STATE OF GUJARAT

v.

RELIANCE INDUSTRIES LTD.

(Civil Appeal Nos. 13047-13048 of 2017)

SEPTEMBER 22, 2017

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Gujarat Value Added Tax Act, 2003 – ss.11(3)(b), 12 – Respondent-assessee is engaged in the business of manufacturing and selling polymers and chemicals in the appellant-State – For the purpose of manufacturing said goods, the assessee purchases raw materials/inputs which are fuels, namely furnace oil, natural gas and light diesel oil – On purchase of such raw materials, VAT is paid at varying rates – Under s.11(1)(a) credit is given to a dealer on the VAT paid at the time of purchase of such raw materials which are used in manufacturing the final products – However, s.11(3)(b) provides that if the goods fall in the categories mentioned in sub-clauses (i), (ii) and (iii), the tax credit is to be reduced by the amount of tax calculated at the rate of 4% on the taxable turnover of purchases within the State – In the instant case, since after the final product is produced, the goods are transferred by assessee to its various branches outside the State, hence, the goods so transferred are covered under sub-clause(ii) – Also the raw material/inputs used in the manufacture of instant goods are fuels, hence it falls under sub-clause (iii) as well – Issue as to whether the tax credit is to be reduced at the rate of 4% under sub-clause (ii) and again at the same rate under sub-clause (iii) as well or deduction is permissible only once – On appeal, held: Section 11(3)(b) is a non-obstante *clause as it starts with the word 'notwithstanding' – The 'amount of tax credit' which a dealer is entitled to claim u/cl. (a) which is to be reduced at the rate of 4%, is effected in three eventualities provided under sub-clauses (i), (ii) and (iii) – Between sub-clauses (i) and (ii) there is no question of any overlap and the same are disjunctive as the word 'or' is inserted between these two clauses – However, between clauses (ii) and (iii), there is a possibility of overlap (as in the instant case), there is no word 'or' used between clauses (ii) and (iii) – Sub-clause (ii) finishes with the punctuation mark full stop and then sub-clause (iii) starts – This depicts the intention of*

A *the Legislature, namely, reduction is not confined to one of the aforesaid two sub-clauses and it can occur under both these provisions – Thus, reduction of 4% would be applied whenever a case gets covered by sub clause (ii) and again when sub-clause (iii) is attracted – However, this would be subject to one limitation, that in cases where VAT paid on such raw material is 4%, as in the case of furnace oil, reduction cannot be more than that – Gujarat Tax On Entry of Specified Goods into Local Area Act, 2001.*

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Interpretation of Statutes – Taxing statutes –Interpretation of – Held: Taxing statutes are to be interpreted literally.

C *Interpretation of Statutes – Taxing statute – Intention of Legislature – Held: How much tax credit is to be given and under what circumstances, is the domain of the Legislature and the courts are not to tinker with the same.*

Allowing the appeals, the Court

D **HELD: 1.1 The tax credit which is admissible to the purchasing dealer is subject to provisions of sub-section (2) of Section 12, Gujarat Value Added Tax Act, 2003. Sub-section (3)(b) provides that if the goods are falling in the categories mentioned in sub-clauses (i), (ii) and (iii), the tax credit is to be reduced by**

E **the amount of tax calculated at the rate of 4% on the taxable turnover of purchases within the State. The raw material/ inputs used in the instant goods are fuels. Sub-clause (ii) includes such goods in case the taxable goods are dispatched outside the State in the course of branch transfer. After the final product is produced, the assessee transfers these goods to its various**

F **branch offices, many of which are located outside the State and, therefore, those goods which are so transferred would be covered by this sub-clause and in respect of such goods which are transferred outside the State and are taxable under the VAT Act, the tax credit is to be reduced by 4%. Since the raw material in**

G **the instant goods is in the nature of fuels used for the manufacture of goods, it gets covered by sub-clause (iii) as well. [Para 3] [37-E-G]**

1.2 Section 11 entails the provision pertaining to the scheme of tax credit, which is the caption of the said Section as well. Sub-section (1) thereof mentions the contingencies when a

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registered dealer would be entitled to claim tax credit which is equal to the amount of tax collected from the dealer by a registered dealer or tax paid by him during the tax period or tax paid by the purchasing dealer under the Gujarat Tax On Entry of Specified Goods into Local Area Act, 2001. In nutshell, clause (a) of sub-section (1) of Section 11 entitles the registered dealer to claim tax credit of the amount of VAT or entry tax which was paid. However, this tax credit is subject to sub-sections (2) to (12) of Section 11. [Para 12] [41-B-D] A B

1.3 Clause (a) of sub-section 3 lays down certain conditions which have to be fulfilled in order to claim the tax credit. First condition is to give the tax credit in those cases where taxable goods are purchased. Thus, it is not admissible where the purchased goods are non-taxable inasmuch as in those cases no tax was paid and thus the question of giving credit would not arise. Second condition mentions that these goods are intended for specific purposes which are stipulated in sub-clauses (1) to (7) of clause (a). A perusal of these sub-clauses would indicate that contingencies stipulated in sub-clauses (i) to (v) pertain to one category, i.e. where the goods are purchased as it is. On the other hand, sub-clauses (vi) and (vii) would fall in other category. Sub-clause (vi) deals with a situation where the goods, after purchase, are used as raw material in the manufacture of taxable goods or in the packing of goods so manufactured. Sub-clause (vii) deals with those goods which are used as capital goods meant for use in the manufacture of taxable goods. Sub-clause (i) of clause (b) is relatable to sub-clause (iii) of clause (a) as these deal with branch transfer of the goods. Likewise, sub-clause (vi) read with sub-clause (iii) of clause (a) is concerned with sub-clause (2) of clause (b) as these deal with a situation where the goods so produced, in respect of which tax credit is given, are used as raw material in the manufacture or in the packing of goods and there is branch transfer of these goods as well outside the State. In such eventualities, tax credit is not fully given as it is reduced by 4%. [Para 13] [41-D-H; 42-A] C D E F G

1.4 Section 2(19) defines "raw material". It is clear that the material used even in the packing of goods is treated as raw material and, therefore, this definition is to be treated as term of art. This definition also clarifies that fuels used in the manufacture H

A of goods would be treated as raw material with the only exception of those fuels which are used for the purpose of generation of electricity. [Paras 13, 14] [42-B-C]

1.5 Section 11(3)(b) is a non-obstante clause as it starts with the word 'notwithstanding'. It is the 'amount of tax credit' B which a dealer would be entitled to claim under clause(a) that is to be reduced at the rate of 4% and this reduction is to be effected in three eventualities provided under sub-clauses(i),(ii) and (iii). Insofar as sub-clause (i) is concerned, it pertains to trading activity and there is no question of any overlap between sub-clause(i) on the one hand and sub-clauses(ii) and (iii) on the other. Further, C insofar as sub-clauses(i) and (ii) are concerned, same are disjunctive as the word 'or' is inserted between these two clauses. However, between clauses(ii) and (iii), where there is a possibility of overlap (as it has happened in the instant case), there is no word 'or' used between clauses(ii) and (iii). Sub-clause(ii) finishes D with the punctuation mark full stop and then sub-clause(iii) starts.This depicts the intention of the Legislature, namely, reduction is not confined to one of the aforesaid two sub-clauses and it can occur under both these provisions. It was rightly pointed out by the appellant State that these are event based sub-clauses and two events are totally different. Sub-clause(ii) is attracted in E those cases where taxable goods are used as raw material (which may not necessarily be fuel but all raw materials are included) and also the other condition which is to be fulfilled is that these goods are dispatched outside the State in the course of branch transfer etc.Therefore, even if the taxable goods are used as raw F material in the manufacture or in the packing of goods but they are consumed or sold within the State, sub-clause(ii) would not apply. On the other hand, sub-clause(iii) is referable to only fuels which are used for manufacture of goods. It is, thus, a totally separate category and the moment fuel is used in the manufacture of goods, this sub-clause gets attracted and it would be immaterial G whether the goods are sold within the State or outside the Sate. The manner in which punctuations are to be interpreted is provided by this Court in Jamshed N. Guzdar case. Moreover, there is no quarrel about the well-settled proposition of law that taxing statutes are to be interpreted literally. [Paras 15-17] H [42-D-H; 43-A-C; 44-D]

Jamshed N. Guzdar v. State of Maharashtra & Ors. A
(2005) 2 SCC 591 : [2005] 1 SCR 223– relied on.

1.6 It is a mega tax credit scheme which is provided under the VAT Act meant for all kinds of manufactured goods. The material in question, namely, furnace oil, natural gas and light diesel oil are admittedly subject to VAT under the VAT Act. The B **Legislature, however, has incorporated the provision, in the form of Section 11, to give tax credit in respect of such goods which are used as inputs/ raw material for manufacturing other goods. Rationale behind the same is simple. When the finished product, after manufacture, is sold, VAT would be again payable thereon. This VAT is payable on the price at which such goods are sold,** C **costing whereof is done keeping in view the expenses involved in the manufacture of such goods *plus* the profits which the manufacturer intends to earn. Insofar as costing is concerned, element of expenses incurred on raw material would be included. In this manner, when the final product is sold and the VAT paid,** D **component of raw material would be included again. Keeping in view this objective, the Legislature has intended to give tax credit to some extent. However, how much tax credit is to be given and under what circumstances, is the domain of the Legislature and the courts are not to tinker with the same. The upshot of the aforesaid discussion is that reduction of 4% would be applied** E **whenever a case gets covered by sub-clause (ii) and again when sub-clause (iii) is attracted. This, however, would be subject to one limitation. In those cases where VAT paid on such raw material is 4%, as in the case of furnace oil, reduction cannot be more than that. After all, Section 11 deals with giving credit in respect** F **of tax that is paid. Therefore, if some reduction is to be made from the said credit, it cannot be more than the credit given. Thus, so far as furnace oil is concerned, tax credit shall be reduced by 4%. On the other hand, tax credit given in case of natural gas and light diesel oil (other fuels), it shall be reduced by 4% under sub-clause (ii) and 4% under sub-clause (iii) of clause (b) of sub-** G **section (3) of Section 11. [Paras 18-20] [44-E-G; 45-A; 46-E-G; 47-A]**

Godrej & Boyce Mfg. Co. Pvt. Ltd. & Ors. v. Commissioner of Sales Tax and Others **(1992) 3 SCC 624 : [1992] 3 SCR 683 – relied on.** H

A *Commissioner of Income Tax-III v. Calcutta Knitwears, Ludhiana* **(2014) 6 SCC 444** ; *State of Madhya Pradesh v. Rakesh Kohli & Anr.* **(2012) 6 SCC 312 : [2012] 6 SCR 661** ; *V.V.S. Sugars v. Government of Andhra Pradesh & Ors.* **(1999) 4 SCC 192 : [1999] 2 SCR 925** ; *Hotel Balaji & Ors. v. State of Andhra Pradesh & Ors.*(**1993) Supp 4 SCC 536 : [1992] 2 Suppl. SCR 182**; *Jayam and Company v. Assistant Commissioner and Another* **(2016) 15 SCC 125 : [2016] 6 SCR 787 – referred to.**

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Case Law Reference

[2005] 1 SCR 223	**relied on**	**Para 16**
(2014) 6 SCC 444	**referred to**	**Para 17**
[2012] 6 SCR 661	**referred to**	**Para 17**
[1999] 2 SCR 925	**referred to**	**Para 17**
[1992] 3 SCR 683	**relied on**	**Para 18**
[1992] 2 Suppl. SCR 182	**referred to**	**Para 18**
[2016] 6 SCR 787	**referred to**	**Para 18**

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 13047-13048 of 2017.

From the final Judgment and Order dated 18.01.2013 of the High Court of Gujarat at Ahmedabad in Tax Appeal No.932/2012 and
F 935/2012 respectively

WITH

Civil Appeal Nos.13049, 13050 and 13051-13052 of 2017.

K.K. Venugopal, AG, S. K. Bagaria, Sr. Adv., Preetesh Kapur,
G Ms. Hemantika Wahi, Ms. Jesal Wahi, Kabir Hathi, K. Ajit Singh, Advs. for the Appellant.

Arvind Datar, Sr. Adv., K.R. Sasiprabhu, Ms. Megha Jani, Amey Nabar, Vishnu Sharma, Purvish Jitendra Malkan, Rashesh Parikh, Advs. for the Respondent.

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The Judgment of the Court was delivered by A

A. K. SIKRI, J. 1. In all these appeals, question of law that needs to be decided is identical, which was the reason for clubbing these appeals and hearing them analogously. However, for the sake of convenience, we would be taking note of facts from Civil Appeal Nos. 13047-13048 of 2017, as that would serve the purpose. B

2. The respondent (hereinafter referred to as the 'assessee') is engaged in the business of manufacturing and selling polymers and chemicals. These goods are manufactured by the respondent in its factory situated in the State of Gujarat (hereinafter referred to as the 'appellant State'). After the manufacture of these goods, same are transferred by the assessee to its various branches located in different parts of the country from where those goods are sold. Obviously, in respect of goods transferred to places outside the appellant State, the Value Added Tax (VAT) is paid at the time of sale of those goods in those States, as per the local laws of the said States. The goods are sold in the appellant State as well and in respect of these goods VAT is paid as per the Gujarat Value Added Tax Act, 2003 (for short, the 'VAT Act'). For the purpose of manufacturing the aforesaid goods, namely, polymers and chemicals, the assessee purchases furnace oil, natural gas and light diesel oil (hereinafter referred to as the 'raw material or inputs') from its registered dealers. These fuels are used for the aforesaid manufacturing activities. On purchase of the raw material, VAT is paid at varying rates. On furnace oil, 4% VAT is payable as per the VAT Act, whereas on natural gas and light diesel oil rate of VAT prescribed and payable is 12.5%. Since these inputs are used for manufacturing of the final products, there is a provision in the VAT Act for giving credit on the VAT which is paid at the time of purchase of these inputs. The manner in which this credit is to be given is prescribed under Section 11 of the VAT Act. Section 11 reads as under: C D E F

> "**11. Tax Credit. :**
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> (1) (a) A registered dealer who has purchased the taxable goods (hereinafter referred to as the "purchasing dealer") shall be entitled to claim tax credit equal to the amount of, - G
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> (i) tax collected from the dealer by a registered dealer from who he has purchased such goods or the tax payable by the purchasing dealer to a registered dealer who has sold such goods to him during the tax period, or H

A (ii) tax paid by him during the tax period under sub-section (1), (2)(5) or (6) of section 9 or;

(iii) Tax paid by the purchasing dealer under the Gujarat Tax on Entry of Specified Goods into Local Area Act, 2001 (Gun. 22 of 2001);

B (b) The tax credit to be so claimed under this sub-section shall be subject to the provisions of sub-sections (2) to (12); and the tax credit shall be calculated in such manner as may be prescribed.

(2) The registered dealer who intends to claim the tax credit shall maintain the register and the books of accounts in such manner C as may be prescribed.

(3) (a) Subject to the provisions of this section, tax credit to be claimed under sub-section (1) shall be allowed to a purchasing dealer on his purchase of taxable goods which are intended for the purpose of –

D (i) Sale or re-sale by him in the State;

(ii) sale in the course of inter-State and commerce;

(iii) branch transfer of consignment of taxable goods to other states (subject to the provision of sub-clause (b) below);

E (iv) sales in the course of export out of the territory of India;

(v) sales to export oriented units or the units in Special Economic Zones for sale in the course of export out of the territory of India;

F (vi) use as raw material in the manufacture of taxable goods intended for (i) to (v) above or in the packing of the goods so manufactured:

(vii) use as capital goods meant for use in manufacture of taxable goods intended for (i) to (vi) above subject to the condition G that such capital goods are purchased after the appointed day;

Provided that if purchases are used partially for the purposes specified in this sub-section, the tax credit shall be allowed proportionate to the extent they are used for the purposes specified in this sub-section.

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(b) Notwithstanding anything contained in this section, the amount of tax credit in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four per cent on the taxable turnover of purchases within the State

(i) of taxable goods consigned or dispatched for batch transfer or to his agent outside the State, or

(ii) of taxable goods which are used as raw materials in the manufacture, or in the packing of goods which are dispatched outside the State in the course of branch transfer or consignment or to his agent outside the State.

(iii) of fuels used for the manufacture of goods

Provided that where the rate of tax of the taxable goods consigned or dispatched by dealer for branch transfer or to his agent outside the State is less than four per cent, then the amount of tax credit in respect of such dealer shall be reduced by the amount of tax calculated at the rate of tax set out in the Schedule on such goods on the taxable turnover of purchases within the State

(4) The tax credit shall not be claimed by the purchasing dealer until the tax period in which he receives from a registered dealer from whom he has purchased taxable goods, a tax invoice (in original) containing particulars as may be prescribed under sub-section (1) of section 60 evidencing the amount of tax.

(5) Notwithstanding anything contained in this Act, tax credit shall not be allowed for purchases –

(a) made from any person other than a registered dealer under this Act;

(b) made from a dealer who is not liable to pay tax under this Act;

(c) made from a registered dealer who has been permitted under section 14, 14A, 14B, 14C or 14D to pay *lump sum* amount of tax in lieu of tax;

(d) made prior to the relevant date of liability to pay tax as provided in sub-section (3) of section 3;

(dd) made prior to the date of registration;

A (e) made in the course of inter-State trade and commerce;

(f) of the goods (not being taxable goods dispatched outside the State in the course of branch transfer or consignment) which are disposed of otherwise than in sale, resale or manufacture;

B (g) of the goods specified in the Schedule I or the goods exempt from whole of tax by a notification under sub-section (2) of section 5;

(h) of the goods which are used in the manufacture of goods specified in Schedule I, or the goods exempt from the whole of the tax by a notification under sub-section (2) of section 5

C or in the packing of goods so manufactured;

(i) of capital goods used in the manufacture of goods specified in Schedule I or the goods exempt from the whole of the tax by a notification under sub-section (2) of section 5 or in generation of electrical energy including captive power

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(j) of vehicles of any type and its equipment, accessories or spare parts (except when purchasing dealer is engaged in the business of sales of such goods)

(k) of the property or goods not connected with the business of the dealer;

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(l) of the goods which are used as fuel in generation of electrical energy meant for captive use or otherwise;

(ll) of petrol, high speed diesel, crude oil and lignite unless such purchase is intended for resale;

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(m) Of the goods which are used as fuel in motor vehicles;

(mm) of capital goods used in transfer of property in goods (whether as goods or in some other form) involved in execution of works contract;

G (mmm) of the goods for which right to use is transferred for any purpose (whether or not for a specified period), for cash, deferred payment or other valuable considerations;

(mmmm) made from a dealer after the name of such dealer has been published under sub-section (11) of section 27 or section 97;

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(n) of the goods which remain as unsold stock at the time of closure of business; A

(nn) of the goods purchased during the period when the permission granted under clause (a) of sub-section (1) of section 14 has remained valid under clause (b) of that sub-section;

(o) Where original invoice does not contain the details of tax charged separately by the selling dealer from whom purchasing dealer has purchased the goods; B

(p) Where original tax invoice or duplicate thereof duly authenticated in accordance with the rules made in this behalf is not available with purchasing dealer or there is evidence that the same has not been issued by the selling dealer from whom the goods are purported to have been purchased. C

(i) Notwithstanding anything contained in clause (a) or (b) in this sub-section and subject to conditions as may be prescribed, a registered dealer shall be allowed to claim tax credit in respect of purchase tax paid by him under sub-section (1) or (2) of section 9. D

(ii) Notwithstanding anything contained in clause (d) or (dd) in this sub-section and subject to such conditions and in such manner as may be prescribed, a registered dealer shall be allowed to claim tax credit for the taxable goods held in stock on the date of registration which are purchased after 1st April, 2008 and during the period of one year ending on the date of registration. E

(iii) Notwithstanding anything contained in clause (nn) of this sub-section and subject to such conditions and in such manner as may be prescribed, a registered dealer, whose permission to pay lump sum tax under section 14, F

(a) Is no longer valid on account of total turnover exceeding rupees fifty lakhs, or

(b) Is cancelled on request by such dealer, G

And becomes liable to pay tax under section 7, shall be allowed to claim tax credit for the taxable goods held in stock which are purchased after 1st April, 2008 and during the period of one year ending on the date of liability to pay tax under section 7."

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A (6) The State Government may, by notification in the Official Gazette, specify any goods or the class of dealers that shall not be entitled to whole or partial tax credit.

(7) Where a registered dealer without entering into a transaction of sale, issues to another registered dealer tax invoice, retail invoice, B bill or cash memorandum with the intention to defraud the Government revenue or with the intention that the Government may be defrauded of its revenue, the Commissioner may, after making such inquiry as he thinks fit and giving a reasonable opportunity of being heard, deny the benefit of tax credit, in respect of such transaction, to such registered dealers issuing or accepting C such tax invoice, retail invoice, bill or cash memorandum either prospectively or retrospectively from such date as the Commissioner may, having regard to the circumstances of the case, fix.

(8) (a) If the goods purchased were intended for the purposes D specified under sub section (3) and are subsequently used fully or partly for purposes other than those specified under the said sub-section or are used fully or partly in the circumstances described in sub-section (5), the tax credit, if availed of, shall be reduced on account of such use, from the tax credit being claimed for the tax E period during which such use has taken place; and such reduction shall be done in the manner as may be prescribed.

(b) Where the Capital goods referred to in sub-clause (vii) of clause (a) of sub-section (3) are not used continuously for a full period of five years in the State, the amount of tax credit shall be F reduced proportionately having regard to the period falling short of the period of five years.

(9) The registered dealer may claim the amount of net tax credit, which shall be determined in the manner as may be prescribed.

(10) Where any purchaser, being a registered dealer, has been G issued with a credit note or debit note in terms of section 61 or if he returns or rejects goods purchased, as a consequence of which the tax credit availed by him in any period in respect of which the purchase of goods relates, becomes either short or excess, he shall compensate such short of excess by adjusting the amount of tax credit allowed to him in respect of the tax period in which the H

credit note or debit note has been issued or goods are returned, subject to such conditions as may be prescribed.

(11) A registered dealer shall apply fair and reasonable method to determine, for the purpose of this section, the extent to which the goods are sold, used, consumed or supplied, or intended to be sold, used, consumed or supplied. The Commissioner may, after giving the dealer an opportunity of being heard and for the reasons to be recorded in writing, reject the method adopted by the dealer and calculate the amount of tax credit as he deems fit.

(12) Subject to the exceptions as may be prescribed by the rules, any dealer including the Commission agent shall not be permitted to transfer his tax credit to any other dealer or as the case may be, the principal.

Explanation:- For the purpose of this section, the amount of tax credit on any purchase of goods shall not exceed the amount of tax actually paid or payable under this Act in respect of the same goods."

3. A bird's eye view of the relevant portion of the aforesaid provision, which is the subject matter of these appeals, reveals that the tax credit which is admissible to the purchasing dealer is subject to provisions of sub-section (2) of Section 12. Sub-section (3)(b), with which we are primarily concerned, provides that if the goods are falling in the categories mentioned in sub-clauses (i), (ii) and (iii), the tax credit is to be reduced by the amount of tax calculated at the rate of 4% on the taxable turnover of purchases within the State. As noted above, the raw material/ inputs used in the instant goods are fuels. Sub-clause (ii) includes such goods in case the taxable goods are dispatched outside the State in the course of branch transfer. As already mentioned above, after the final product is produced, the assessee transfers these goods to its various branch offices, many of which are located outside the State and, therefore, those goods which are so transferred would be covered by this sub-clause and in respect of such goods which are transferred outside the State and are taxable under the VAT Act, the tax credit is to be reduced by 4%. Since the raw material in the instant goods is in the nature of fuels used for the manufacture of goods, it gets covered by sub-clause (iii) as well. The issue that needs to be decided is as to whether the tax credit is to be reduced at the rate of 4% under sub-clause (ii) and again

A at the same rate under sub-clause (iii) as well or deduction permissible is only once.

4. The Assessing Officer had held that in respect of such goods tax credit is required to be reduced at the rate of 4% under sub-clause (ii) and again at the rate of 4% under sub-clause (iii). This order was B upheld by the Joint Commissioner of Commercial Taxes in appeal that was preferred by the assessee. However, in further appeal before the Gujarat Value Added Tax Tribunal, the aforesaid view was upset as the Tribunal held that the deduction can be at 4% only and there cannot be double reduction in tax credit admissible to the assessee. The High Court has put its stamp of approval to the aforesaid view of the VAT C Tribunal. That is the reason for the appellant State to approach this Court as it is obviously not satisfied with the decision of the High Court.

5. Reasons given by the High Court in taking the aforesaid view can be captured from the following discussion contained in the impugned judgment:

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"It is not in dispute that in the present case, the taxable goods purchased by the respondent assessee satisfy the description of sub-clause (ii) and (iii) of section 11(3)(b). Despite this, in our view, the Tribunal came to a correct conclusion that denial of tax credit by 4 per cent as provided in clause (b) would have to be E done only once. We say so for several reasons. Firstly, clause (b) of section 11(3) pertains to reduction of tax credit otherwise available under section 11. Such reduction is to be applied if the goods satisfy the descriptions contained in sub-clause (i) to (iii) thereof. After clause (i), the Legislature has used the word "or". F We are conscious that at end of clause (ii) and beginning of clause (iii), the Legislature has not once again used the word "or", but has also not added the expression "and". Plain reading of the said provisions thus makes it clear that the reduction of tax credit had to be applied to any case which satisfy the description contained in sub-clauses (i) to (iii) not every time such description G is satisfied. Further, reduction of amount of tax at the rate of 4 per cent is to be done for the taxable goods which fall in any of the three categories contained in sub-clauses (i) to (iii) and not every time a particular class of goods specified fall in more than one categories."

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6. In addition, the High Court has also observed that the legislative intent of Section 11(3)(b) can be gathered from proviso thereto which provides that where the rate of tax of taxable goods is less than 4%, then the amount of tax credit in respect of such dealer shall be reduced by the amount of tax calculated at the rate of tax set out in the Schedule of such goods, meaning thereby, if the tax credit available to a dealer is less than 4%, the reduction should be limited to such credit and no more. From this, the High Court has observed that the Legislature envisaged that in no case reduction of tax credit under Section 11(3)(b) would accede 4%.

7. Mr. K.K. Venugopal, learned Attorney General for India, and Mr. S.K. Bagaria, learned senior counsel, argued the matter on behalf of the appellant State and response thereto was given by Mr. Arvind Datar, learned senior advocate appearing for the respondent in Civil Appeal Nos. 13047-13048 of 2017. Advocates appearing for the respondents in other appeals supported Mr. Datar.

8. It was argued by Mr. Venugopal and Mr. Bagaria that the approach of the High Court was clearly erroneous as liberal interpretation of Section 11(3)(b), when read in the context of the entire scheme of tax credit and other provisions, would clearly show that it was intended to reduce the amount of tax credit by 4% in an eventuality when case was covered under sub-clause (ii) and again at the rate of 4% when the matter was covered by sub-clause (iii). It was argued that in tax matters, where the language of the statute is plain and clear, effect thereto has to be given and equity does not play any role in these cases. It was further argued that as per the provisions of the VAT Act, VAT was payable on the purchase of furnace oil, natural gas and light diesel oil as well. However, the Legislature intended to give tax credit in respect of these items when such items are used as raw material/inputs for the purpose of manufacturing other products. At the same time, it is the prerogative of the law makers to decide how and under what circumstances such tax credit would be admissible and to what extent. But for such a provision, the assessee did not have any right to claim tax credit and thus the question of double deduction does not arise at all. It was also argued that sub-clause (ii) as well as sub-clause (iii) are attracted in different circumstances and, therefore, the reduction stipulated therein could not be treated as double taxation. The learned counsel proceeded to argue that insofar as sub-clause (ii) is concerned, it would be attracted on

A satisfying the twin conditions, namely: (a) when taxable goods are used as raw material in the manufacture or in the packing of goods; and (b) these goods are dispatched outside the State in the course of branch transfer or consignment or to the agent of the manufacturer outside the State. On the other hand, sub-clause (iii) was attracted in those cases where fuel is used for the manufacture of goods. It is possible, in a B given case, that both sub-clauses (ii) and (iii) become applicable (as it has happened in the instant case). However, in such cases the Legislature clearly intended that reduction at the rate of 4% has to be applied in each of the circumstances. Number of judgments were cited on interpretation of tax statutes as well as the manner in which punctuation C marks are to be interpreted.

9. Mr. Datar conceded to the extent that the Legislature was empowered to frame a particular scheme of giving tax credit and when such a scheme is provided statutorily, that had to be applied and it was not open to the assessees to claim equities in such matters. He also D conceded that such taxing statutes are to be given strict interpretation. However, he joined issues in the manner in which Section 11(3)(b) is to be interpreted. His submission was that the High Court has rightly interpreted the said provision. In this behalf, he argued that Section 11(3)(a) makes a provision for giving the credit whereas clause (b) reduces the said credit to a certain extent in those eventualities which E are provided therein. Section 11(5) totally disallows the tax credit in the circumstances provided in clauses (a) to (p) thereof. He specifically referred to clauses (h) and (l) of sub-section (5) to buttress his submission that on those goods which are exempted from the whole of the tax by a notification under sub-section (2) of Section 5 etc. no tax credit in that F behalf is provided. Likewise, on the goods which are used as fuel in generation of electrical energy meant for captive use or otherwise (sub-clause (l)), no tax credit is allowed. According to him, if one keeps in mind this scheme of giving tax credit, the intention is clear, namely, the reduction rate cannot be more than the tax credit allowed. Pointing out that in respect of furnace oil VAT is payable at 4% and if the contention G of the appellant State is accepted, deduction there on will be at the rate of 8% (4% under sub-clause (ii) and 4% under sub-clause (iii)) and it would result in an anomalous position as tax credit earned on the said furnace oil, when used as raw material in the production of polymers or chemicals, would be earned at the rate of 4% under clause (a), the State H intended to reduce the same by 8% under clause (b).

10. We have examined the respective contentions minutely and carefully and are of the opinion that the view taken by the High Court in the impugned judgment may not be entirely correct. A

11. Let us take up the provision for interpretation in the first instance.

12. Section 11 entails the provision pertaining to the scheme of tax credit, which is the caption of the said Section as well. Sub-section (1) thereof mentions the contingencies when a registered dealer would be entitled to claim tax credit which is equal to the amount of tax collected from the dealer by a registered dealer or tax paid by him during the tax period or tax paid by the purchasing dealer under the Gujarat Tax On Entry of Specified Goods into Local Area Act, 2001. In nutshell, clause (a) of sub-section (1) of Section 11 entitles the registered dealer to claim tax credit of the amount of VAT or entry tax which was paid. However, this tax credit is subject to sub-sections (2) to (12) of Section 11. In this hue, we have to examine the provisions of sub-section (3) around which the entire case hinges upon. B C D

13. Clause (a) of sub-section 3 lays down certain conditions which have to be fulfilled in order to claim the tax credit. First condition is to give the tax credit in those cases where taxable goods are purchased. Thus, it is not admissible where the purchased goods are non-taxable inasmuch as in those cases no tax was paid and thus the question of giving credit would not arise. Second condition mentions that these goods are intended for specific purposes which are stipulated in sub-clauses (1) to (7) of clause (a). A perusal of these sub-clauses would indicate that contingencies stipulated in sub-clauses (i) to (v) pertain to one category, i e. where the goods are purchased as it is. On the other hand, sub-clauses (vi) and (vii) would fall in other category. Sub-clause (vi) deals with a situation where the goods, after purchase, are used as raw material in the manufacture of taxable goods or in the packing of goods so manufactured. Sub-clause (vii) deals with those goods which are used as capital goods meant for use in the manufacture of taxable goods. Sub-clause (i) of clause (b) is relatable to sub-clause (iii) of clause (a) as these deal with branch transfer of the goods. Likewise, sub-clause (vi) read with sub-clause (iii) of clause (a) is concerned with sub-clause (2) of clause (b) as these deal with a situation where the goods so produced, in respect of which tax credit is given, are used as raw material in the manufacture or in the packing of goods and there is branch transfer of E F G H

A these goods as well outside the State. In such eventualities, tax credit is not fully given as it is reduced by 4%. It may also be pointed out at this stage that the term 'raw materials' is defined in Section 2(19) of the VAT Act and reads as under:

> ""raw materials" means goods used as ingredient in the
B manufacture of other goods and includes processing materials, consumable stores and materials used in the packing of the goods so manufactured but does not include fuels for the purpose of generation of electricity;"

14. It is clear that the material used even in the packing of goods
C is treated as raw material and, therefore, this definition is to be treated as term of art. This definition also clarifies that fuels used in the manufacture of goods would be treated as raw material with the only exception of those fuels which are used for the purpose of generation of electricity.

D 15. Keeping in mind the aforesaid aspects, we advert to Section 11(3)(b). It is a non-obstante clause as it starts with the word 'notwithstanding'. Another aspect which is to be necessarily kept in mind is that it is the 'amount of tax credit' which a dealer would be entitled to claim under clause (a) that is to be reduced at the rate of 4% and this reduction is to be effected in three eventualities provided under
E sub-clauses (i), (ii) and (iii). Insofar as sub-clause (i) is concerned, it pertains to trading activity and there is no question of any overlap between sub-clause (i) on the one hand and sub-clauses (ii) and (iii) on the other. Further, insofar as sub-clauses (i) and (ii) are concerned, same are disjunctive as the word 'or' is inserted between these two clauses.
F However, when we come to clauses (ii) and (iii), where there is a possibility of overlap (as it has happened in the instant case as well), there is no word 'or' used between clauses (ii) and (iii). Sub-clause (ii) finishes with the punctuation mark full stop and then sub-clause (iii) starts. This depicts the intention of the Legislature, namely, reduction is not confined to one of the aforesaid two sub-clauses and it can occur
G under both these provisions. It is rightly pointed out by the appellant State that these are event based sub-clauses and two events are totally different. Sub-clause (ii) is attracted in those cases where taxable goods are used as raw material (which may not necessarily be fuel but all raw materials are included) and also the other condition which is to be fulfilled

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is that these goods are dispatched outside the State in the course of branch transfer etc. Therefore, even if the taxable goods are used as raw material in the manufacture or in the packing of goods but they are consumed or sold within the State, sub-clause (ii) would not apply. On the other hand, sub-clause (iii) is referable to only fuels which are used for manufacture of goods. It is, thus, a totally separate category and the moment fuel is used in the manufacture of goods, this sub-clause gets attracted and it would be immaterial whether the goods are sold within the State or outside the State.

16. The manner in which punctuations are to be interpreted is provided by this Court in the case of ***Jamshed N. Guzdar*** v. ***State of Maharashtra & Ors.***[1] in the following manner:

> "68. A Full Bench of the Punjab and Haryana High Court in *Rajinder Singh v. Kultar Singh* [AIR 1980 P&H 1: ILR (1979) 2 P&H 486 (FB)] touching the same topic stated thus: (AIR p. 1)
>
> > "So far as the High Courts are concerned, the topic of jurisdiction and powers in general is not separately mentioned in any of the entries of List I, but 'administration of justice' as a distinct topic finds a place in Entry 3 of List II (now Entry 11-A of List III).
> >
> > The expression 'administration of justice' occurring in Entry 3 of List II of the VIIth Schedule has to be construed in its widest sense so as to give power to the State Legislature to legislate on all matters relating to administration of justice.
> >
> > After the words 'administration of justice' in Entry 3 there is a semicolon and this punctuation cannot be discarded as being inappropriate. The punctuation has been put with a definite object of making this topic as distinct and not having relation only to the topic that follows thereafter. Under Entry 78 of List I, the topic of jurisdiction and powers of the High Courts is not dealt with. Under Entry 3 of List II the State Legislature can confer jurisdiction and powers or restrict or withdraw the jurisdiction and powers already conferred on any of the courts except the Supreme Court, in respect of any statute. Therefore, the State Legislature has the power to make a law with respect to the jurisdiction and powers of the High Court."

[1] (2005) 2 SCC 591

A 69. In *Aswini Kumar Ghosh v. Arabinda Bose* [AIR 1952 SC 369], Mukherjea, J. in AIR para 57 has observed that: (SCR p. 41)

> "Punctuation is after all a minor element in the construction of a statute, and very little attention is paid to it by English courts.
B ... When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to the punctuation."

70. In our view the Full Bench of the Punjab and Haryana High Court was right in giving emphasis and meaning to semicolon in Entry 3 of the list after the words "administration of justice" in
C Rajinder Singh. Semicolon after the words "administration of justice" in Entry 11-A, in our view, has significance in dealing with the topic whether "administration of justice" includes conferring general jurisdiction on High Court in addition to the subordinate courts within the State."

D 17. Moreover, there is no quarrel about the well-settled proposition of law that taxing statutes are to be interpreted literally {See ***Commissioner of Income Tax-III*** v. ***Calcutta Knitwears, Ludhiana***[2], ***State of Madhya Pradesh*** v. ***Rakesh Kohli & Anr.***[3] and ***V.V.S. Sugars*** v. ***Government of Andhra Pradesh & Ors.***[4]}.

E 18. The aforesaid discussion leads us to the conclusion that it is a mega tax credit scheme which is provided under the VAT Act meant for all kinds of manufactured goods. The material in question, namely, furnace oil, natural gas and light diesel oil are admittedly subject to VAT under the VAT Act. The Legislature, however, has incorporated the
F provision, in the form of Section 11, to give tax credit in respect of such goods which are used as inputs/ raw material for manufacturing other goods. Rationale behind the same is simple. When the finished product, after manufacture, is sold, VAT would be again payable thereon. This VAT is payable on the price at which such goods are sold, costing whereof is done keeping in view the expenses involved in the manufacture of
G such goods *plus* the profits which the manufacturer intends to earn. Insofar as costing is concerned, element of expenses incurred on raw material would be included. In this manner, when the final product is

[2](2014) 6 SCC 444
[3](2012) 6 SCC 312
H [4](1999) 4 SCC 192

sold and the VAT paid, component of raw material would be included again. Keeping in view this objective, the Legislature has intended to give tax credit to some extent. However, how much tax credit is to be given and under what circumstances, is the domain of the Legislature and the courts are not to tinker with the same. This proposition is authoritatively determined by this Court in series of judgments. We may refer to the judgment in ***Godrej & Boyce Mfg. Co. Pvt. Ltd. & Ors.*** v. ***Commissioner of Sales Tax and Others***[5] and the relevant extract which is relevant for our purposes is as follows:

> "9. Sri Bobde appearing for the appellants reiterated the contentions urged before the High Court. He submitted that the deduction of one per cent, in effect, amounts to taxing the raw material purchased outside the State or to taxing the sale of finished goods effected outside the State of Maharashtra. We cannot agree. Indeed, the whole issue can be put in simpler terms. The appellant (manufacturing dealer) purchases his raw material both within the State of Maharashtra and outside the State. Insofar as the purchases made outside the State of Maharashtra are concerned, the tax thereon is paid to other States. The State of Maharashtra gets the tax only in respect of purchases made by the appellant within the State. So far as the sales tax leviable on the sale of the goods manufactured by the appellant is concerned, the State of Maharashtra can levy and collect such tax only in respect of sales effected within the State of Maharashtra. It cannot levy or collect tax in respect of goods which are despatched by the appellant to his branches and agents outside the State of Maharashtra and sold there. In law (apart from Rules 41 and 41-A) the appellant has no legal right to claim set-off of the purchase tax paid by him on his purchases within the State from out of the sales tax payable by him on the sale of the goods manufactured by him. It is only by virtue of the said Rules — which, as stated above, are conceived mainly in the interest of public — that he is entitled to such set-off. It is really a concession and an indulgence. More particularly, where the manufactured goods are not sold within the State of Maharashtra but are despatched to out-State branches and agents and sold there, no sales tax can be or is levied by the State of

[5](1992) 3 SCC 624

A Maharashtra. The State of Maharashtra gets nothing in respect of such sales effected outside the State. In respect of such sales, the rule-making authority could well have denied the benefit of set-off. But it chose to be generous and has extended the said benefit to such out-State sales as well, subject, however to deduction of one per cent of the sale price of such goods sent out
B of the State and sold there. We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of set-off is itself a boon or a concession. It was open to the rule-making authority to provide for a small abridgement or curtailment while extending a
C concession. Viewed from this angle, the argument that providing for such deduction amounts to levy of tax either on purchases of raw material effected outside the State or on sale of manufactured goods effected outside the State of Maharashtra appears to be beside the point and is unacceptable. So is the argument about apportioning the sale-price with reference to the proportion in
D which raw material was purchased within and outside the State.

(emphasis added)"

To the same effect are the judgments in the case of ***Hotel Balaji & Ors.*** v. ***State of Andhra Pradesh & Ors.***[6] and ***Jayam and Company*** v. ***Assistant Commissioner and Another***[7].
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19. The upshot of the aforesaid discussion would be to hold that reduction of 4% would be applied whenever a case gets covered by sub-clause (ii) and again when sub-clause (iii) is attracted.

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20. This, however, would be subject to one limitation. In those cases where VAT paid on such raw material is 4%, as in the case of furnace oil, reduction cannot be more than that. After all, Section 11 deals with giving credit in respect of tax that is paid. Therefore, if some reduction is to be made from the said credit, it cannot be more than the
G credit given. Thus, so far as furnace oil is concerned, tax credit shall be reduced by 4%. On the other hand, tax credit given in case of natural gas and light diesel oil (other fuels), it shall be reduced by 4% under sub-

[6](1993) Supp 4 SCC 536
[7](2015) 15 SCC 125
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clause (ii) and 4% under sub-clause (iii) of clause (b) of sub-section (3) of Section 11. A

21. The appeals are allowed in the aforesaid terms.

No costs.

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Divya Pandey

Appeals allowed.