IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: THE HON'BLE JUSTICE ARIJIT BANERJEE

WPA/345/2025

M/s. Seashell vs. The Lt. Governor and Others

With

WPA/391/2025

Shri Praveen vs. The Lt. Governor and Others

With

WPA/392/2025

M/s. Sinclairs Hotel Limited Vs. The Lt. Governor and Others

With

WPA/393/2025

Smti. C. Kalaiarasi Vs The Lt. Governor and Others

With

WPA/394/2025

M/s. Aquays Hotels and Resorts Pvt. Ltd. vs. The Lt. Governor and Others

With

WPA/395/2025

Shri T. Kannan Vs. The Lt. Governor and Others

With

WPA/396/2025

Shri. V. Ravichandran Vs. The Lt. Governor and Others

With

WPA/397/2025

M/s. Hotel Sentinel Vs. The Lt. Governor and Others

With

WPA/398/2025

Welcomehotel Bay Island, Unit of ITC Hotel Ltd. Vs. The Lt. Governor and Others

With

WPA/399/2025

M/s. Oriental Filling Station Vs. The Lt. Governor and Others

With

WPA/400/2025

M/s. Jadwet Trading Company Vs. The Lt. Governor and Others

With

WPA/401/2025

M/s. Royal Petroleum Vs. The Lt. Governor and Others

With

WPA/418/2025

M/s. Kamala Trading Vs. The Lieutenant Governor and Others

With

WPA/420/2025

M/s. Manoj Marketing Vs. The Lt. Governor and Others
With

WPA/566/2025

M/s. Hotel Arasi Vs. The Lt. Governor and Others

With

WPA/568/2025

M/s. Medival Islander Inn Bar Vs The Lt. Governor and Others

With

WPA/569/2025

M/s. Hotel Sarvottam (A) Pvt. Ltd. Vs. The Lt. Governor and Others

With

WPA/570/2025

M/s. Hotel Rajadeepam Vs The Lieutenant Governor and Others

With

WPA/573/2025

M/s. Whistling Wood Vs. The Lieutenant Governor and Others

With

WPA/574/2025

M/s. Apt Bar and Restaurant Vs. The Lieutenant Governor and Others

With

WPA/575/2025

M/s. Dharma Cool Bar Vs The Lieutenant Governor and Others

With

WPA/583/2025

M/s. Hotel Raj Prakash Vs The Lieutenant Governor and Others

With

WPA/366/2025

M/s. TSG Hotels and Resorts vs. The Lieutenant Governor and Others

With

WPA/367/2025

Shri V. Karuppaiah Vs. The Lieutenant Governor and Others

With

WPA/368/2025

M/s. TSG Aqua (TSG Bella Bay) Vs. The Lieutenant Governor and Others

With

WPA/369/2025

Shri K. V. Rama Rao Vs. The Lieutenant Governor and Others

With

WPA/370/2025

M/s. Holiday Inn –vs. The Lieutenant Governor and Others

With

WPA/371/2025

Smti. Usha Moorthy –vs- The Lieutenant Governor and Others

With

WPA/372/2025

M/s. Aparupa Sands Marina Vs. The Lieutenant Governor and Others

With

WPA/373/2025

M/s. Hotel Aparupa (A) Pvt. Ltd. vs. The Lieutenant Governor and Others

With

WPA/374/2025

M/s. Southern Holdings and Investments (Chennai) Pvt. Ltd.
Vs. The Lieutenant Governor and Others

With

WPA/375/2025

Shri K. V. Narsimha Rao Vs. The Lieutenant Governor and Others

With

WPA/381/2025

M/s. Silver Sand Neil vs. The Lieutenant Governor and Others

With

WPA/383/2025

Smti. K. Shobha vs. The Lieutenant Governor and Others

With

WPA/384/2025

M/s. C. S. Empire vs- The Lieutenant Governor and Others

With

WPA/385/2025

M/s. Pearl Park Beach Resort vs. The Lieutenant Governor and Others

With

WPA/546/2025

M/s. Annu Bar and Restaurant vs. The Lt. Governor and Others

With

WPA/547/2025

M/s. Pristine Beach Resort vs. The Lt. Governor and Others

With

WPA/549/2025

M/s. Ashoka Bar and Restaurant vs. The Lt. Governor and Others

With

WPA/550/2025

M/s. B. R. B. Bar and Restaurant Vs Lieutenant Governor and Another

With

WPA/551/2025

M/s. Purna Pushpawalli Bar and Restuarant Vs. Lieutenant Governor and Another

With

WPA/552/2025

M/s. Stalin Bar and Restaurant vs. The Lieutenant Governor and Others

With

WPA/558/2025

M/s. Hotel A.T.Villa Vs. The Lieutenant Governor and Others

With

WPA/562/2025

M/s. Hotel Exel Bar and Restaurant vs. The Lt. Governor and Others

With

WPA/563/2025

M/s. Unique Bar and Restaurant vs. The Lt. Governor and Others

With

WPA/564/2025

M/s. G. International vs. The Lt. Governor and Others

With

WPA/565/2025

M/s. G. M. S. Restaurant Vs The Lt. Governor and Others

For the petitioner	:	Ms. Anjili Nag, Sr.Adv. Mr. Adarsh Ilango,
For the respondents	:	Mr. Rakesh Kumar
Heard on	:	February 04, 2026
Delivered on	:	February 10, 2026

ARIJIT BANERJEE, J.

1. Learned counsel for the parties told me that these writ petitions involve similar facts and same points of law. Hence, they were heard analogously. However, for the sake of convenience, I will refer to the records of WPA/345/2025 (M/s Seashell vs. The Lieutenant Governor and others).

2. The impugned notices issued under section 32 (Assessment of Tax and Interest) and Section 33 (Assessment of Penalty) of the Andaman and Nicobar Islands Value Added Tax Regulation, 2017 (in short 2017 Regulation), may be dated differently in the different writ petitions but in substance are the same. The orders

rejecting the written objections filed by the petitioners in terms of section 74 of the VAT Regulation may also be differently dated but in substance are the same.

3. Notices under sections 32 and 33 of the 2017 Regulation were served on the petitioner. The petitioner filed statutory objection as per section 74 of the 2017 Regulation. Such objection was rejected. Challenging such rejection order and the two notices, the petitioner has approached this Court.

4. The respondent authorities challenged the maintainability of the writ petition on the ground that there exists an alternative remedy by way of statutory appeal under section 76 of the VAT Regulation. In response, the petitioner submitted that though an Appellate Tribunal has been constituted recently vide Gazette Notification dated August 19, 2025, yet, the manner of regulating the procedure and disposal of the business of the Appellate Tribunal has not been brought into force in the form of Rules as required under section 73(6) of the VAT Regulation. Hence, the petitioner cannot be expected to

approach the Tribunal when the remedial forum has been hastily constituted without there being any clarification as regards the manner of its functioning.

5. On the point of maintainability, it was further submitted that the VAT Commissioner while carrying out the assessment exercise has exceeded his jurisdiction and violated the principles of natural justice. The assessment is barred by limitation. A plea of limitation concerns the jurisdiction of the Court. When an order of a Tribunal is challenged, *inter alia,* on the ground of being without jurisdiction, the writ court ought to entertain an application under Article 226 of the Constitution in spite of availability of an alternative remedy.

6. Amplifying on the point of limitation, Mr. Adarsh Ilango, learned counsel representing the petitioner, drew my attention to Section 34 of the VAT Regulation and submitted that the Commissioner is empowered to make assessment or reassessment within a period of four years from the end of the year comprising tax period(s).

7. In the present case, the last date for issuing notice of assessment stood expired. Hence, the notices under sections 32 and 33 of the VAT Regulation are barred by limitation. Consequently, the assessment period(s) FY 2017-18, FY 2018-19, FY 2019-2020 cannot be brought under the purview of assessment or reassessment as the assessment has been made between 2024 and early 2025. Therefore, the said notices are without jurisdiction.

8. Learned counsel submitted that the date from which limitation period for assessment has to be calculated is the end of the financial year comprising of the tax period for which the assessee has filed returns. 'Year' has been defined in section 2(1)(zo) of the 2017 Regulation to mean the financial year or the first date of April to the last date of March. Therefore, the cutoff date/limitation for assessment of the relevant financial years would be as follows:

Tax period	Beginning of Limitation	End of Limitation
FY 2017-2018	31.03.2018	31.03.2022
FY 2018-2019	31.03.2019	31.03.2023
FY 2019-2020	31.03.2020	31.03.2024

9. Learned advocate further submitted that the proviso to section 34(1) of the VAT Regulation will not be applicable. That can only be applied when tax has not been paid. The question of omission or failure to disclose something will arise only when tax is unpaid. In the present case, it is undisputed that the assessee has paid requisite tax. There is also no indication in the notices issued under sections 32 and 33 that the Commissioner had reason to apply such proviso.

10. Insofar as the FY 2020-2021 is concerned, learned counsel submitted that the assessment for that period is *non est* in the eye of law due to non-compliance of section 58 of the VAT Regulation and violation of the principle of *audi alteram partem.* In support of the contention that the notices for assessment of taxes and interest and assessment of penalty being time barred are without jurisdiction, learned counsel referred to the following cases.

(i) M/s Tata Teleservices Limited vs. The State of Chhattisgarh and others (Civil Appeal NO.1993 of 2022).

(ii) Calcutta Discount Co. Limited vs. Income Tax Officer, Companies District-I, Calcutta and another in 1961 AIR Supreme Court 372.

(iii) M/s Yogi Petroleum Vs. the Commissioner (VAT), Dadar and Nagar Haveli (Writ Petition (Stamp) NO.93644 of 2020).

(iv) Durga Steel Rolling Mills Vs. Commissioner of Commercial Taxes [2024: AHC-LKO:22796] and M/s Sayar Cars Vs. Appellate Deputy Commissioner (CT) WP No.30251, 30256 and 30258 of 2019.

(v) The Calcutta Municipal Corporation and others vs. The Cricket Association of Bengal and others (APO/248 of 2016 with WPO/2662 of 1996]

11. Learned counsel then submitted that section 32(1) of the VAT Regulation stipulates that the Commissioner by a single order can make an assessment so long as all the tax period(s) in that are comprised in one year. In the present

case, the Commissioner has exceeded his jurisdiction in incorporating more than one taxation year in a single order of assessment. Therefore, the notice of assessment of tax under section 32 of the VAT Regulation is contrary to law and hence bad.

12. Learned counsel then drew my attention to section 58(4)(b) of the VAT Regulation and submitted that the said provision stipulates that the Commissioner shall only after considering the returns, evidence furnished in the returns and the evidence acquired in the course of audit, issue notices under sections 32 and 33 of the Regulation. Subsections (1) to (3) of Regulation 58 of the VAT Regulation provide for a notice being served on the assessee intimating for audit of the business, hearing, inspection, along with production of documents and books of accounts. None of these provisions were complied with by the respondent authorities.

13. Learned counsel submitted that although one notice was sent to the petitioner calling upon it to submit books of accounts for assessment of value added tax such notice

was not in compliance of Regulation 58. When the Commissioner felt that audit was necessary before making an assessment, it is not understood why the Commissioner proceeded with the assessment without conducting an audit.

14. The Commissioner unilaterally proceeded to make the assessment without permitting the petitioner to participate in the process and without granting an opportunity of hearing to the petitioner. The Commissioner has thereby acted in breach of the principle of *audi alteram partem.* In this connection, reliance was placed on the decision of the Bombay High Court in the case of ***M/s Yogi Petoleum (supra).***

15. The next point urged was that the Andaman and Nicobar Value Added Tax Rules were notified by the Commissioner (VAT) through publication in the official gazette in 2020. Section 70(5) of the VAT Regulation states that "every notification issued by the Commissioner under this Regulation shall be published in the Official Gazette and shall not have any effect prior to such publication."

Therefore, the 2020 Rules cannot be given retrospective effect. Further, Section 112(3) states that any Rule made under this Regulation may be made so as to be retrospective to any date not earlier than the date of commencement, provided that no Rule shall be given effect retrospectively if it would have the effect of prejudicially affecting the interests of a dealer.

16. Learned counsel submitted that in both the notices issued under sections 32 and 33, it is absolutely unclear as to how the petitioner is liable for violation of any of the provisions of VAT Regulation or the Rules. The notices are vague, devoid of material particulars and therefore, cannot be acted upon.

17. Mr. Adarsh Ilango submitted that the assessment by the Commissioner under section 33 is based on the principle of "best judgment assessment". When any assessment is based on that principle, penalty cannot be imposed. In this connection, reliance was placed on the following decisions:

(i) ***Durga Steel Rolling Mills Vs. Commissioner of Commercial Taxes [2024: AHC-LKO:22796];***

(ii) ***M/s Sayar Cars Vs. Appellate Deputy Commissioner (CT) WP No.30251, 30256 and 30258 of 2019***

18. Learned counsel submitted that under section 33(1), the Commissioner has to have a reason to believe that liability to pay a penalty has arisen. In the notice under section 33 that was served on the petitioner, no reason is mentioned as to why penalty was being imposed on the petitioner. Further, without assigning any valid reason, the Commissioner chose to impose the maximum amount of penalty prescribed under the statute clearly indicating that the assessment of penalty has been made arbitrarily, with malafide intention to harass the assessee. The notices are unreasoned. The basis on which the amounts of tax or penalty have been arrived at, has not been disclosed. When such a demand notice fails to provide the basis on which the amount claimed is arrived at, the notice becomes

arbitrary and unsustainable in the eye of law. In this connection, reliance was placed on the case of ***Calcutta Municipal Corporation and others vs. The Cricket Association of Bengal and others [APO/248 of 2016 with WPO/2662 of 1996).***

19. Learned counsel then referred to the decision of a Division Bench of this Court, dated May 06, 2025, rendered in ***WP.TT/8/2025 (Jharna Saha vs. Joint Commissioner of Sale Tax, Behala Charge and others)*** in support of his contention that if an assessment is made without serving prior notice on the assessee, the assessment is rendered null and void for want of jurisdiction.

20. Learned counsel relied on the decision of the Hon'ble Supreme Court in the case of ***M/s Shiv Steels vs. State of Assam reported in (2025) INSC 1126,*** in support of his submission that in construing fiscal statutes and in determining the liability of a subject to tax, one must have regard to the strict letter of law. If the revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If , on the other hand, the

case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislation and by considering what was the substance of the matter.

21. Learned counsel finally referred to the decision of the Hon'ble Supreme Court in the case of ***M/s Godrej Sara Lee Ltd vs. The Excise And Taxation Officer-cum-Assessing Authority and others reported in 2023 AIR SC 781***, in support of his submission that where the controversy is a purely legal one not involving disputed questions of fact but only questions of law, then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy being available

22. Appearing for the Administration, Mr. Rakesh Kumar, learned counsel submitted as follows:

(i) The Andaman and Nicobar Islands Value Added Tax Regulation, 2017 was brought into effect from 01.07.2017. The said Regulation provided for levy

of taxes on sale of goods, sold on or after 01.07.2017, schedule of taxable goods, rates of tax applicable, liability of persons/dealers to pay tax, formula for computation of net tax, requirements with regard to submission of returns, etc.

(ii) The Andaman and Nicobar Islands Value Added Tax Rules, 2020, was brought into force on 14.12.2020. The Rules provided for the procedure to be followed for giving effect to the Regulation. The Rules defined "tax period" and provided the periodicity for filing of returns and payment of taxes and the procedure for complying with the other requirements mandated under the Regulation. The Rules also prescribed Forms for statutory compliances.

(iii) Subsequent to the notification of the Rules, the dealers were allowed a grace period till March 28, 2021, to file quarterly returns for the period, 2nd quarter of 2017-2018 to 3rd quarter of 2020-2021, in prescribed Form of A & N VAT 16 and for

clearing of dues if any for the said period. This could not be done by the Administration in the absence of the Rules. The grace period was granted vide Office Order No.18 dated 07.01.2021. The order operated prospectively and was in consonance with Rule 25(2).

(iv) The compliance with the above mentioned office order forms the primary basis for assessment. Since the grace period was till March 28, 2021, no assessment process could be initiated prior to that date. Prior to initiation of assessment, notices requiring submission of books of accounts and other relevant records were served on the dealers, which were duly acknowledged. The tax liability was assessed on the basis of the records submitted by the dealers.

(v) As multiple tax periods were involved i.e. period between 01.07.2017 and 31.12.2020, all the tax deficiencies were netted with excesses, if any, arising between the said dates. Interest on dues, if

any, after such netting was concluded after March 28, 2021. Accordingly, multiple tax years were consolidated in a single order for the convenience of the dealers.

(vi) Penalties under the Regulation automatically arise on default. Accordingly, penalty on default after March 28, 2021, has been computed.

(vii) Statutory objections were filed by the dealers under Section 74 of the Regulation. Upon hearing and considering the cases on merits, reasoned orders were passed by the Commissioner.

(viii) Regulation 76 provides for statutory appeal to the appellate tribunal. The Court of Learned Chief Judicial Magistrate-cum-Civil Judge (Senior Division), Car Nicobar with link Court of Joint Civil Judge (Senior Division), Sri Vijaya Puram, was designated as the Appellate Tribunal under Section 73 of the Regulation in consultation with the Hon'ble Chief Justice of the Calcutta High Court

vide A & N Gazette Notification No. 69 of 2025 dated August 19, 2025, with immediate effect.

(ix) Therefore, the petitioner has an alternative efficacious remedy in the form of statutory appeal and on that ground, the writ petition should be dismissed.

(x) The Tribunal is a quasi judicial authority. Provisions of the Civil Procedure Code, Evidence Act, etc, apply to it. The procedure for filing of an appeal and the manner of conducting the appeal have been prescribed in Rules 55(A), 55(B) and 55 (C).

23. On the point of limitation and the impugned notices under sections 32 and 33 of the Regulation being time barred, learned counsel for the Administration submitted as follows:

(i) Section 34 prescribes that no assessment or reassessment shall be made after the expiry of four years from the end of the year for which

returns were furnished under section 26 or section 28.

(ii) A reading of section 26 indicates that the returns under the said sections are to be furnished in the format and manner and within the date prescribed by the Commissioner. However, no such prescription was made prior to the notification of the Rules.

(iii) Hence, in a situation where the procedural mechanism necessary to initiate proceedings is not in place, the initiation of any legal process becomes impossible.

(iv) In such circumstances, the question of limitation becomes inherently ambiguous as no proceeding can be said to have been capable of being initiated in the first place.

(v) In view of the fact that the procedural framework was brought into force only on 14.12.2020 through the official notification of the A & N

Islands VAT Rules, 2020 and further considering that registered dealers were granted a grace period until 28.03.2021 for filing of returns and clearance of past dues as per office order dated 07.01.2021, it is evident that no proceedings could lawfully have been initiated prior to the expiry of the grace period.

(vi) The limitation prescribed under the statute is to be computed from *'the end of the year for which returns were filed".* In the present case, although the returns relate to the years 2017-18 to 2020-21, no prescribed return format existed till 2020 and a statutory grace period for filing of such returns was granted upto 28.03.2021.

(vii) As a result, returns for the second quarter of 2017-2018 to the third quarter of 2020-2021 could not be lawfully filed prior thereto, and the condition precedent for commencement of limitation itself did not arise earlier.

(viii) The Hon'ble Supreme Court while interpreting Article 113 of the Limitation Act, 1963, in the case of ***Shakti Bhog Foods Ltd. Vs. Central Bank of India (2020) 17 SCC 260***, has held that limitation begins to run only when the right to sue or initiate proceedings becomes complete and enforceable in law, and not when it exists merely in theory.

(ix) Though Article 113 of the schedule to the Limitation Act may not apply in terms, the underlying principle governing accrual of an enforceable right is of general application and can be legitimately imported while construing the present limitation provision.

24. Applying the settled rules of interpretation *ut res magis valeat quam pereat,* the expression *"year for which returns were filed"* must be construed in a manner that gives meaningful effect to the statutory scheme, rather than rendering the filing requirement illusory or unworkable. Accordingly, the limitation period can commence only from

the end of the financial year in which the returns were lawfully filed i.e. 28.03.2021, and not from any earlier notional date.

25. In reply, learned counsel for the petitioner submitted that the order issued by the Commissioner on January 07, 2021, is of no effect. Such office order was never notified by publication in the official gazette. Without such publication the office order would have no effect as per Regulation 70(3). Even if the Commissioner was to issue notification and publish the same in the official gazette, the same would not have had retrospective effect.

COURT'S VIEW:

26. Having heard learned counsel for the parties, to my mind, the following issues fall for adjudication:-

(i) Whether the present writ petition should be entertained notwithstanding availability of an alternative remedy in the form of a statutory appeal under section 76 of the Regulation.

(ii) Whether or not, the notice of default assessment of tax and interest dated December 31, 2024, under section 32 of the Regulation is time barred.

(iii) Whether or not, the notice of assessment of penalty under section 33 dated December 31, 2024, is bad in law.

(iv) Whether or not both the notices dated December 31, 2024, stand vitiated by reason of the same having been issued in breach of the principles of natural justice.

(v) Whether or not the two notices, both dated December 31, 2024, are bad in law for being vague and bereft of material particulars.

27. Issue numbers (i),(ii), and (iv) are inter-related. I say this because, the writ petitioner argued that the writ petition is maintainable in spite of there being an alternative remedy because the notice of assessment of tax is time barred and therefore without jurisdiction and also because both the notices dated December 31, 2024, are

vitiated by reason of breach of the principles of natural justice. Hence, these three issues are taken up together for discussion and decision.

28. It is not in dispute that the writ petitioner has an alternative remedy in the form of section 76 of the Regulation, which reads as follows:-

> *"76. (1) Any person aggrieved by a decision made by the Commissioner under sections 74, 84 and 85 may appeal to the Appellate Tribunal against such decision:*
>
> *Provided that no appeal may be made against a non-appealable order under section 79.*
>
> *(2) Subject to the provisions of section 77, no appeal shall be entertained unless it is made within two months from the date of service of the decision appealed against.*
>
> *(3) Every appeal made under this section shall be in form, verified in such manner and shall be accompanied by such fee as may be prescribed.*
>
> *(4) No appeal against an assessment shall be entertained by the Appellate Tribunal unless the appeal*

is accompanied by satisfactory proof of the payment of the amount in dispute and any other amount assessed as due from the person:

Provided that the Appellate Tribunal may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order without payment of some or all of the amount in dispute, on the appellant furnishing in the prescribed manner security for such amount as it may direct:

Provided further that no appeal shall be entertained by the Appellate Tribunal unless it is satisfied that such amount as the appellant admits to be due from him has been paid.

(5) In proceedings before the Appellate Tribunal—

(a) the person aggrieved shall be limited to disputing only those matters stated in the objection;

(b) the person aggrieved shall be limited to arguing only those grounds stated in the objection; and

(c) the person aggrieved may be permitted to adduce evidence not presented to the Commissioner for good and sufficient reasons.

(6) The Appellate Tribunal shall—

(a) in the case of an assessment, confirm, reduce, or annul the assessment (including any penalty and interest imposed);

(b) in the case of any other decision of the Commissioner, affirm or reject the decision; or

(c) pass such other order for the determination of the issue as it thinks fit:

Provided that the Appellate Tribunal shall give reasons in writing for its decision which shall include its findings on material questions of fact and the evidence or other material on which those findings were based.

(7) The Appellate Tribunal shall use its best endeavours to make a final resolution of the matter before it and for this purpose may make a decision in substitution for the order in dispute, including the exercise or re-exercise of any discretion or power vested in the Commissioner.

(8) The Appellate Tribunal shall not set aside an assessment and remit the matter to the Commissioner for a further assessment, unless it has first—

(a) advised the aggrieved person of the proposed order;

(b) offered the person the opportunity to adduce such further evidence before it as might assist the Appellate Tribunal to reach a final determination.

(9) Where the Appellate Tribunal sets aside an assessment and remits the matter to the Commissioner for a further assessment, the Appellate Tribunal shall at the same time order the Commissioner to refund to the person some or all of the amount in dispute:

Provided that where no order is made, it shall be presumed that the Appellate Tribunal has ordered the refund of the amount in dispute.

(10) Where a person has failed to attend the hearing at the time and place stipulated, the Appellate Tribunal may adjourn the proceedings, strike out the appeal or proceed to make an order determining the objection in the absence of the person.

(11) Save as provided in section 81 and sub-section (12), an order passed by the Appellate Tribunal on an appeal shall be final.

(12) The Appellate Tribunal may rectify any mistake or error apparent from the record of its proceedings.

(13) Any order passed by the Appellate Tribunal may be reviewed suo motu or upon an application made in that behalf:

Provided that before any order which is likely to affect any person adversely is passed, such person shall be given a reasonable opportunity of being heard."

29. It is true that on the date when the writ petition was filed by M/s Seashell (WPA/345/2025], i.e., July 25, 2025, the Appellate Tribunal was not functional. However, soon thereafter, by a notification dated August 19, 2025, the Chief Judicial Magistrate-cum-Civil Judge (Senior Division), Car Nicobar with link Court of Joint Civil Judge (Senior Division), Sri Vijaya Puram, was designated as the

Appellate Tribunal contemplated in section 76 of the VAT Regulation, with immediate effect.

30. The ordinary rule, which is well established, is that when an alternative efficacious remedy is available, the High Court will not entertain a writ petition. This has nothing to do with the jurisdiction of the High Court to entertain such petition. An alternative remedy is not an absolute bar to the High Court entertaining a writ petition. This is a rule of self-imposed limitation by the High Court. It is no more *res integra* that the jurisdiction of the High Court under Artcile 226 of the Constitution of India cannot be ousted or curtailed even by legislation far less by existence of an alternative remedy in a particular case. However, a writ of certiorari or mandamus or prohibition is a discretionary remedy. The High Court normally refuses to exercise its higher prerogative writ jurisdiction when the writ petitioner has an alternative remedy available to him.

31. In ***PHR Invent Educational Society vs. UCO Bank and others*** in ***Civil Appeal No 4845 of 2024 (arising out***

of SLP (C) No.8867 of 2022), the Hon'ble Supreme Court observed as follows:

> *"It could thus be seen that, this Court has clearly held that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person. It has been held that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. The Court clearly observed that, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. It has been held that, though the powers of the High Court under Article 226 of the Constitution are of widest amplitude, still the Courts cannot be oblivious of the rules of self-imposed restraint evolved by this Court. The Court further held that though the rule of exhaustion of alternative remedy is a rule of discretion and*

not one of compulsion, still it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution when there exists an alternative remedy.

32. In the aforesaid case, the Hon'ble Apex Court clarified that the High Court will not entertain a petition under Article 226 of the Constitution, if an effective alternative remedy is available to the aggrieved person and particularly, if the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.

33. In ***Babu Ram Prakash Chanda Maheshwari Vs.Antarim Zilla Parisahd (1968 SCC Online SC 45),*** the Hon'ble Supreme Court observed that it is a well-established proposition of law that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. The existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. However, the

existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. The rule requiring the exhaustion of statutory remedies before the writ will be issued, is a rule of policy, convenience and discretion rather than a rule of law.

34. In ***United Bank of India vs. Satyawati Tondon and others (2010) 8 SCC 110,*** in paragraphs 43 to 45 of the reported judgment, the Hon'ble Supreme Court observed as follows:

> *"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in*

mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of 19 exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

35. In ***Commissioner of Income Tax and others vs. Chhabil Dass Agarwal, (2014) 1 SCC 603***, in paragraphs 11 to 15 of the reported judgment, the Hon'ble Supreme Court observed as follows:

"*11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an*

alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See State of U.P. v. Mohd. Nooh [AIR 1958 SC 86] , Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] , Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107] and State of H.P. v. Gujarat Ambuja Cement Ltd. [(2005) 6 SCC 499].

12. The Constitution Benches of this Court in K.S. Rashid and Son v. Income Tax Investigation Commission [AIR 1954 SC 207] , Sangram Singh v. Election Tribunal [AIR 1955 SC 425] , Union of India v. T.R. Varma [AIR 1957 SC 882] , State of U.P. v. Mohd. Nooh [AIR 1958 SC 86] and K.S. Venkataraman and Co. (P) Ltd. v. State of Madras [AIR 1966 SC 1089] have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. If the High Court is

satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted. [See N.T. Veluswami Thevar v. G. Raja Nainar [AIR 1959 SC 422] , MunicipalCouncil, Khurai v. Kamal Kumar [AIR 1965 SC 1321 : (1965) 2 SCR 653] , Siliguri Municipality v. Amalendu Das [(1984) 2 SCC 436 : 1984 SCC (Tax) 133] , S.T. Muthusami v. K. Natarajan [(1988) 1 SCC 572] , Rajasthan SRTC v. Krishna Kant [(1995) 5 SCC 75 : 1995 SCC (L&S) 1207 : (1995) 31 ATC 110] , Kerala SEB v. Kurien E. Kalathil [(2000) 6 SCC 293] , A. Venkatasubbiah Naidu v. S. Chellappan [(2000) 7 SCC 695] , L.L. Sudhakar Reddy v. State of A.P. [(2001) 6 SCC 634] , Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra [(2001) 8 SCC 509] , Pratap Singh v. State of Haryana [(2002) 7 SCC 484 : 2002 SCC (L&S) 1075] and GKN Driveshafts (India) Ltd. v. ITO [(2003) 1 SCC 72] .]

13. In Nivedita Sharma v. Cellular Operators Assn. of India [(2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court has held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows: (SCC pp. 343-45, paras 12-14)

> *"12. In Thansingh Nathmal v. Supt. of Taxes [AIR 1964 SC 1419] this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7)*
>
> > *'7. … The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by the statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed,*

and will leave the party applying to it to seek resort to the machinery so set up.'

13. In Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] this Court observed: (SCC pp. 440-41, para 11)

'11. … It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford [(1859) 6 CBNS 336 : 141 ER 486] in the following passage: (ER p. 495)

"… There are three classes of cases in which a liability may be established founded upon a statute. … But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. … The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The

form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspaper Ltd. [1919 AC 368 : (1918-19) All ER Rep 61 (HL)] and has been reaffirmed by the Privy Council in Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd. [1935 AC 532 (PC)] and Secy. of State v. Mask and Co. [(1939-40) 67 IA 222 : (1940) 52 LW 1 : AIR 1940 PC 105] It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.'

14. In Mafatlal Industries Ltd. v. Union of India [(1997) 5 SCC 536] B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

'77. … So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these

remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.'"

(See G. Veerappa Pillai v. Raman & Raman Ltd. [(1952) 1 SCC 334 : AIR 1952 SC 192] , CCE v. Dunlop India Ltd. [(1985) 1 SCC 260 : 1985 SCC (Tax) 75] , Ramendra Kishore Biswas v. State of Tripura [(1999) 1 SCC 472 : 1999 SCC (L&S) 295] , Shivgonda Anna Patil v. State of Maharashtra [(1999) 3 SCC 5] , C.A. Abraham v. ITO [AIR 1961 SC 609 : (1961) 2 SCR 765] , Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] , Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath and Sons [1992 Supp (2) SCC 312] , Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] , Tin Plate Co. of India Ltd. v. State of Bihar [(1998) 8 SCC 272] , Sheela Devi v. Jaspal Singh [(1999) 1 SCC 209] and Punjab National Bank v. O.C. Krishnan [(2001) 6 SCC 569].

14. In Union of India v. Guwahati Carbon Ltd. [(2012) 11 SCC 651] this Court has reiterated the aforesaid principle and observed: (SCC p. 653, para 8)

> *"8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta [(1979) 3 SCC 83 : 1979 SCC (Tax) 205] . In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23)*
>
> > *'23. … [when] a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.*

15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order

has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

36. Exceptions have been carved out by the Hon'ble Supreme Court where in spite of the aggrieved person having an alternative remedy available to him, the writ Court may intervene.

37. In Whirlpool Corporation vs. Registrar of Trade Marks, Mumabi and others, (1998) 8 SCC 1, The Hon'ble Supreme Court held that an alternative remedy will not operate as a

bar to the maintainability of a writ petition in at least four contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principles of natural justice or where the order or proceedings challenged are wholly without jurisdiction or the vires of an Act is challenged. This view has been reiterated by the Hon'ble Supreme Court in a plethora of subsequent cases and indeed in earlier cases also.

38. The writ petitioner argued that the notice of assessment of tax and interest is without jurisdiction because it is time barred. His argument is based on section 34 of the 2017 Regulation, which reads as follows:-

> *"34. (1) No assessment or re-assessment shall be made by the Commissioner after the expiry of four years from—*
>
> *(a) the end of the year comprising of one or more tax periods for which the person furnished a return under section 26 or section 28; or*

(b) the date on which the Commissioner made an assessment of tax for the tax period, whichever is the earlier:

Provided that where the Commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years.

(2) Notwithstanding anything contained in sub-section (1) the Commissioner may make an assessment of tax within one year after the date of any decision of the Appellate Tribunal or court where the assessment is required to be made in consequence of, or to give effect to, the decision of the Appellate Tribunal or court which requires the re-assessment of the person."

39. Learned counsel argued that the notice of assessment having been issued on December 31, 2024, if one calculates backward the financial years 2017-18, 2018-19 and 2019-20 would be beyond four years. The office of the Commissioner did not have jurisdiction to assess or

reassess value added tax for the said three financial years. Limitation is an issue bordering on the issue of jurisdiction. Therefore, this writ petition will be maintainable in spite of section 76 of the regulation providing the petitioner with an alternative remedy in the form of statutory appeal.

40. I am unable to agree with learned counsel for the petitioner. Firstly, limitation is ordinarily a mixed question of fact and law. I am not to be understood as saying that limitation can never be a pure question of law. If the facts of a case are not in dispute, limitation may well be a pure question of law. In such a case, the writ Court may still be inclined to entertain a petition in spite of existence of an alternative remedy.

41. However, generally speaking, limitation is a mixed question of fact and law. There are authorities legion for this proposition. I may refer to two of the very recent decisions of the Hon'ble Supreme Court. The first is in the case of ***P.Kumarakurubaran vs. P.Narayanan and others, Civil Appeal No. 5622 of 2025 (arising from SLP(C) NO.2549 of 2021).*** The judgment of the Supreme

Court is dated April 29, 2025. It was observed by the Hon'ble Supreme Court that the issue of limitation is a mixed question of facts and law for which the parties will have to lead evidence. The second is in the case of ***Shri Mukund Bhavan Trust and Ors versus Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and another, Civil Appeal No.14807 of 2024 (Arising out of SLP (C) No.18977 of 2016.***.

42. In the present case, the petitioner submitted that it duly filed returns under the VAT Regulation 2017 for the four financial years in question. This has been denied by the respondents in their affidavit-in-opposition. Copies of returns have not been enclosed to the writ petition. Therefore, the facts of the case, on the hinges of which the issue of limitation has to be decided, are not admitted. Hence, the issue of limitation, in my opinion, does not partake the nature of a jurisdictional issue in the facts of this case.

43. In my considered view, it cannot be said at this stage that the impugned notices dated December 31, 2024, are

without jurisdiction and therefore, this writ petition is maintainable notwithstanding availability of the appellate remedy.

44. Secondly, having received the notices dated December 31,2024, the petitioner had two options open to it. It could straightway approach the High Court in its writ jurisdiction as it has done now contending that the notices are without jurisdiction. Alternatively, it was open to it to file objection to the notices in terms of section 74 of the Regulation. The petitioner chose the second avenue. It filed a written objection asking for a hearing. The hearing was held before the Joint Commissioner. The Joint Commissioner by a reasoned order dated July 22, 2025, overruled the objection and upheld the two notices. Therefore, the petitioner waived its rights, if any, to invoke the writ jurisdiction of the High Court for challenging the impugned notices and opted for the statutory avenue for challenging such notices. Having been unsuccessful before the Joint Commissioner, the petitioner cannot now be permitted to invoke the writ jurisdiction to challenge the same notices.

45. In the course of hearing of this matter, it was mentioned by learned counsel for the respondents that the petitioner had, in fact, approached the writ court earlier. The Court refused to interfere and relegated the petitioner to the statutory avenue under section 74 of the Regulation to file objection to the impugned notices. Although no such court order is on record before me, even if that was the case, still the petitioner would not be entitled to maintain the present writ petition since the petitioner did not assail such order before any higher forum but acted in terms thereof.

46. Under challenge in this writ petition is also an order of the Joint Commissioner dated July 22, 2025, rejecting the petitioner's objection to the impugned notices. It is nobody's case that said order suffers from jurisdictional error. The order may be an erroneous order but that would not entitle the petitioner to invoke the writ jurisdiction to challenge that order, bypassing the statutory remedy of appeal under section 76 of the Regulation.

47. Next, coming to the issue of breach of natural justice. At the very beginning, I would like to quote paragraph 26 of the decision of the Hon'ble Supreme Court in the case of ***Swadeshi Cotton Mills vs. Union of India, 1981 (1) SCC 664.***

> *"26. Well then, what is "natural justice"? The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, "natural justice" has been used in a way "which implies the existence of moral principles of self-evident and unarguable truth". In course of time, Judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to "equity and good conscience". Legal experts of earlier generations did not draw any distinction between "natural justice" and "natural law". "Natural justice" was considered as "that part of natural law which relates to the administration of justice". Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules."*

48. Simply put, the principles of natural justice require that nobody be condemned unheard. If the order of an Authority is likely to have adverse civil consequences for a citizen, that person should be granted an opportunity of hearing before such order is passed. In most of the cases what is required is a pre-decisional hearing. However, there are cases galore where a post-decisional hearing may suffice. This is often so in cases of action taken under fiscal statutes. A taxing statute may provide for issuance of notice imposing a tax burden/penalty on an assessee without providing for a hearing prior to issuance of such notice. But the statute may provide for an objection being filed by the assessee to such notice and a full-fledged hearing being given by the authority issuing such notice. This would be post-decisional hearing but nonetheless would pass the test of fairness. The assessee would have full opportunity of assailing such notice and arguing why such notice should be withdrawn or modified.

49. In the present case, I do not find any provision in the Regulation requiring the office of the Commissioner to

grant an opportunity of hearing to the assessee prior to issuing notices under sections 32 and 33 of the Regulation. The said sections read as follows:

"32. (1) If any person—

(a) has not furnished returns required under this Regulation by the prescribed date; or

(b) has furnished incomplete or incorrect returns; or

(c) has furnished a return which does not comply with the requirements of this Regulation; or

(d) for any other reason the Commissioner is not satisfied with the return furnished by a person,

the Commissioner may for reasons to be recorded in writing assess or reassess to the best of his judgment the amount of net tax due for a tax period or more than one tax period by a single order so long as all such tax periods are comprised in one year.

(2) If, upon the information which has come into his possession, the Commissioner is satisfied that any person who has been liable to pay tax under this

Regulation in respect of any period or periods, has failed to get himself registered, the Commissioner may for reasons to be recorded in writing, assess to the best of his judgment the amount of net tax due for such tax period or tax periods and all subsequent tax periods.

(3) Where the Commissioner has made an assessment under this section, the Commissioner shall forthwith serve on that person a notice of assessment of the amount of any additional tax due for that tax period.

(4) Where the Commissioner has made an assessment under this section and further tax is assessed as owed, the amount of further tax assessed is due and payable on the same date as the date on which the net tax for the tax period was due.

33. *(1) Where the Commissioner has reason to believe that a liability to pay a penalty under this Regulation has arisen, the Commissioner, after recording the reason in writing, shall make and serve on the person a notice of assessment of the penalty that is due under this Regulation.*

(2) The amount of any penalty assessed under this section is due and payable on the date on which the notice of assessment is served by the Commissioner.

(3) Any assessment made under this section shall be without prejudice to prosecution for any offence under this Regulation."

50. However, section 74 of the Regulation provides an opportunity to the assessee to file written objection to such notices and participate in a hearing before the Commissioner. This was the course of action adopted by the present petitioner. The said section reads as follows:

"74. (1) Any person who is dissatisfied with—

(a) an assessment made under this Regulation (including an assessment under section 33); or

(b) any other order or decision made under this Regulation, may make an objection against such assessment, or order or decision, as the case may be, to the Commissioner:

Provided that no objection may be made against a non-appealable order as defined in section 79:

Provided further that no objection against an assessment shall be entertained unless the amount of tax, interest or penalty assessed that is not in dispute has been paid failing which the objection shall be deemed to have not been filed:

Provided also that the Commissioner may, after giving to the dealer an opportunity of being heard, may direct the dealer to deposit an amount deemed reasonable, out of the amount under dispute, before such objection is entertained:

Provided also that only one objection may be made by the person against any assessment, decision or order:

Provided also that in the case of an objection to an amended assessment, order, or decision, an objection may be made only to the portion amended:

Provided also that no objection shall be made to the Commissioner against an order made under section 84 or section 85 if the Commissioner has not delegated his power under the said sections to other Value Added Tax Authorities.

(2) A person who is aggrieved by the failure of the Commissioner to reach a decision or issue any assessment or

order, or undertake any other procedure under this Regulation, within six months after a request in writing was served by the person, may make an objection against such failure.

(3) An objection shall be in writing in the prescribed form and shall state fully and in detail the grounds upon which the objection is made.

(4) The objection shall be made—

(a) in the case of an objection made under sub-section (1), within two months of the date of service of the assessment, or order or decision, as the case may be; or

(b) in the case of an objection made under sub-section (2), not earlier than six months and not later than eight months after the written request was served by the person:

Provided that where the Commissioner is satisfied that the person was prevented for sufficient cause from lodging the objection within the time specified, he may accept an objection within a further period of two months.

(5) The Commissioner shall conduct its proceedings by an examination of the assessment, or order or decision, as the case may be, the objection and any other document or information as may be relevant:

Provided that where the person aggrieved, requests a hearing in person, the person shall be afforded an opportunity to be heard in person.

(6) Where a person has requested a hearing under sub-section (5) and the person fails to attend the hearing at the time and place stipulated, the Commissioner shall proceed and determine the objection in the absence of the person.

(7) Within three months after the receipt of the objection, the Commissioner shall either—

(a) accept the objection in whole or in part and take appropriate action to give effect to the acceptance (including the remission of any penalty assessed either in whole or in part); or

(b) refuse the objection or the remainder of the objection, as the case may be; and in either case, serve on the

person objecting, a notice in writing of the decision and the reasons for it, including a statement of the evidence on which it is based:

Provided that where the Commissioner within three months of the making of the objection notifies the person in writing, he may continue to consider the objection for a further period of two months:

Provided further that the person may, in writing, request the Commissioner to delay considering the objection for a period of three months for the proper preparation of its position, in which case the period of the adjournment shall not be counted towards the period by which the Commissioner shall reach his decision.

(8) Where the Commissioner has not notified the person of his decision within the time specified under sub-section (7), the person may serve a written notice requiring him to make a decision within fifteen days.

(9) If the decision has not been made by the end of the period of fifteen days after being given the notice referred to in sub-

section (8), then, at the end of that period, the Commissioner shall be deemed to have allowed the objection.

(10) (a) In case of revision of any order under this section or any decision in objection is passed under this Regulation, rules or notifications made thereunder, by any officer or person subordinate to him, the Commissioner may, of his own motion or upon information received by him, call for the record of such order and examine whether—

(i) any turnover of sales has not been brought to tax or has been brought to tax at lower rate, or has been incorrectly classified, or any claim is incorrectly granted or that the liability to tax is understated; or

(ii) any case, the order is erroneous, insofar as it is prejudicial to the interest of revenue, and after examination, the Commissioner may pass an order to the best of his judgment, where necessary.

(b) (i) For the purpose of the examination and passing of the order, the Commissioner may require, by service of notice, the dealer to produce or cause to be produced

before him such books of account and other documents or evidence as he thinks necessary for the purposes aforesaid.

(ii) Notwithstanding anything to the contrary contained in section 34, no order under this section shall be passed after the expiry of four years from the end of the year in which the order passed by the subordinate officer has been served on the dealer.

(iii) Notwithstanding anything to the contrary contained in section 34, where in respect of any order or part of the said order passed by the subordinate officer, an order has been passed by any authority hearing the objection or any appellate authority including the Tribunal or such order is pending for decision in objection or in appeal, or an objection or an appeal is filed, then, whether or not the issues involved in the examination have been decided or raised in the objection or the appeal, the Commissioner may, within five years of the end of the year in which the said order passed by the subordinate officer has been served on the dealer, make a report to the said objection hearing authority or the appellate authority including the

Tribunal regarding his examination or the report or the information received by him and the said appellate authority including the Tribunal shall thereupon, after giving the dealer a reasonable opportunity of being heard, pass an order to the best of its judgment, where necessary.

(c) If the Commissioner has initiated any proceeding before an appropriate forum against an issue which is decided against the revenue by an order of the Tribunal, then the Commissioner may, in respect of any order, other than the order which is the subject-matter of the order of the Tribunal, call for the record, conduct an examination as aforesaid, record his findings, call for the said books of account and other evidence and pass an order as provided for under this section as if the issue was not so decided against the revenue, but shall stay the recovery of the dues including the interest or penalty, insofar as they relate to such issue until the decision by the appropriate forum and after such decision, may modify the order of revision, if necessary.

(d) No proceedings under this section shall be entertained on any application made by a dealer or a person.

(e) Notwithstanding anything contained in any judgment, decree or order of any court, the provisions of this Regulation, other than sections 99 to 101, shall be deemed to have come into force with effect from the 1st day of July, 2017.

(11) (a) Notwithstanding anything to the contrary contained in section 34, the Commissioner may, at any time within four years from the end of the year in which any order passed by him has been served, on his own motion, rectify any mistake apparent on record and shall within the said period or thereafter rectify any such mistake which has been brought to his notice within the said period, by any person affected by such order.

(b) The provisions of sub-section (1) shall apply to the rectification of a mistake by the appellate authority or an objection hearing authority as they apply to the rectification of mistake by the Commissioner:

Provided that where any matter has been considered and decided in any proceedings by way of objection or appeal or review in relation to any order or part of an order, the authority passing the order on objection, appeal or review, may, notwithstanding anything contained in this Regulation, rectify the order or part of the order on any matter other than the matter which has been so considered and decided.

(c) Where any such rectification has the effect of reducing the amount of the tax or penalty or interest, the Commissioner shall refund any amount due to such person in accordance with the provisions.

(d) Where any such rectification has the effect of enhancing the amount of the tax or penalty or interest or reducing the amount of refund, the Commissioner shall recover the amount due from such person in accordance with the provisions.

(e) Save as provided in the foregoing sub-sections, and subject to such rules as may be prescribed, any assessment or re-assessment made or order passed

under this Regulation or the rules made thereunder by any person appointed under section 66 may be reviewed by such person suo motu or upon an application made in that behalf."

51. That a post-decisional hearing may also be sufficient compliance of the principles of natural justice in certain cases would also appear from the following observations of the Hon'ble Supreme Court of India in paragraph 44 of ***Swadeshi Cotton Mills (Supra)***

"*44. In short, the general principle — as distinguished from an absolute rule of uniform application — seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be*

> *extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.*

52. I am therefore of the considered view that there has been no breach of the principles of nature justice on the part of the respondents in the present case. In any event, the petitioner has not been able to demonstrate any prejudice that it has suffered by not being granted a hearing prior to issuance of the notice of assessment of tax

and interest and notice of penalty. It had full opportunity of hearing before the Joint Commissioner under section 74 of the 2017 Regulation, *albeit* post-facto.

53. Therefore, I am unable to agree with the petitioner's contention that this writ petition is maintainable in spite of there being an alternative remedy for the reason that principles of natural justice have been violated by the respondents in issuing the impugned notices.

54. The decision in ***M/s Tata Teleservices Limited vs. The State of Chhattisgarh and others*** rendered by the Hon'ble Supreme Court in ***Civil Appeal No.1993 of 2022*** were on different facts. The assessee in that case had straightway challenged the assessment order by way of a writ petition, which is not the case here. In the present case, as noted above, the writ petitioner chose to pursue the statutory avenue of filing objection to the assessment notice under Section 74 of the Regulation, thereby inviting a decision on all the concerned issues from the Commissioner. Having failed before the Commissioner the

petitioner cannot now invoke the writ jurisdiction to challenge the selfsame notice.

55. The decision of the Division Bench of this Court in ***WP.TT No. 8 of 2025 (Jharna Saha vs. Joint Commissioner Sales, Tax, Behala Charge and others)*** was on West Bengal Value Added Tax Act. The provisions of that Act are not identical with the provisions of the VAT Regulation, 2017, which is in force in the Andaman and Nicobar Islands. In any event, the reason why this decision will not help the petitioner is the same reason for which the decision in ***M/s Tata Teleservices Limited (supra)*** will not be applicable to the facts of the case. For the same reason again the decision in ***M/s Yogi Petroleum Limited (supra)*** would not help the petitioner.

56. The ratio of the decision in the case of ***M/s Godrej Sara Lee Ltd (Supra)*** is that cases where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy being

available. In that case, a pure point of law was involved, i.e., whether or not the revisional authority could exercise *suo motto* power of revision of assessment order. In the present case, as noted above, disputed questions of fact are involved. Hence, the decision of ***M/s Godrej Sara Lee Ltd (Supra)*** does not help the petitioner.

57. The other points urged by the petitioner clearly do not pertain to the Commissioner's jurisdiction to issue the impugned notices or to the point of breach of natural justice and are therefore, not relevant for the purpose of deciding the issue of maintainability of this writ petition. The petitioner will be at liberty to urge all points before the Appellate Tribunal. It may be noted that the Andaman and Nicobar Islands Value Added Tax Rules, 2020, were notified on December 14, 2020. Rules 55A to 55C lay down the procedure for filing of an appeal before the Appellate Tribunal and for hearing of the appeal. It may also be noted that the Appellate Tribunal is fully functional now.

58. A question that would naturally arise is whether it can be said that a writ petition is not maintainable when on the

date of filing of the petition the alternative statutory remedy was illusory by reason of the statutory appellate tribunal being non-functional for want of presiding officer? Strictly speaking, the answer should be in the negative since on the date of filing the writ petition, the petitioner had no other forum available to it. However, without going into the question of maintainability or otherwise of WPA/345/2025, I would like to put it in a different way. Since the Appellate Tribunal is fully functional since August 19, 2025, even though writ petitions were permitted to be filed prior to that date, I would decline to issue writs of certiorari or mandamus or prohibition in exercise of the high prerogative writ jurisdiction under Article 226 of the Constitution. Once the Tribunal started functioning a few days after WPA/345/2025 was filed, the petitioner ought to have approached the Tribunal by not pressing the writ application.

59. Under attack by the petitioner is an action of the respondent authorities under the VAT Regulation, 2017, which also provides a remedy to the petitioner. It is a fiscal

statute providing for an appeal against the Commissioner's order. The Appellate Tribunal's order is stated to be final subject to a review by the Tribunal. The VAT Regulation is a complete Code in itself. In my opinion, the writ court should be very slow to intervene in respect of orders which are appealable to the Tribunal. Tax disputes are also more effectively and conveniently adjudicable before the Tribunal rather than the writ Court.

60. I am conscious of the line of cases which say that once a writ petition is taken on record and affidavits are exchanged, at the final hearing the writ petition should not be dismissed on the ground of availability of an alternative remedy. However, those cases may not be relevant if at the final hearing the writ court is of the opinion that because of existence of disputed facts or for any other reason, the alternative remedy should be resorted to by the writ petitioner. I am of the considered view that this is a case where the disputes between the parties which pertain to a fiscal statute and to an extent are factual in nature, should be adjudicated by the Appellate Tribunal. I do not think

that just because the writ petitioner was permitted to file this petition in the absence of a functional Appellate Tribunal, the same would give the petitioner any vested right to have the disputes adjudicated by the writ court.

61. I therefore direct that the records of all those writ petitions out of the bunch of 47 petitions which have been heard, which were filed prior to August 19, 2025, be transferred/transmitted to the Appellate Tribunal constituted under section 73 of the VAT Regulation, 2017. All those writ petitioners as well as the respondents will be entitled to file additional pleadings before the Tribunal. The Tribunal will decide those cases in accordance with law. In respect of all those pre-August 19, 2025, cases, the Tribunal will not insist on pre-deposit being made in terms of section 76 of the VAT Regulation, 2017. The appeals will be decided within the statutory framework in accordance with the applicable laws, Rules and Regulations. The said writ petitions will be treated as disposed of insofar as the records of this Court are concerned.

62. The records of the following writ petitions will be transferred/ transmitted to the Appellate Tribunal.

(i) WPA/345/2025 (M/s. Seashell vs. The Lt. Governor and Others).

(ii) WPA/391/2025 (Shri Praveen vs. The Lt.Govenor and others)

(iii) WPA/392/2025 (Shri M/s Sinclairs Hotel Limited vs. The Lt.Govenor and others).

(iv) WPA/393/2025 (Smt Kalaiarasi vs. The Lt. Governor and others].

(v) WPA/394/2025 (M/s. Aquays Hotels and Resorts Pvt. Ltd. vs. The Lt. Governor and Others).

(vi) WPA/395/2025 (Shri T. Kannan Vs. The Lt. Governor and Others).

(vii) WPA/396/2025 (Shri. V. Ravichandran Vs. The Lt. Governor and Others).

(viii) WPA/397/2025 (M/s. Hotel Sentinel Vs. The Lt. Governor and Others).

(ix) WPA/398/2025 (Welcomehotel Bay Island, Unit of ITC Hotel Ltd. Vs. The Lt. Governor and Others).

(x) WPA/366/2025 (M/s. TSG Hotels and Resorts vs. The Lieutenant Governor and Others).

(xi) WPA/367/2025 (Shri V. Karuppaiah Vs. The Lieutenant Governor and Others).

(xii) WPA/368/2025 (M/s. TSG Aqua (TSG Bella Bay) Vs. The Lieutenant Governor and Others).

(xiii) WPA/369/2025 (Shri K. V. Rama Rao Vs. The Lieutenant Governor and Others).

(xiv) WPA/399/2025 (M/s. Oriental Filling Station Vs. The Lt. Governor and Others).

(xv) WPA/400/2025 (M/s. Jadwet Trading Company Vs. The Lt. Governor and Others).

(xvi) WPA/401/2025 (M/s. Royal Petroleum Vs. The Lt. Governor and Others).

(xvii) WPA/418/2025 (M/s. Kamala Trading Vs. The Lieutenant Governor and Others).

(xviii) WPA/420/2025 (M/s. Manoj Marketing Vs. The Lt. Governor and Others).

(xix) WPA/370/2025 (M/s. Holiday Inn –vs. The Lieutenant Governor and Others).

(xx) WPA/371/2025 (Smti. Usha Moorthy –vs- The Lieutenant Governor and Others).

(xxi) WPA/372/2025 (M/s. Aparupa Sands Marina Vs. The Lieutenant Governor and Others).

(xxii) WPA/373/2025 (M/s. Hotel Aparupa (A) Pvt. Ltd. vs. The Lieutenant Governor and Others).

(xxiii) WPA/374/2025 (M/s. Southern Holdings and Investments (Chennai) Pvt. Ltd Vs. The Lieutenant Governor and Others).

(xxiv) WPA/375/2025 (Shri K. V. Narsimha Rao Vs. The Lieutenant Governor and Others).

(xxv) WPA/381/2025 (M/s. Silver Sand Neil vs. The Lieutenant Governor and Others).

(xxvi) WPA/383/2025 (Smti. K. Shobha vs. The Lieutenant Governor and Others).

(xxvii) WPA/384/2025 (M/s. C. S. Empire vs- The Lieutenant Governor and Others).

(xxviii) WPA/385/2025 (M/s. Pearl Park Beach Resort vs. The Lieutenant Governor and Others).

63. Insofar as the writ petitions filed on or after August 19, 2025, are concerned, the same shall stand dismissed solely on the ground of availability of an alternative statutory remedy. Those writ petitioners will be at liberty to approach the Appellate Tribunal. If any question of limitation/time-bar arises, the Tribunal shall decide the issue taking into consideration the applicable provisions of the Limitation Act, 1963, and in particular section 14 thereof as also the factum of pendency of the writ petitions in this Court.

64. The following writ petitions stand dismissed.

(i) WPA/566/2025 (M/s. Hotel Arasi Vs. The Lt. Governor and Others).

(ii) WPA/568/2025 (M/s. Medival Islander Inn Bar Vs The Lt. Governor and Others).

(iii) WPA/569/2025 (M/s. Hotel Sarvottam (A) Pvt. Ltd. Vs. The Lt. Governor and Others).

(iv) WPA/570/2025 (M/s. Hotel Rajadeepam Vs The Lieutenant Governor and Others).

(v) WPA/573/2025 (M/s. Whistling Wood Vs. The Lieutenant Governor and Others).

(vi) WPA/574/2025 (M/s. Apt Bar and Restaurant Vs. The Lieutenant Governor and Others).

(vii) WPA/575/2025 (M/s. Dharma Cool Bar Vs The Lieutenant Governor and Others).

(viii) WPA/583/2025 (M/s. Hotel Raj Prakash Vs The Lieutenant Governor and Others).

(ix) WPA/546/2025 (M/s. Annu Bar and Restaurant vs. The Lt. Governor and Others).

(x) WPA/547/2025 (M/s. Pristine Beach Resort vs. The Lt. Governor and Others).

(xi) WPA/549/2025 (M/s. Ashoka Bar and Restaurant vs. The Lt. Governor and Others).

(xii) WPA/550/2025 (M/s. B. R. B. Bar and Restaurant Vs Lieutenant Governor and Another).

(xiii) WPA/551/2025(M/s. Purna Pushpawalli Bar and Restuarant Vs. Lieutenant Governor and Another).

(xiv) WPA/552/2025(M/s. Stalin Bar and Restaurant vs. The Lieutenant Governor and Others).

(xv) WPA/558/2025 (M/s Hotel A.T. Villa vs.The Lieutenant Governor and others).

(xvi) WPA/562/2025 (M/s. Hotel Exel Bar and Restaurant vs. The Lt. Governor and Others).

(xvii) WPA/563/2025 (M/s. Unique Bar and Restaurant vs. The Lt. Governor and Others).

(xviii) WPA/564/2025 (M/s. G. International vs. The Lt. Governor and Others).

(xix) WPA/565/2025 (M/s. G. M. S. Restaurant Vs The Lt. Governor and Others).

65. I clarify that I have not touched the merits of the respective cases of the writ petitioners in the 47 writ petitions which are being disposed of by this judgment and order. The Appellate Tribunal is requested to decide the transferred cases or any appeal(s) that may be preferred by any or all of the writ petitioners whose petitions stand dismissed by this order, without being influenced by any observation in this judgment and order.

66. All the writ petitions are disposed of on the above terms.

67. Parties to act on the server copy of this order downloaded from the official website of this Court.

(Arijit Banerjee, J.)