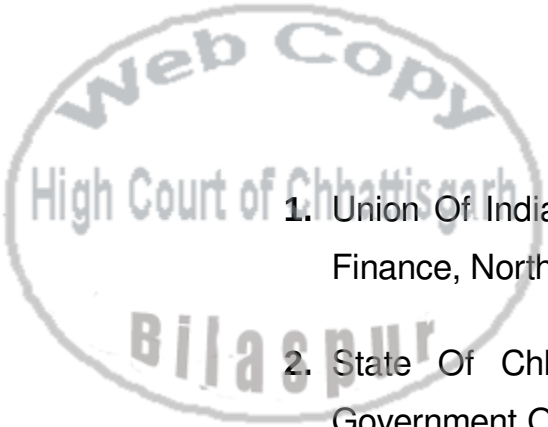
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6. Director Central Board Of Indirect Taxes And Customs, Ministry Of Finance, Department Of Revenue, North Block, New Delhi, Pin Code- 110001.





---- Respondents

**WPT No. 60 of 2024**

- Bharat Aluminium Company Limited Registered Address- Bharat Aluminium Company Limited Balco Plant, Korba, District- Korba, C.G. Pin Code- 495684. Through Its Authorised Representative- Shri Rajiv Jain, S/o Shri Bimal Kumar Jain, Aged About 38 Years, Presently Posted As- Head- Taxation, Bharat Aluminium Comapny Limited, Balco Plant, Korba, District Korba, C.G. Pin Code- 495684.

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2. State Of Chhattisgarh Through Secretary, Department Of Finance, Government Of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, Raipur, District Raipur, Chhattisgarh, Pin Code- 492002.
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6. Director Central Board Of Indirect Taxes And Customs, Ministry Of Finance, Department Of Revenue, North Block, New Delhi, Pin Code- 110001.

---- Respondents

**WPT No. 61 of 2024**

- Bharat Aluminium Company Limited, Registered Address Bharat Aluminium Company Limited, Balco Plant, Korba, District Korba, Chhattisgarh. Pin Code -495684. Through Its Authorised Representative



Shri Rajiv Jain S/o Shri Bimal Kumar Jain Aged About 38 Years, Presently Posted As Head Taxation, Bharat Aluminium Company Limited, Balco Plant, Korba, District Korba, Chhattisgarh. Pin Code-495684

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6. Director Central Board Of Indirect Taxes And Customs, Ministry Of Revenue, North Block, New Delhi, Pin Code-110001

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---- **Petitioner**

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2. State Of Chhattisgarh Through- Secretary, Department Of Finance Government Of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District- Raipur (C.G.). Pin Code -492002.
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---- Respondents

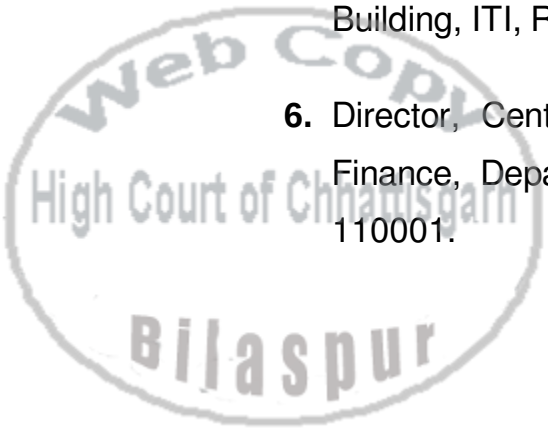
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6. Director Central Board Of Indirect Taxes And Customs, Ministry Of Finance, Department Of Revenue, North Block, New Delhi, Pin Code- 110001.

---- Respondents

**WPT No. 64 of 2024**

Bharat Aluminium Company Limited Registered Address- Bharat Aluminium Company Limited, Balco Plant, Korba Pin Code- 495684. Through Its Authorised Representative- Shri Rajiv Jain, S/o Shri Bimal Kumar Jain, Aged About 38 Years, Presently Posted As- Head- Taxation, Bharat Aluminium Company Limited, Balco Plant, Korba, District- Korba (Chhattisgarh) Pin Code- 495684, District : Korba, Chhattisgarh

---- Petitioner

**Versus**

1. Union Of India Through- Secretary, Department Of Revenue, Ministry Of Finance, North Block, New Delhi. Pin Code- 110001, District : New Delhi, Delhi.
2. State Of Chhattisgarh Through- Secretary, Department Of Finance, Government Of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, Raipur, District- Raipur (Chhattisgarh) Pin Code- 492002, District : Raipur, Chhattisgarh.
3. Central Board Of Indirect Taxes And Customs Through Its- Chairman, Ministry Of Finance, Department Of Revenue, North Block, New Delhi Pin Code- 110001, District : New Delhi, Delhi



4. Joint Commissioner (Appeal), State Tax Bilaspur (Chhattisgarh), O/o Joint Commissioner (Appeal), State Tax, Bilaspur- Division-II, Opposite New Hi Tech Bus Stand, Ambe Plaza, Tifra, Bilaspur, District- Bilaspur (Chhattisgarh) Pin Code- 495223, District : Korba, Chhattisgarh
5. Assistant Commissioner (State Tax) Korba- Division-II, Commercial Tax Building, I T I, Rampur, Korba, District- Korba (Chhattisgarh). Pin Code- 495677, District : Korba, Chhattisgarh
6. Director Central Board Of Indirect Taxes And Customs, Ministry Of Finance, Department Of Revenue, North Block, New Delhi Pin Code- 110001, District : New Delhi, Delhi.

---- Respondents

**WPT No. 65 of 2024**

Bharat Aluminium Company Limited Registered Address- Bharat Aluminium Company Limited, Balco Plant, Korba Pin Code- 495684. Through Its Authorised Representative- Shri Rajiv Jain, S/o Shri Bimal Kumar Jain, Aged About 38 Years, Presently Posted As- Head- Taxation, Bharat Aluminium Company Limited, Balco Plant, Korba, District- Korba (Chhattisgarh) Pin Code- 495684.

---- Petitioner

**Versus**

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2. State Of Chhattisgarh Through- Secretary, Department Of Finance, Government Of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, Raipur, District- Raipur (Chhattisgarh) Pin Code- 492002.
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(Chhattisgarh) Pin Code- 495223

5. Assistant Commissioner (State Tax) Korba- Division-II, Commercial Tax Building, ITI, Rampur, Korba, District- Korba (Chhattisgarh). Pin Code- 495677.
6. Director Central Board Of Indirect Taxes And Customs, Ministry Of Finance, Department Of Revenue, North Block, New Delhi Pin Code- 110001, District : New Delhi, Delhi

---- Respondents

(Cause-title taken from Case Information System)

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|                           |   |
|---------------------------|---|
| For Petitioner            | : Mr. Bharat Raichandani, Omkar sharma and Mr. K.Rohan, Advocates |
| For Respondent No.1       | : Mr. Ramakant Mishra, Deputy Solicitor General                   |
| For Respondent No.2/State | : Mr. R.S.Marhas, Additional Advocate General                     |
| For Respondents No.3 to 6 | : Mr. Maneesh Sharma, Advocate                                    |

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**Hon'ble Mr. Ramesh Sinha, Chief Justice**

**Hon'ble Mrs. Rajani Dubey, Judge**

**Order on Board**

**Per Ramesh Sinha, Chief Justice**

**09/04/2024**

1. Heard Mr. Mr. Bharat Raichandani and Mr. Omkar Sharma (through video conferencing) and Mr. K.Rohan, learned counsel for the petitioner. Also heard Mr. Ramakant Mishra, learned Deputy Solicitor General appearing for respondent No.1, Mr. R.S.Marhas, learned Additional Advocate General appearing for respondent No.2 and Mr. Maneesh Sharma, learned counsel appearing for respondents No.3 to 6.
2. Since common facts and issues are involved in these writ petitions, they are being considered and decided by this common order. WPT No. 53/2024 is taken as the lead case.



3. By way of this writ petition, the petitioner {in WPT No. 53/2024} has prayed for following reliefs:-

“10.1 Issue a writ of certiorari or a writ in the nature of certiorari or any other writ, order or direction thereby striking down Clause 5 of the impugned Notification No.53/2023 – Central Tax dated 02.11.2023 issued by the Central Board of Indirect Taxes & Customs (Annexure P-3) in the manner it is being interpreted by Respondent No.4 being arbitrary, unreasonable and violative of Article 14 of the Constitution of India; And

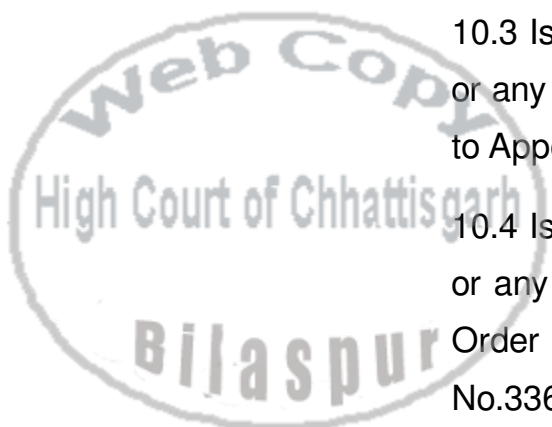
10.2 Issue any writ, order or direction reading down the Clause 5 of the impugned Notification No.53/2023 – Central Tax dated 02.11.2023 issued by the Central Board of Indirect Taxes & Customs (Annexure P-3) to mean that Appeals pertaining solely to orders denying refund are outside the purview Clause 5; And

10.3 Issue a writ of certiorari or a writ in the nature of certiorari, or any other writ, order or direction calling for records in relation to Appeal Case No.336/GST/2023; And

10.4 Issue a writ of certiorari or a writ in the nature of certiorari, or any other writ, order or direction setting aside the impugned Order dated 05.12.2023 passed in Appeal Case No.336/GST/2023 by the Joint Commissioner (Appeal), State Tax, Bilaspur (Annexure P-1) whereby the Petitioner's Appeal has been summarily rejected; AND

10.5 Issue a writ of mandamus or a writ in the nature of mandamus, or any other writ, order or direction thereby a holding that the impugned Order dated 05.12.2023 passed in Appeal Case No.336/GST/2023 (Annexure P-1) is contrary to Notification No.53/2023 – Central Tax dated 02.11.2023 (Annexure P-3) which is in favour of the Petitioner and directing the Respondent No.4 to restore the appeal and hear the same on merits without raising the issue of limitation under Section 107(1) of the CGST Act; AND / OR

10.6 Alternatively, issue a writ or an order or a direction condoning the delay in filing of the Appeal No.336 and directing the Respondent No.4 to hear the same on merits without raising the issue of limitation under Section 107(1); AND / OR.

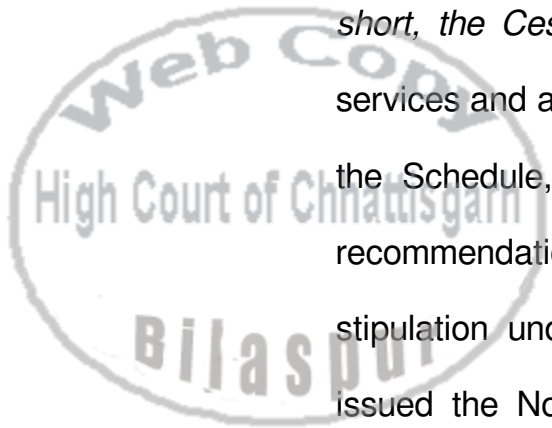




10.7 That the cost of the Petition be provided for; AND/OR

10.8 issue any other direction as deemed fit by this Hon'ble court in the interest of justice.”

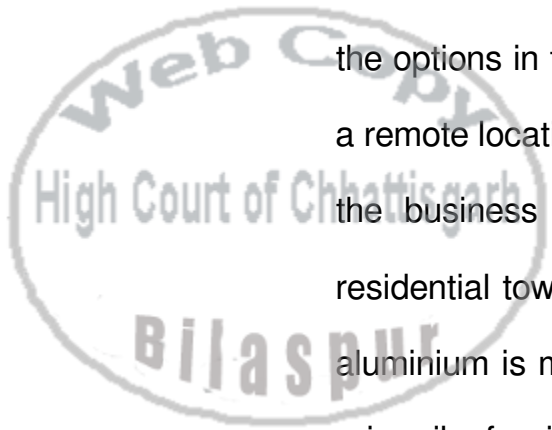
4. The facts, in brief, as projected by the petitioner is that it is a Company incorporated under the Companies Act, 1956 and is primarily engaged in the manufacture and sale of aluminium products. The petitioner's factory / plant is located at Korba, Chhatisgarh. The petitioner has established two captive power plants (*for short, the CPP*), i.e., power plant having production capacity of 540MW and 1200MW. The electricity generated in the power plants is primarily used in the manufacture of aluminium. The CPP procures coal for the purpose of generating electricity. As per Section 8 of the Goods and Services Tax (Compensation to States) Act, 2017 (*for short, the Cess Act*), cess shall be levied on such supplies of goods / services and at such rates, not exceeding the rate specified in column 4 of the Schedule, as may be notified by the Central Government on the recommendations of the Goods and Services Tax Council. Pursuant to the stipulation under Section B of the Cess Act, the Central Government issued the Notification No. 1/2017 - Compensation Cess (Rate) dated 28.06.2017 ("Notification No. 1"). As per entry provided at serial no. 39, cess on items like coal; briquettes; ovoids and similar solid fuels manufactured from coal, will be leviable at rate of INR 400 per tonne. The petitioner duly discharges its Goods and Services Tax ("GST") liability while procuring coal. As per Section 8 read with serial No. 39 of the Notification No. 1 (Annexure P/5), the petitioner paid to the supplier the prescribed amount of cess which was in turn on the purchase of coal, used for generating electricity. As stated above, the aluminium manufactured, by using the electricity generated in the CPPs, was exported to other countries. Consequently, the outward supply of the petitioner i.e. the export of aluminium to other countries, qualified as a 'zero rated supply' in terms of Section 16 of the Integrated Goods and Services Tax Act, 2017 (for





short, the IGST Act). The concept of 'zero rated supply' is envisaged under Section 16 of the IGST Act. As per Section 16(1) of the IGST Act, export of goods / services qualifies as a 'zero rated supply'. Further, Section 16(3) of the IGST Act (as it stood during the relevant period) encapsulated two ways/options in which the taxpayer making the 'zero rated supply' can claim refund in accordance with the provisions of Section 54 of the CGST Act. The two options stipulated under Section 16(3) were: (a) Taxpayer may supply goods/services under bond or letter of undertaking, without payment of Integrated Tax and claim refund of unutilised input tax credit; or (b) taxpayer may supply goods/services, on payment of Integrated Tax and claim refund of such tax paid on goods / services supplied.

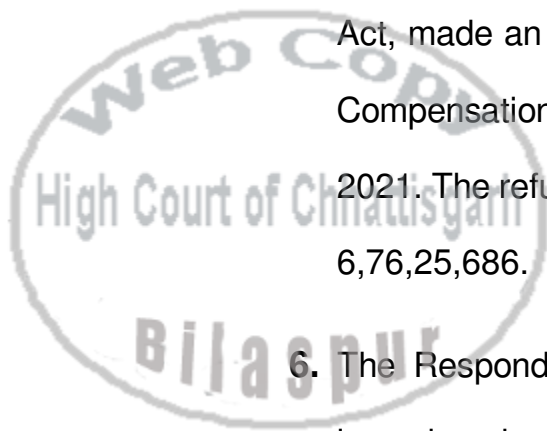
5. The petitioner has availed the benefit of Section 16(3) by resorting to both the options in few months. The petitioner's factory premises are located in a remote location at Korba. To ensure smooth and seamless functioning of the business operations, the petitioner has established/constructed a residential township for the staff working at the petitioner's factory, where aluminium is manufactured. It has established / constructed the township primarily for its staff given the relative remoteness of the area. The township has been established/constructed by the petitioner in order to provide adequate housing facility to its staff, working daily in the factory, and also for the staff/senior personnel who visit the factory on occasional basis for supervising its functioning. The electricity which is generated by the petitioner using the CPPs are therefore primarily used for three purposes; (a) a majority of the electricity produced is captively consumed for manufacture of aluminium and (b) a certain portion of the electricity is supplied to the township and (c) some portion is sold to the State Electricity Boards ("SEB"). In context of the electricity supplied to the township, it is stated since the sole purpose of township is to provide stability to the business operations, the very fact that the township has





been constructed and is maintained can be said to be inextricably connected with the petitioner's factory, in fact an extension thereof. This is also a judicially settled principle wherein it has been held that maintenance of townships is for business activities. Basis this rationale, the petitioner is also utilising the electricity, generated by the captive power plants, for electrification of the township. Since the electricity was being supplied to township and was also being captively consumed, the petitioner preferred refund applications for claiming the unutilized Input Tax Credit (*for short, the ITC*) of the GST Compensation Cess paid on coal. Section 9(2) of the Cess Act provides that the provisions governing refunds of compensation cess shall be governed by the provisions of CGST Act. Subsequently, the petitioner, in accordance with the provisions of Section 54 of the CGST Act, made an application for claiming refund of the unutilized ITC of GST Compensation Cess in Form GST RFD-01 for the month of November 2021. The refund application was filed on 05.01.2022 for an amount of INR 6,76,25,686.

6. The Respondent No. 5 Assistant Commissioner (State Tax) thereafter issued a show cause notice in Form GST RFD-08 on 05.03.2022. The show cause notice directed the petitioner to file its reply as to why the refund should not be rejected, especially on the ground that supply of electricity to township is a non-business activity. In reply to the show cause notice (Annexure P/7) so issued, the petitioner filed its detailed reply on 24.03.2022 whereby it explained as to how the maintenance of township is a business activity and is connected with the overall business operations. The Respondent No. 5 thereafter passed the order in Form GST RFD-06 sanctioning an amount of INR 49,08,582 out of the total amount claimed along with the amount provisionally granted. An amount of INR 18,53,986 was rejected on the ground that this portion pertain to supply of electricity to township which is not in the course or furtherance of business. The

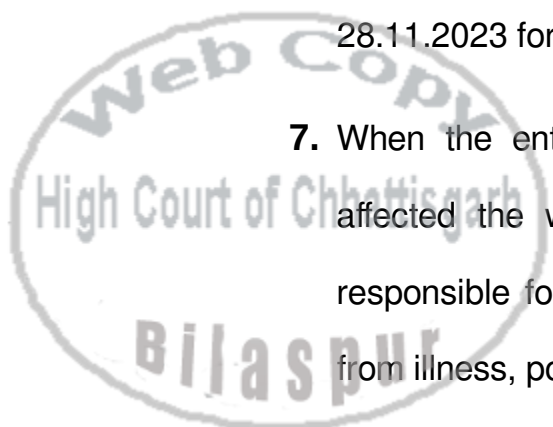






petitioner never manually received this order which was apparently passed on 07.04.2022. Further, the petitioner physically received the order partially rejecting the refund application only on 7 August 2023, i.e., after a period of more than one year after passing of the order when it was physically received by it. The fact that an order has been uploaded on the portal was never 'communicated to the petitioner. Once the petitioner received the physical copy of the order partially rejecting its refund application, the petitioner preferred an appeal before the respondent No. 4 on 01.09.2023, within the prescribed time limit of three months under Section 107(1) of the CGST Act, i.e., it filed the appeal within three months from the date of 'communication', as is required under Section 107 of the CGST Act. The petitioner had also preferred additional submissions vide letter dated 28.11.2023 for the admission of appeal.

7. When the entire country was reeling under COVID, it had invariably affected the working of the petitioner as well. The person who was responsible for looking after the GST compliances was herself suffering from illness, post which she resigned. The GST portal is also designed in a manner which does not provide any update in relation to uploading of any order at any stage. Therefore, the petitioner was never 'communicated' that such an order has been passed and this has also been stated by the petitioner before the Respondent No. 4. The respondent No. 4 has rejected the appeal filed by the petitioner vide impugned order dated 05.12.2023 (Annexure P/1) primarily on the ground that the petitioner failed to lodge the appeal within the prescribed period of limitation under Section 107 of the CGST Act. The Respondent No. 4 in the impugned order has observed that there is no ground to condone the delay and accordingly the appeal has been summarily rejected. The impugned order is premised on the fact that the order in question was passed on 22.03.2022 and the appeal should have been filed within three months therefrom.





- 8.** The respondent no. 3 - Central Board of Indirect Taxes & Customs had issued the Notification No. 53/2023 Central Tax in exercise of powers under Section 148 of the Goods & Services Tax Act, 2017 (GST Act, 2017) providing for the extension of the time limit for the persons who could not file an appeal against the order passed by the proper officer on or before 31.03.2023. Clause 2 of the Notification provides that the person shall file an Appeal on or before 31.01.2024. However, the impugned Clause 5 provides that no appeal under this Notification shall be admissible in respect of a demand not involving tax.
- 9.** Mr. Bharat Raichandani, learned counsel for the petitioner submits that the impugned order dated 05.12.2023 (Annexure P/1) has been passed without taking into consideration that the order was not communicated to the petitioner till the certified physical copy of the order was obtained on 07.08.2023 and accordingly, the impugned order is liable to be quashed and set-aside with a direction to the Respondent No. 4 to hear the appeal on merits. Further, in the appellate proceedings, the petitioner categorically submitted that the impugned notification provides a benefit that for cases in which appeals could not be lodged within time, the appeals can be filed by 31 January 2024. However, Clause 5 of the impugned Notification provides that the benefit thereunder is not available in cases where there is no demand of tax. The respondent No. 4 by relying on this clause has taken a view that the benefit cannot be granted to the petitioner and has accordingly dismissed the appeal and as such, the constitutional validity of clause 5 of the impugned Notification is being challenged to the extent of the interpretation adopted by the Respondent No. 4.
- 10.** Mr. Raichandani further submits that the impugned notification in the manner it is being read by the respondent no. 4 is liable to be struck down on grounds of creating a hostile discrimination and being arbitrary and violative of Article 14 of the Constitution of India. It creates a hostile and an





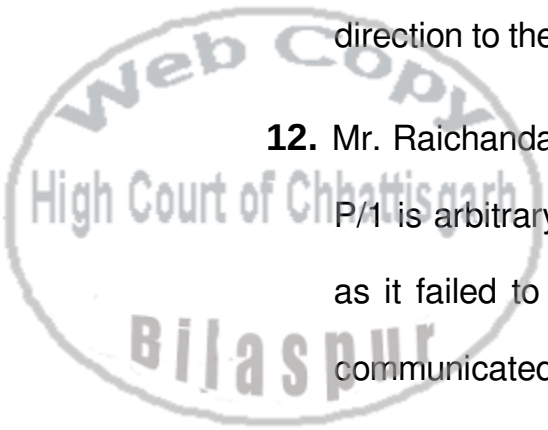
unreasonable discrimination between two class of people who are similarly situated. The impugned Notification was issued pursuant to the trade facilitation measures announced post the 52<sup>nd</sup> meeting of the Goods and Services Tax Council ("GST Council"). The interpretation accorded to clause 5 of the Notification seeks to cover only those class of taxpayers against whom a demand involving tax is present and accordingly only these taxpayers could file an appeal till 31<sup>st</sup> January 2024. However, the respondent No. 4 completely overlooks the fact that there can be other scenarios or class of taxpayers as well like that of the petitioner who may have been prevented from filing an appeal within the prescribed limitation period. In other words, the discrimination between those taxpayers against whom a demand involving tax is present and taxpayers against whom there is no demand involving is tax is unreasonable, perpetuates hostile discrimination without any basis and is devoid of any reasonable classification. As per the settled principles of Article 14 of the Constitution of India, while there can be a difference between two sets of people, it is an equally settled principle of law that similarly placed people cannot be treated differently or that any classification which is sought to be done must have a rational nexus with the object it seeks to achieve, as held by the Hon'ble Supreme Court in the case of **Union of India v. N.S. Rathnam & Sons**, {(2015) 10 SCC 681}. Without prejudice, the impugned notification ought to be read down and the impugned order (Annexure P/1) by not appreciating the true purport of clause 5 is liable to be set aside. Notification No. 53 provides that persons who could not file an appeal before the period of 31<sup>st</sup> March 2023 can file an appeal till 31 January 2024. Notification No. 53 was issued in light of difficulties being faced by the taxpayers and accordingly, the time limit for filing the statutory appeal was extended. Vide the impugned order, it has been observed that the benefit of Notification No. 53 is not applicable in the present case since as per clause 5 thereof, the present issue does not involve any demand of tax.





**11.** Mr. Raichandani further submits that it is a settled principle of law that a beneficial legislation has to be favourably construed. Reference in this regard is made to the judgment in the case of ***Bhavnagar University v Palitana Sugar Mills*** { (2003) 2 SCC 111} wherein it was held that a beneficial legislation has to be liberally interpreted so as to advance its object and not to frustrate it. The impugned order in a cursory manner and without any cogent reasoning rejects the applicability of Notification No. 53 without properly appreciating its legal purport and context and denies the benefit thereof to the petitioner erroneously. It suffers from gross infirmities, is manifestly arbitrary, devoid of any merit thereby violating the constitutional provisions under Article 14 of Constitution of India. Hence, the same is liable to be quashed and set aside on this ground alone with a direction to the respondent No. 4 to hear the case on merits.

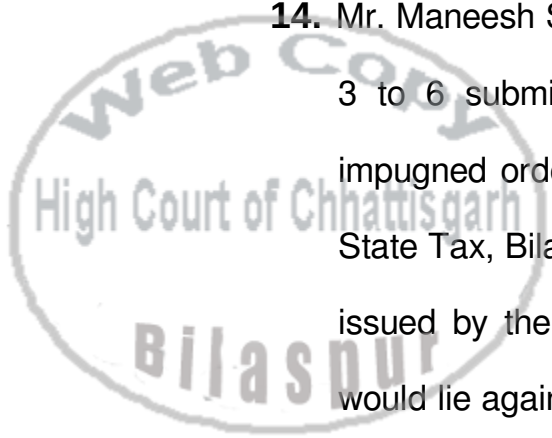
**12.** Mr. Raichandani would further submit that the impugned order (Annexure P/1) is arbitrary, unreasonable and suffers from gross infirmities inasmuch as it failed to appreciate that the order of rejection of refund was never communicated to the petitioner as contemplated under section 107 of the CGST Act. Section 107(1) of the CGST Act states that the aggrieved person shall file an appeal within three months from the date of 'communication' of the order to the said person. Meaning thereby, that the limitation period will statutorily have to be calculated from the date on which the aggrieved person is 'communicated' about an order. In the present case, the petitioner was able to obtain a physical copy of the order only on 07.08.2023. Hence, as per Section 107(1) of the CGST Act, the limitation period will have to be calculated accordingly. The term used in Section 107(1) of the CGST Act is 'communicated' and not 'uploaded' or 'served'. The settled legal principle is that an order shall be deemed to be effective only when it is 'communicated' in a proper manner. Mere uploading the order on the portal does not constitute valid communication





for the purpose of calculating the limitation period to file an appeal.

- 13.** Mr. Raichandani also submits that in any case, without prejudice, the delay, if any, is condonable by this Hon'ble court in exercise of its power under Article 226 of the Constitution and these petitions are the fit case for exercise of such power. Section 107(4) states that in case an appeal is not filed within the prescribed period of three months then, the adjudicating authority can condone the delay for a further period of one more month if sufficient cause is shown, i.e., in essence, the limitation period stands extended to four months. He relies on a decision of the Calcutta High Court in ***Arvind Gupta v. Assistant Commissioner of State Taxes, WPA No. 2903 of 2024.***
- 14.** Mr. Maneesh Sharma, learned counsel appearing for the respondents No. 3 to 6 submits that the contesting party would be the State as the impugned order has been passed by the Joint Commissioner (Appeals), State Tax, Bilaspur and the notification which is under challenge has been issued by the Union Government. He, however submits that an appeal would lie against the order impugned (Annexure P/1) before the Appellate Tribunal and in absence of the Appellate Tribunal, the same can be challenged before the learned Single Judge of this High Court.
- 15.** Mr. Ramakant Mishra, learned Deputy Solicitor General appearing for the Union of India/respondent No. 1 submits that the petitioner has not raised any cogent grounds so as to declare clause 5 of the impugned Notification to be ultra vires. The same is just and proper which needs no interference and the same in tune with the Constitution of India.
- 16.** Mr. R.S.Marhas, learned Additional Advocate General submits that the opening paragraph of the order impugned (Annexure P/1) states that an appeal before the Appellate Tribunal shall lie against the said order, which the petitioner-Company has not availed of.



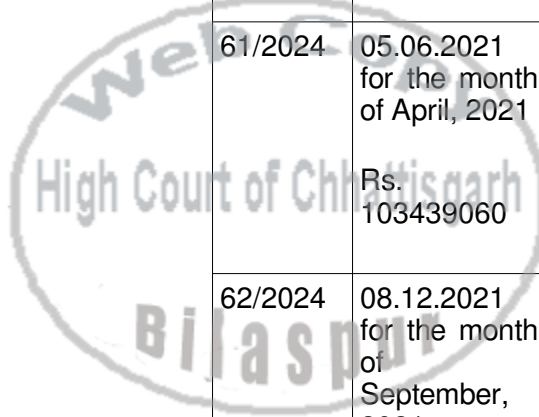


17. The facts are similar in all these petitions. Only the date of making application for refund, the amount claimed, issuance of show cause notice, reply to the show cause notice, rejection of the application for refund, date of receiving of the physical copy of the order, date of filing appeal and rejection of the appeal by the appellate authorities are different which, for the sake of convenience, is reproduced in a tabular form which reads as under:

| WPT No. | Application for refund was filed by the petitioner Company on | Show cause notice was issued by the Asst. Comm. (Sales Tax) on | Reply to the show cause notices was given by the petitioner Company on | Refund Sanction/ Rejection order was passed by Asst. Comm. on | Copy of order was received by the petitioner Company on | Appeal was preferred against the said order before the respondent No. 4 / additional submissions were made | Appeal was rejected by Joint Comm. (Appeals) State Tax, on |
|---------|---|--|--|---|---|--|--|
| 53/2024 | 05.01.2022 for the month of November, 2021<br>Rs. 67625686/-  | 05.03.2022   | 24.03.2022   | 07.04.2022  | 07.08.2023  | 01.09.2023 / 28.11.2023  | 05.12.2023   |
| 54/2024 | 10.05.2021 for the month of March, 2021<br>Rs. 85287548       | 13.07.2021   | 14.06.2021   | 27.07.2021  | 07.08.2023  | 01.09.2023 / 28.11.2023  | 05.12.2023   |
| 55/2024 | 22.06.2021 for the month of May, 2021<br>Rs. 12072041         | 19.08.2021   | 20.08.2021   | 03.09.2021  | 07.08.2023  | 01.09.2023 / 28.11.2023  | 05.12.2023   |
| 56/2024 | 02.03.2021 for the month of January, 2021<br>Rs. 60716240     | 01.05.2021   | 02.05.2021   | 27.05.2021  | 07.08.2023  | 02.09.2023 / 28.11.2023  | 05.12.2023   |
| 57/2024 | 31.01.2021 for the month of December, 2020                    | 22.03.2021   | 22.03.2021   | 25.03.2021  | 07.08.2023  | 02.09.2023 / 28.11.2023  | 05.12.2023   |



|         |   |            |            |            |            |                            |            |
|---------|---|------------|------------|------------|------------|----------------------------|------------|
|         | Rs.<br>60228717   |            |            |            |            |                            |            |
| 58/2024 | 26.07.2021<br>for the month<br>of June, 2021<br><br>Rs.<br>124413261            | 25.09.2021 | 27.09.2021 | 08.10.2021 | 07.08.2023 | 01.09.2023 /<br>28.11.2023 | 05.12.2023 |
| 59/2024 | 23.09.2021<br>for the month<br>of August,<br>2021<br><br>Rs.<br>107946544       | 23.11.2021 | 15.12.2021 | 23.12.2021 | 07.08.2023 | 01.09.2023 /<br>28.11.2023 | 05.12.2023 |
| 60/2024 | 22.05.2021<br>for the month<br>of February,<br>2021<br><br>Rs.<br>75579122      | 27.05.2021 | 07.06.2021 | 29.06.2021 | 07.08.2023 | 02.09.2023 /<br>28.11.2023 | 05.12.2023 |
| 61/2024 | 05.06.2021<br>for the month<br>of April, 2021<br><br>Rs.<br>103439060           | 05.08.2021 | 17.08.2021 | 31.08.2021 | 07.08.2023 | 01.09.2023 /<br>28.11.2023 | 05.12.2023 |
| 62/2024 | 08.12.2021<br>for the month<br>of September,<br>2021<br><br>Rs.<br>10,36,52,944 | 01.03.2022 | 03.03.2022 | 22.03.2022 | 07.08.2023 | 01.09.2023 /<br>28.11.2023 | 05.12.2023 |
| 63/2024 | 14.12.2021<br>for the month<br>of October,<br>2021<br><br>Rs.<br>100826347      | 01.03.2022 | 02.03.2022 | 22.03.2022 | 07.08.2023 | 01.09.2023 /<br>28.11.2023 | 05.12.2023 |
| 64/2024 | 30.08.2021<br>for the month<br>of July, 2021<br><br>Rs.<br>116712689            | 30.10.2021 | 19.11.2021 | 03.12.2021 | 07.08.2023 | 01.09.2023 /<br>28.11.2023 | 05.12.2023 |
| 65/2024 | 31.12.2020<br>for the month<br>of November,<br>2020                             | 06.03.2021 | 06.03.2021 | 09.03.2021 | 07.08.2023 | 02.09.2023 /<br>28.11.2023 | 05.12.2023 |





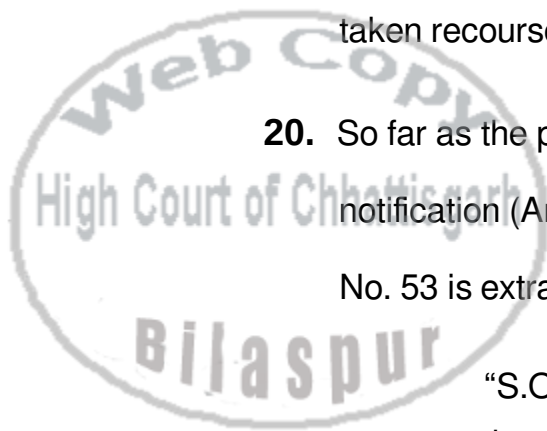
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|  | Rs.<br>48247751 |  |  |  |  |  |  |
|--|-----------------|--|--|--|--|--|--|

**18.** From the pleadings and documents appended to these petitions, it transpires that basically, the petitioner on the one hand is challenging the order dated 05.12.2023 (Annexure P/1) in all these petitions and further the petitioner also seeks quashing of clause 5 of the impugned notification (Annexure P/3), on the grounds as above.

**19.** So far as the challenge to the order dated 05.12.2023 passed by the Joint Commissioner (Appeals) State Tax, Bilaspur, is concerned, the same is appellable before the Appellate Tribunal. However, it is stated that since the Appellate Tribunal is not in existence as on date, the same can be challenged before the learned Single Judge which the petitioner has not taken recourse to.

**20.** So far as the prayer of the petitioner for declaring clause 5 of the impugned notification (Annexure P/3) is concerned, the relevant portion of Notification No. 53 is extracted hereunder:

“S.O (E). In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to as the said person) who shall follow the following special procedure for filing appeals in such cases:







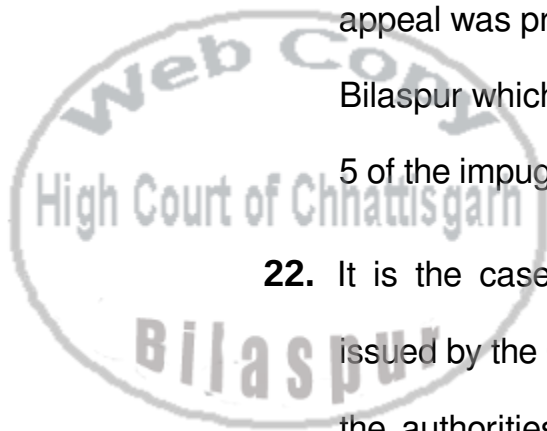
"(2) The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with subsection (1) of Section 107 of the said Act, on or before 31st day of January 2024...

xxx                      xxx                      xxx

(5) No appeal under this notification shall be admissible in respect of a demand not involving tax."

**21.** The petitioner had applied for refund of unutilized ITC of GST Compensation Cess paid on coal in Form GST RFD-01 for various different months and claiming different amounts. On filing of the said application, the Assistant Commissioner (State Tax) issued show cause notice to the petitioner which was duly replied. However, the refund application of the petitioner-Company was rejected against which an appeal was preferred before the Joint Commissioner (Appeals), State Tax, Bilaspur which was also dismissed on the ground of delay in light of clause 5 of the impugned Notification.

**22.** It is the case of the petitioner-Company itself that the notification was issued by the Government of India as various orders were being passed by the authorities and they were being uploaded on the web portal of the Department. However, since the orders were uploaded but could not be communicated to the parties concerned, delay was caused in preferring appeals against those orders and the appeals were being dismissed on the ground of delay. To overcome such situation, the impugned notification was brought in so that the appeals could be heard and the delay if any caused in preferring the appeal could be condoned. In the case in hand, admittedly, the appeals were filed by the petitioner-Company before the Joint Commissioner (Appeals), State Tax with some delay and the said appeals stood dismissed vide order dated 05.12.2023 (Annexure P/1) in light of clause 5 of the impugned notification. The learned Joint Commissioner has observed that the appeal was filed by the petitioner Company after a delay of 1 year and 1 month from the prescribed time limit





and no cogent reason was afforded for such an inordinate delay. We do not find any error in the order (Annexure P/1) passed by the respondent No. 4.

**23.** So far as declaring clause 5 of the impugned notification is concerned, a plain reading of the said clause would make it amply clear that no appeal would lie under this Notification in respect of a demand not involving tax. It is a case where the petitioner-Company is claiming refund of tax which was rejected and the appeal before the Joint Commissioner also stood dismissed on the ground of limitation. No cogent reason has been assigned as to how the said clause is ultra vires the Constitution of India. The appeal filed by the petitioner-Company is barred by limitation and it is not in a position to avail the benefit of extension of time period which has been granted by the Notification and as such, the relief sought for by the petitioner-Company to declare clause 5 of the impugned Notification, does not merit acceptance.

**24.** Resultantly, all these writ petitions are **dismissed**. However, the petitioner-Company is at liberty either to approach the Appellate Tribunal or before the learned Single Judge, if so advised.

Sd/-  
(Rajani Dubey)  
**JUDGE**

Sd/-  
(Ramesh Sinha)  
**CHIEF JUSTICE**



**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPT No. 53 of 2024**

**Petitioner** : Bharat Aluminium Company Limited

**Versus**

**Respondents** : Union of India & Others

alongwith other connected writ petitions

**Head Note**

A clause of any notification cannot be declared as ultra vires merely because it is not beneficial to a party or an individual, furthermore, when it is to by-pass a remedy available to it under the law.

