



AFR

ORISSA HIGH COURT : CUTTACK

W.P.(C) No.1005 of 2026

In the matter of Applications under Articles 226 & 227 of the
Constitution of India, 1950

* * *

Vedanta Limited
Village: Banjari
P.O./District: Jharsuguda
Odisha – 768 201
Represented through
Authorized Signatory
Shalendra Kumar Thakur
Aged about 41 years
Son of Ram Kumar Thakur
Working as Head Taxation. ... Petitioner

-VERSUS-

- 1.** Union of India
Represented through
The Secretary
Department of Revenue
Ministry of Finance, North Block
New Delhi – 110 001.
- 2.** Commissioner of Customs (Preventive)
Central Revenue Building
Rajaswa Vihar
Bhubaneswar, Odisha – 751 007.
- 3.** Assistant Commissioner, Customs Division
Central Revenue Building
Rajaswa Vihar
Bhubaneswar, Odisha – 751 007.



4. Commissioner (Appeals)
CGST, Central Excise and Customs
Central Revenue Building
Rajaswa Vihar
Bhubaneswar – 751 007. ... Opposite parties.

Counsel appeared for the parties:

- For the Petitioner : M/s. Vishal Agarwal
along with
Prasanta Kumar Nayak,
Suman Mitra, Amlan Panda,
Anindita Bisoi, Neelam B. Minz,
Advocates
- For the Opposite Party No.1. : Mr. Prasanna Kumar Parhi,
Deputy Solicitor General of India
for High Court of Orissa
- And
- Mr. Satya Narayan Pattanaik,
Central Government Counsel
- For the Opposite Party Nos.2 to 4 : Mr. Sujan Kumar Roy Choudhury,
Senior Standing Counsel

P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Date of Hearing : 22.01.2026 :: Date of Judgement :24.02.2026



JUDGMENT

MURAHARI SRI RAMAN, J.—

Craving to invoke extraordinary jurisdiction under the provisions of Articles 226 and 227 of the Constitution of India against Order-in-Appeal No. 220-221/CUS/CCP/2025, dated 30.09.2025 (issued on 08.10.2025) passed by the Commissioner (Appeals), Bhubaneswar (hereinafter referred to as “impugned order”) setting aside the Order-in-Original dated 24.01.2024 of the Assistant Commissioner of Customs Division, Bhubaneswar, giving effect to Order-in-Appeal No. 100-101/CUS/CCP/2023, dated 29.09.2023 (issued on 30.09.2023) of the Principal Commissioner (Appeals) (In-Situ), Bhubaneswar (“Appellate Order”, for convenience), the writ petition is filed for grant of following relief(s):

“Under the facts and circumstances, the petitioner, humbly prays:

- a) that this Hon’ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ/order/direction under Article 226 or Article 227 of the Constitution of India, calling for the records and proceedings pertaining to the impugned Order dated 08.10.2025 under Annexure-1 and after going into the validity and legality thereof, to quash and set aside the same;*
- b) that this Hon’ble Court may kindly graciously be pleased to restore the Appeal No.123/CUS/CCP/2023 filed on 21.03.2024 by the petitioner;*



- c) *for costs of this petition;*
- d) *for such and other reliefs as the nature and circumstances of the case may require.*

And/or any other order/orders as the Court may deem fit in the interest of justice;

And/or for this act of kindness the petitioner in duty bound shall ever pray.”

Factual matrix:

2. The petitioner, a public limited company, having units in the Special Economic Zone (SEZ) as well as the Domestic Tariff Area (DTA), utilized portion of electricity generated in the unit located in the DTA for use as input for the purpose of manufacturing aluminium products. Therefore, all industry rate of duty drawback for electricity so used in the unit located in SEZ was claimed to be *NIL* with reference to Section 2(m) of the Special Economic Zones Act, 2005 read with Rule 23 and Rule 24 of the Special Economic Zones Rules, 2006 and relevant provisions of the Customs and Central Excise Duty Drawback Rules, 1995. Accordingly, an application was made under Rule 6 of the Customs and Central Excise Duty Drawback Rules, 1995 before the Competent Authority on 18.05.2017 seeking fixation of brand rate of drawback pertaining to the period April, 2017 to March 2018.



2.1. The Joint Commissioner of Customs (Preventive), Bhubaneswar fixed the brand rate of duty drawback at 15.61% of the free on board *vide* Brand Rate Fixation Order No. 2 of 2019, dated 18.04.2019 read with corrigendum dated 07.08.2019 with respect to exports made during the period 01.04.2017 to 31.03.2018. The application dated 07.11.2019 filed by the petitioner before the Assistant Commissioner claiming duty drawback to the tune of Rs.165,07,76,478/- in respect of export transactions under nine Bills of Export stood rejected by Order-in-Original dated 04.06.2020; thereby, the claim of the petitioner with respect to duty drawback was disallowed. An appeal preferred under Section 128 of the Customs Act 1962, came to be disposed of *vide* Order-in-Appeal No. 100-101/CUS/CCP/2023, dated 29.09.2023 issued on 30.09.2023 by the Principal Commissioner (Appeals) (In-Situ), Bhubaneswar ("Appellate Authority", for brevity) whereby the claim of the petitioner was partially allowed. The Appellate Authority found four Bills of Export dated 01.07.2017, 31.07.2017, 04.09.2017 and 29.09.2017 out of nine Bills of Export, being assessed prior to 01.07.2017, to be eligible for duty drawback at brand rate of 15.61%. It was also held in appeal that in the facts of the case, the availment of ITC would not disentitle the petitioner from receiving duty drawback, subject however to the corresponding ITC reversal. The Authority sanctioned



duty drawback amounting to Rs.162,00,11,729/- in favour of the petitioner subject to reversal of corresponding ITC pertaining to export covered under the aforesaid four Bills of Export. Since the remaining five Bills of Export were assessed after 01.10.2017, the petitioner was not found eligible for brand rate of 15.61%. Against said Order dated 30.09.2023, the Customs Department has not preferred further avenue available to it under the Customs Act; rather upon review, the Commissioner of Customs (Preventive) accepted the Order-in-Appeal dated 30.09.2023.

2.2. Addressing the Deputy Commissioner of Customs the petitioner *vide* Letter dated 03.10.2023 and 03.01.2024 intimated that it had already reversed/adjusted ITC to the tune of Rs.40,25,70,556/- in terms of Order-in-Appeal, and requested for disbursal of duty drawback as sanctioned by the Appellate Authority. Notwithstanding the Appellate Authority had observed no interest is payable in respect of reversal/adjustment of ITC, as the Department insisted for payment of the same, the petitioner by Letter 03.01.2024 requested the Deputy Commissioner, Bhubaneswar to adjust the interest on such amount of reversal/adjustment of ITC to the tune of Rs.40,25,78,556/-. The petitioner claimed to have deposited Rs.1,45,24,423/-, being the refund of Goods



and Services Tax on the transactions of zero-rated supply along with interest of Rs.1,47,19,500/-.

2.3. With such factual background, the Assistant Commissioner, Bhubaneswar Customs Division in order to give effect to the Appellate Order passing Order-in-Original dated 24.01.2024 returned the fact that the petitioner is found eligible for sanction of drawback to the tune of Rs.62,00,11,728/- and observed:

*“*** taking into account the adjustment/reversal of input tax credit of Central Goods and Services Tax and Integrated Goods and Services Tax and applicable interest thereon total amounting to Rs.86,11,88,387/- which was adjusted from due drawback on request of the claimant”.*

Accordingly, an amount of Rs.75,88,23,341/- was sanctioned for payment under Section 75 of the Customs Act.

2.4. Being aggrieved by said Order-in-Original dated 24.01.2024 to the extent it failed to grant interest on delayed sanction of drawback and wrongful adjustment of interest amounting to Rs.45,74,18,640/- and recovering refund of Rs.1,45,24,423/- against the sanctioned duty drawback, on 21.03.2024 the petitioner carried the matter in appeal under Section 128 of the Customs Act. The Assistant Commissioner of Customs



Division also preferred an appeal on 02.04.2024 before the Commissioner (Appeals) seeking to challenge the said Order-in-Original, as if it is the original order but not the consequential order arising out of Order-in-Appeal, on the ground that no duty drawback ought to have been sanctioned to the petitioner since it had availed ITC at the time of claiming such drawback. The Commissioner (Appeals), Bhubaneswar passed impugned Order-in-Appeal, dated 30.09.2025 (issued on 08.10.2025) by holding that the petitioner is not eligible for the duty drawback, as it availed ITC. As a consequence of such observation, the Order-in-Original, dated 24.01.2024 stood set aside.

2.5. Challenging the said Order-in-Appeal (Annexure-1) as perverse, capricious and without jurisdiction, the petitioner has filed the writ petition.

Hearing and arguments:

3. As short question involving competence, jurisdiction and authority of the Commissioner (Appeals), Bhubaneswar in nullifying the Order-in-Original by which duty of drawback was granted giving effect to Appellate Order of the Principal Commissioner (Appeals) (In-Situ), Bhubaneswar has been raised, and no counter affidavint/affidavit in opposition has been filed even though copy of writ petition was served on the opposite



parties on 09.01.2025, the matter is heard accordingly on the date of admission.

4. Shri Vishal Agarwal, learned Advocate along with Prashanta Kumar Nayak submitted that the Order-in-Appeal dated 30.09.2023 being not carried to the higher forum, and the Assistant Commissioner *vide* Order-in-Original dated 24.01.2024 having given consequential effect to the issues adjudicated upon in the Appeal, there is no scope or occasion for the Revenue to question the veracity of entitlement of duty drawback of the petitioner.

4.1. He submitted that the Commissioner (Appeals) as if sitting over the appeal against Order-in-Appeal of the Principal Commissioner (Appeals) (In-Situ), passed impugned Order nullifying the consequential grant of duty drawback by adjusting the amount of ITC with respect to Central Goods and Services Tax and Integrated Goods and Services Tax, thereby recovered or retained such ITC. He, thus, emphatically submitted that the Commissioner (Appeals) being *functus officio* could not have traversed beyond what is adjudicated in Order-in-Appeal dated 30.09.2023. To buttress his argument that the appellate orders are to be respected and to be carried out to its logical end, Sri Vishal Agarwal, learned Advocate placed reliance on a decision of this Court rendered in the case of *Auroglobal*



Comtrade Pvt. Ltd. Vrs. Joint Commissioner of Goods and Services Tax and Central Excise, W.P.(C) No.35050 of 2025, vide Judgment dated 18.12.2025.

4.2. He would further advance argument by canvassing that the impugned Order is out and out illegal and outcome of arbitrariness in action inasmuch as the issue which was settled *inter se* parties *vide* Order-in-Appeal dated 30.09.2023, the same could not have been agitated again when the Revenue had accepted said Appellate Order. The findings and observations made therein having attained finality, the Commissioner (Appeals), Bhubaneswar is estopped from reviewing/revisiting the Appellate Order dated 30.09.2023. By setting aside the Order-in-Original dated 24.01.2024 the said Appellate Authority has overstepped his jurisdiction and the issue adjudicated by the Principal Commissioner (Appeals) (In-Situ) would be hit by principles of *res judicata*.

5. *Quod ultra*, Sri Prasanna Kumar Parhi, learned Deputy Solicitor General of India and Sri Satya Narayan Pattanaik, learned Central Government Counsel appeared for the opposite party No.1 and Sri Sujan Kumar Roy Choudhury for the opposite party Nos.2 to 4 conceded that the Order-in-Appeal, dated 30.09.2023 has attained finality, being not challenged by the Customs Department before the higher fora.



5.1. Yet, the counsel appearing for the opposite parties stood by the reasoning ascribed in the impugned Order-in-Appeal (Annexure-1) and would submit that the Order-in-Appeal in Annexure-2 is beyond the ken of statutory provisions and therefore, the Commissioner (Appeals) is justified in setting aside the Order-in-Original (Annexure-3).

Discussions:

6. No provision of the Customs Act could be brought to notice by the counsel for the opposite parties that the Commissioner (Appeals) at the stage of giving consequential relief arising out of Appellate Order is authorized under law to revisit the Appellate Order and nullify the effect thereof in the garb of challenging the consequential Order-in-Original in the appeal, particularly when the findings and observations adjudicating entitlement of the petitioner in the Appellate Order was accepted by the Department.

6.1. The underlying principle of *functus officio* is highlighted in the case of *Ajay Mohan Vrs. H.N. Rai*, (2008) 2 SCC 507, wherein at paragraph 24 the following observation has been made:

“The order of the City Civil Court dated 13.10.2006 may be bad but then it was required to be set aside by the Court of Appeal. An appeal had been



preferred by the appellants thereagainst but the same had been withdrawn. The said order dated 13.10.2006, therefore, attained finality. The High Court, while allowing the appellant to withdraw the appeal, no doubt, passed an order of status quo for a period of two weeks in terms of its order dated 23.11.2006 but no reason therefor had been assigned. It *ex facie* had no jurisdiction to pass such an interim order. Once the appeal was permitted to be withdrawn, the Court became *functus officio*. It did not hear the parties on merit. It had not assigned any reason in support thereof. Ordinarily, a court, while allowing a party to withdraw an appeal, could not have granted a further relief. [See *G.E. Power Controls India Vrs. S. Lakshmipathy & Ors.*, (2005) 11 SCC 509].”

6.2. It is apposite in the present context to refer to the following exposition with regard to application of doctrine of *functus officio* in *Odisha Administrative Tribunal Bar Association Vrs. Union of India*, (2023) 6 SCR 731:

“90. *P. Ramanatha Aiyer’s The Law Lexicon* (1997 Edition) defines the term *functus officio* as:

‘A term applied to something which once has had a life and power, but which has become of no virtue whatsoever ... One who has fulfilled his office or is out of office; an authority who has performed the act authorised so that the authority is exhausted’.

91. *Black’s Law Dictionary* (5th Edition) defines the term as follows:



‘Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority ... an instrument, power, agency, etc. which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect.’

92. ***The doctrine of functus officio gives effect to the principle of finality. Once a judge or a quasi-judicial authority has rendered a decision, it is not open to her to revisit the decision and amend, correct, clarify, or reverse it (except in the exercise of the power of review, conferred by law). Once a judicial or quasi-judicial decision attains finality, it is subject to change only in proceedings before the appellate court.***

93. *For instance, Section 362 of the Code of Criminal Procedure 1973 provides that a court of law is not to alter its judgment once it is signed:*

‘362. Court not to alter judgment.—

Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.’

In Hari Singh Mann Vrs. Harbhajan Singh Bajwa, (2001) 1 SCC 169, this Court recognized that Section 362 was based on the doctrine of functus officio:

*‘10. *** The section is based on an acknowledged principle of law that once a matter is finally*



disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or an arithmetical error.'

94. ***The doctrine of functus officio exists to provide a clear point where the adjudicative process ends and to bring quietus to the dispute. Without it, decision-making bodies such as courts could endlessly revisit their decisions. With a definitive endpoint to a case before a court or quasi judicial authority, parties are free to seek judicial review or to prefer an appeal. Alternatively, their rights are determined with finality. Similar considerations do not apply to decisions by the State which are based entirely on policy or expediency.***

6.3. The doctrinaire concept of *functus officio* can be perceived in the judgment rendered by the Hon'ble Supreme Court of India in the case of *State of Punjab Vrs. Davinder Pal Singh Bhullar*, (2011) 15 (Addl.) SCR 540; relevant excerpts of said reported judgment need to be regarded for clarity in approach:

"26. There is no power of review with the Criminal Court after judgment has been rendered. The High Court



can alter or review its judgment before it is signed. When an order is passed, it cannot be reviewed. Section 362 Cr.P.C. is based on an acknowledged principle of law that **once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and is disentitled to entertain a fresh prayer for any relief unless the former order of final disposal is set aside by a Court of competent jurisdiction in a manner prescribed by law.** The Court becomes functus officio the moment the order for disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. There is also no provision for modification of the judgment. (See: Hari Singh Mann Vrs. Harbhajan Singh Bajwa, AIR 2001 SC 43; and Chhanni Vrs. State of U.P., AIR 2006 SC 3051). Moreover, the prohibition contained in Section 362 Cr.P.C. is absolute; after the judgment is signed, even the High Court in exercise of its inherent power under Section 482 Cr.P.C. has no authority or jurisdiction to alter/review the same. (See: Moti Lal Vrs. State of M.P., AIR 1994 SC 1544; Hari Singh Mann (supra); and State of Kerala Vrs. M.M. Manikantan Nair, AIR 2001 SC 2145).

27. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the



reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C. would not operate. In such eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. **The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault.** (Vide: Chitawan Vrs. Mahboob Ilahi, 1970 Cr.L.J. 378; Deepak Thanwardas Balwani Vrs. State of Maharashtra & Anr., 1985 Cr.L.J. 23; Habu Vrs. State of Rajasthan, AIR 1987 Raj. 83 (F.B.); B Swarth Mahto & Anr. Vrs. Dharmdeo Narain Singh, AIR 1972 SC 1300; Makkapati Nagaswara Sastri Vrs. S.S. Satyanarayan, AIR 1981 SC 1156; Asif Kumar Kar Vrs. State of West Bengal & Ors., (2009) 2 SCC 703; and Vishnu Agarwal Vrs. State of U.P. & Anr., AIR 2011 SC 1232).

28. This Court by virtue of Article 137 of the Constitution has been invested with an express power to review any judgment in Criminal Law and while no such power has been conferred on the High Court, inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code itself. (Vide: State Represented by D.S.P., S.B.C.I.D., Chennai Vrs. K. V. Rajendran & Ors., AIR 2009 SC 46).
29. In Smt. Sooraj Devi Vrs. Pyare Lal & Anr., AIR 1981 SC 736, this Court held that the prohibition in Section 362 Cr.P.C. against the Court altering or reviewing its judgment, is subject to what is 'otherwise provided by this Code or by any other



law for the time being in force'. Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in Section 362 Cr.P.C. and, therefore, the attempt to invoke that power can be of no avail.

30. Thus, the law on the issue can be summarised to the effect that the criminal justice delivery system does not clothe the court to add or delete any words, except to correct the clerical or arithmetical error as specifically been provided under the statute itself after pronouncement of the judgment as the Judge becomes *functus officio*. **Any mistake or glaring omission is left to be corrected only by the appropriate forum in accordance with law.**

6.4. Bearing in mind the aforesaid conceptual conspectus of doctrine of *functus officio*, on perusal of Order-in-Appeal dated 30.09.2023 it is found that the following observation was made:

“In view of the above, I am of the considered view that the drawback amounting to Rs.162,00,11,723/- against the first four Bill of Exports dated 01.07.2017, 31.07.2017, 04.09.2017 and 28.09.2017 is eligible subject to the direction given supra. The amount of drawback of Rs.3,07,64,749/- against the Bills of Export dated 31.10.2017, 30.11.2017, 30.12.2017, 31.01.2018 and 28.02.2018 is rejected as fresh application for fixation of brand rate has not been



filed in view of Rule 20 read with Rule 6 or 7 of the Drawback Rules, 2017.”

- 6.5. Said Order-in-Appeal was given effect to in the following manner in Order-in-Original dated 24.01.2024 by the Assistant Commissioner:

*“In view of the above, I am of the view that **the application filed dated 03.01.2023 and 03.01.2024 by M/s. Vedanta Ltd., Village: Banjari, District: Jharsuguda, Odisha-758201 in pursuance of Order-in-Appeal dated 30.09.2023 for sanction of drawback of Rs.162,00,11,728/- is hereby eligible.** However, taking into account the adjustment/reversal of input tax credit of CGST and IGST and applicable interest thereon total amounting to Rs.86,11,88,387/- which was adjusted from duty drawback on request of the claimant. **Thus, balance amount of drawback** works out to be Rs.75,88,23,341/- (Seventy Five Crore Eighty Eight Lakh Twenty Three Thousand Three Hundred Forty One only) which **is sanctioned for payment** to M/s. Vedanta Ltd., Village: Banjari, District: Jharsuguda, Odisha-768201 **under Section 75 of the Customs Act, 1962.**”*

- 6.6. However, the Commissioner (Appeals), Bhubaneswar in garb of sitting in appeal against the Order-in-Original dated 24.01.2024 sought to modify or nullify the effect of Order-in-Appeal, dated 30.09.2023 passed by the Commissioner (Appeals) (In-Situ), Bhubaneswar even while said Appellate Order had not been carried to higher fora. The Commissioner (Appeals) in the



impugned Order nullifying the Order-in-Original giving consequential effect held as follows:

“Hence, the drawback should have been sanctioned only if no ITC was availed and if the ITC was availed, then paid back along with interest before the drawback was applied.”

- 6.7. This Court is of the opinion that such an observation by revisiting/reviewing earlier Order-in-Appeal dated 30.09.2023 is unwholesome and cannot be countenanced in law. No objection is raised by the learned Deputy Solicitor General nor the Senior Standing Counsel as against following contents found reflected in paragraph 4.21 of the writ petition:

*“That the petitioner, thereafter, vide its Letters dated 03.10.2023 and 03.01.2024 addressed to the Deputy Commissioner of Customs, Bhubaneswar, sought disbursal of the duty drawback, sanctioned under the Order-in-Appeal dated 30.09.2023. **The Petitioner also conveyed its acceptance to reverse/adjust ITC to the tune of Rs.40,25,78,556/-, as was directed by Opposite Party No. 4 in the said Order-in-Appeal.**”*

- 6.8. Such fact being not controverted by the learned counsel for the opposite parties, the following observation made in *Commissioner of Central Excise Vrs. Bombay Dyeing & Mfg. Co. Ltd.*, (2007) 8 SCC 177, as placed by learned counsel for the petitioner, may be appropriate for reference:



“16. There is no merit in this civil appeal. Under the notification, mode of payment has not been prescribed. Further, exemption is given to the final product, namely, grey fabric. Under the Central Excise Act, 1944, levy is on manufacture but payment is at the time of clearance. Under the Act, payment of duty on yarn had to be at the spindle stage. However, when we come to Exemption Notification No. 14/2002-CE, the requirement was that exemption on grey fabric was admissible subject to the assessee paying duty on yarn before claiming exemption and subject to the assessee not claiming Cenvat credit before claiming exemption. The question of exemption from payment of duty on grey fabric arose on satisfaction of the said two conditions. In this case, payment of duty on yarn on deferred basis took place before clearance of grey fabric on which exemption was claimed. Therefore, payment was made before the stage of exemption. **Similarly, on payment of duty on the input (yarn) the assessee got the credit which was never utilised. That before utilisation, the entry has been reversed which amounts to not taking credit.** Hence, in this case, both the conditions are satisfied. Hence Item 1 of the table to Notification No.14/2002-CE would apply and accordingly the grey fabric would attract NIL rate of duty.”

6.9. The view expressed by the Hon'ble Supreme Court of India in the case of *CCE & Customs Vrs. Precot Meridian Ltd.*, (2021) 17 SCC 381 is also apposite in the present context, which is reproduced hereunder:



- “2. As mentioned above, this notification was issued on 28.02.1999. The product of the respondent is covered by the description of goods at Serial No. 133 of the table annexed with the General Exemption Notification. The assessee, however, had utilised the Modvat credit in the previous two years prior to 28.02.1999. As per the assessee, after the issuance of this notification, no such Modvat credit was ever taken or utilised. **Even the earlier Modvat credit which was utilised was returned or paid back on 10.01.2005. In this scenario, question arose as to whether the assessee fulfils the aforesaid condition in order to become eligible to get the benefit of the exemption notification.**
3. We note that five-Member Bench of the Tribunal in *Franco Italian Co. (P) Ltd. Vrs. CCE*, 2000 SCC OnLine CEGAT 1026 = (2000) 120 ELT 792 had taken the view that **even if the Modvat credit was utilised but, thereafter, refunded, it would amount to not utilising the said Modvat credit.** Same view has been taken by the High Court of Allahabad in *Hello Minerals Water (P) Ltd. Vrs. Union of India*, 2004 SCC OnLine All 2187 = (2004) 174 ELT 422.
4. **On a specific query put by the Court, we were informed that as far as the aforesaid two judgments are concerned, they were accepted by the Department and no appeal was filed thereagainst.** In the impugned judgment [*Precot Mills Ltd. Vrs. CCE*, 2006 SCC OnLine CESTAT 1256 = (2006) 201 ELT 356], the Tribunal has decided the issue in favour of the assessee relying upon the aforesaid two decisions.”



6.10. It is put forth by Sri Vishal Agarwal, learned Advocate that the denial of duty drawback upon restoration of input tax credit already availed is not justified in view of *Amit Cotton Industries Vrs. Principal Commissioner of Customs, 2019 (29) GSTL 200 (Guj) = 2019 SCC OnLine Guj 6909*.¹

6.11. Expanding his argument, the learned counsel for the petitioner would submit that challenge by the Revenue to the consequential Order-in-Original dated 24.01.2024 before the Commissioner (Appeals), Bhubaneswar could not be examined by reopening the issue already decided in the earlier appeal *vide* Appellate Order dated 30.09.2023 of the Principal Commissioner (Appeals) (In-Situ), Bhubaneswar inasmuch as the findings and observations in the said order attained finality. Such contention finds favour with in the ratio of judgment rendered by the Hon'ble Gujarat High Court in the case of *CTM Textile Mills Pvt. Ltd. Vrs. Union of India, (2011) 6 GSTR 552 (Guj) = 2009 (246) ELT 148 (Guj)*. In the said case it is observed as follows:

“13. In so far as the merits of the controversy are concerned, suffice it to state that in so far as the petitioner is concerned, the petitioner had agitated the matter right up to the level of the Tribunal and thereafter when the Tribunal decided against the

¹ *Vide Judgment dated 27.06.2019 in R/Special Civil Application No.20126 of 2018 of Hon'ble Gujarat High Court.*



petitioner on October 11, 2004 the petitioner of its own volition took a decision to accept the order made by the Tribunal without challenging the same. In the present petition filed by the petitioner, there is no explanation as to why the said order was not challenged by the petitioner. Therefore, on this limited count the petition deserves to be rejected.

14. *The contention based upon the two orders of this High Court referred to hereinbefore also cannot carry the case of the petitioner any further. As noted, the said orders had been made on August 12, 2002 and May 6, 2004, i.e., much prior to the point of time the Tribunal had rendered its decision on October 11, 2004 in the case of the petitioner. Therefore, once the said orders were available, the petitioner ought to have carried the matter further challenging the adverse order made by the Tribunal.*
15. ***The challenge to the consequential order dated January 4, 2006 made by the adjudicating authority pursuant to order made by the Tribunal is not required to be entertained on the merits considering the fact that the said order is not an independent order made for the first time. The said order had already been made on June 5, 2003. It was only because the intervening order dated September 19, 2003 of the Commissioner (Appeals), that the adjudicating authority was required to pass the consequential order once again on January 4, 2006 pursuant to the order made by the Tribunal. In the circumstances, once the order of the Tribunal had attained finality, the petitioner cannot claim any relief.***



6.12. This Court is, therefore, one with the submission of learned counsel for the petitioner that after the Appellate Order dated 30.09.2023 holding that the petitioner is entitled to the benefit of drawback, which being not challenged by the opposite parties attained finality, the impugned Order seeking to revisit the said issue and holding to the contrary by unsettling such finding of fact is erroneous and faulted with.

6.13. Another significant factor which needs to be highlighted herein is power to re-examine/review/recall by the Appellate Authority to vary with the issue adjudicated in the earlier round of co-appellate jurisdiction and the effect of Orders passed thereunder. Though provisions of *res judicata* as envisaged in Section 11 of the Code of Civil Procedure, 1908 and provisions of estoppel enshrined in Section 121 of the Bharatiya Sakshya Adhiniyam, 2023 (corresponding to Section 115 of the Indian Evidence Act, 1872) do not *stricto sensu* apply to the *quasi* judicial proceedings, the principles thereof can be adhered to. In *Dredging Corporation of India Vrs. State of Orissa*, (1995) 97 STC 10 (Ori) it has been enunciated that the Evidence Act has no statutory application to the Tribunals discharging *quasi* judicial function though for better adjudication they are to be guided by the principles of the Evidence Act. Unless contrary intention appears the procedures and principles of the Evidence



Act can be adopted to the proceedings under taxing statutes.

6.14. In *Dadu Dayalu Mahasabha, Jaipur (Trust) Vrs. Mahant Ram Niwas*, (2008) 11 SCC 753 it has been observed as follows:

“38. *Yet again in Hope Plantations Ltd. Vrs. Taluk Land Board*, (1999) 5 SCC 590:

‘20. ... An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matter of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force.’ [Ed.: Quoting from *Forward Construction Co. v. Prabhat Mandal*, (1986) 1 SCC 100, p. 112, para 20.]

It was furthermore opined: (SCC pp. 607-08, para 26)



‘26. ***It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars.*** Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrably wrong. ***When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it.*** They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. ***These two aspects are ‘cause of action estoppel’ and ‘issue estoppel’.*** These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. ***Their only remedy is to approach the higher forum if available.*** The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. ***Section 11 of the Code of Civil Procedure contains provisions of res judicata but***



these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.'

40. *Principle of issue estoppel and constructive res judicata had also been discussed at some length by this Court in Bhanu Kumar Jain Vrs. Archana Kumar, (2005) 1 SCC 787 to hold:*

'29. There is a distinction between 'issue estoppel' and 'res judicata'. [See Thoday Vrs. Thoday, (1962) 2 WLR 371 = (1964) 1 All ER 341 (CA)].

*30. Res judicata debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the doctrine issue estoppel is invoked against the party. If such an issue is decided against him, he would be estopped from raising the same in the latter proceeding. The doctrine of res judicata creates a different kind of estoppel viz. estoppel by accord.' ***"*

6.15. Perusal of the record and after hearing the counsel for respective parties, no reply could be given nor could the counsel for the opposite parties demonstrate with plausible reason deducing from the Orders of the Appellate Authorities and the Original Authorities. It could not be gainsaid that the entitlement or eligibility of the petitioner for availing benefit of drawback upon reversal of already availed input tax credit with regard to



Central Goods and Services Tax and Integrated Goods and Services Tax, which in fact the company had done in obeisance of Appellate Order dated 30.09.2023, was subject-matter in earlier appeal and the same was adjudicated upon by the Principal Commissioner (Appeals) (In-Situ). Rather indubitably it is admitted that the Revenue has never challenged said Appellate Order. Such fact has candidly been placed in the impugned Order at paragraph 5.3. Nonetheless, the Commissioner (Appeals) proceeded to refuse to grant such relief allowed by the Appellate Authority in Order-in-Appeal dated 30.09.2023.

6.16. The Hon'ble Supreme Court in *Commissioner of Customs Vrs. Kushalchand and Company*, (2016) 16 SCC 457 held that:

- “6. It is pertinent to mention that in spite of particular conclusion which was arrived at by the Tribunal that “cocoa powder” was “flour” and covered under the description of the licence, **the Department did not choose to challenge this finding by filing any further appeal, therefore, at least inter se between the parties, the said issue attained finality and this finding was binding on the Commissioner and, therefore, it was not open to the Commissioner to revisit the issue all over again and come to a contrary finding.**
7. The learned Attorney General made an endeavour to show that “cocoa powder” would not be covered by



the term “flour”. In view of the aforesaid facts emerging from the records, we refrain from going into the issue at all. Thus, insofar as the facts of this case are concerned, since the earlier order of the Tribunal was not challenged by the Department, the impugned order warrants no interference. We, thus, dismiss this appeal.”

6.17. Impugned Order dated 30.09.2025 (issued on 08.10.2025) of the Commissioner (Appeals), Bhubaneswar (Annexure-1) on a careful reading reveals the following:

*“5.3. I find that the instant drawback claim was sanctioned after the decision of the Commissioner (Appeals), Bhubaneswar vide Order-in-Appeal No.100-101/CUS/CCP/2023 dated 30.09.2023, wherein the party has been allowed drawback of Rs.162,00,11,728/- in respect of four numbers of Bills of Export subject to condition of reversal of ITC of Rs.40,25,78,556/-. Vide the Order-in-Appeal dated 30.09.2023 the Commissioner (Appeals) has also taken view that interest should not be levied on the reversal of ITC as availment of credit of CGST and IGST is quite lower than the drawback claims. **The Order of the Commissioner (Appeals) has been accepted by the Department on 18.12.2023. No appeal has been filed by the Department against the Order-in-Appeal dated 30.09.2023 issued by the Commissioner (Appeals). Accordingly, basing on the said Order-in-Appeal dated 30.09.2023, the instant drawback has also been sanctioned by the***



Assistant Commissioner, Bhubaneswar Customs Division vide Order-in-Appeal, dated 24.01.2024. But while sanctioning the drawback the original authority adjusted ITC of Rs.40,25,78,556/- along with interest of Rs.45,74,18,640 from the drawback.”

6.18. Notwithstanding such fact of adjustment being given by the Assistant Commissioner in his Order-in-Original dated 24.01.2024 in view of observation made in Appellate Order dated 30.09.2023 that “the appellant is eligible for transitional drawback @ 15.61% subject to reversal of ITC/adjustment of ITC, the suggestion of requisition of declaration becomes impossible because of the peculiar facts of the present case”, the Appellate Authority in the Appeal vide Order-in-Appeal dated 30.09.2025 held as follows:

“5.5. I find that the Reviewing Authority has relied upon Circular Nos. 23/2017-CUS, dated 30.6.2017 and 24/2019-CUS, dated 08.08.2019 to drive home the point that Drawback cannot be allowed wherein the input duties has been neutralised by way of ITC or refunded to the claimant. In view of such Circulars, I find that there is no ambiguity as regards the intention of the Government. Hence, the Drawback should have been sanctioned only if no ITC was availed and if the ITC was availed, then paid back along with interest before the Drawback was applied. In this case, I am of the opinion that the assessee has made concerted efforts to avail of two alternative benefits at the same time. **They are**



reversing one of the alternative benefits only when the same is noticed or apprehended by the Department. Such actions are not expected from a company of the repute of Vedanta Limited. In the instant case, as they have already availed ITC, I hold that they are not eligible for drawback. As they are not eligible for drawback, question of interest does not arise.

6.0. Accordingly,

- (i) *the appeal filed by M/s. Vedanta Limited is rejected.*
- (ii) *the appeal filed by the Department is allowed by setting aside the Order No. 01/CUS/BBSR/DRAWBACK/ASST. COMMR./2024, dated 24.01.2014 of the Assistant Commissioner, Bhubaneswar Customs Division.”*

6.19. Such conclusion arrived at by the Commissioner (Appeals), Bhubaneswar apparently depicts as if he is sitting in review against the earlier Appellate Order dated 30.09.2023 of the Principal Commissioner (Appeals) (In-Situ), Bhubaneswar and threw the earlier observations made in “peculiar facts” to winds. Nevertheless, he revised and/or nullified the decision rendered in appeals, bearing Nos.39/CUS/CCP/2023 and 110/CUS/CCP/2020, which were allowed *vide* Order-in-Appeal dated 30.09.2023 (Annexure-2).



6.20. Under the above premise, regard may be had to the following principle reiterated in *Sulthan Said Ibrahim Vrs. Prakasan*, (2025) 5 SCR 2185:

“53. The High Court, in its impugned order, held the application of the appellant under Order I, Rule 10 to be barred by *res judicata* and thus not maintainable on that ground. We find no infirmity in the said observation made by the High Court. This Court in *Bhanu Kumar Jain Vrs. Archana Kumar* reported in (2005) 1 SCC 787 observed that **the principles of *res judicata* apply not only to two different proceedings but also to different stages of the same proceeding as well.** The relevant observations are reproduced hereinbelow:

‘18. **It is now well settled that principles of *res judicata* apply in different stages of the same proceedings.** (See *Satyadhyan Ghosal Vrs. Deorajin Debi*, AIR 1960 SC 941 = (1960) 3 SCR 590 and *Prahlad Singh Vrs. Col. Sukhdev Singh*, (1987) 1 SCC 727.)

19. In *Y.B. Patil*, (1976) 4 SCC 66 it was held:

‘4. ... **It is well settled that principles of *res judicata* can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding.**’



21. Yet again in *Hope Plantations Ltd.*, (1999) 5 SCC 590 this Court laid down the law in the following terms:

‘17. ... One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice.’ *”**

6.21. It, thus, needs no further authority to be cited to say that the Appellate Authority in a subsequent proceeding could not tinker with the issue decided in the earlier appeal forming part of the same transaction and doing so would tantamount to review of his own order. The counsel appearing for the opposite parties could not throw light that such power of review or to revisit/relook has been conferred on the Appellate Authority concerned by or under the statute. On the admission of the Appellate Authority in the impugned Order-in-Appeal dated 30.09.2025 (issued on 08.10.2025) that the Order-in-Appeal dated 30.09.2023 has attained finality as no appeal was preferred by the Revenue, it is axiomatic that



the findings recorded and the observation made therein got accepted and the consequential effect of such order is required to be carried out and the directions contained therein are to be implemented in true letter and spirit.

6.22. In *Union of India Vrs. Kamlakshi Finance Corporation Ltd.*, AIR 1992 SC 711 the Supreme Court of India had directed the Department to adhere to the judicial discipline and give effect to the orders of higher Appellate Authorities which are binding on them. The relevant observations of made therein are required to be noted, which read thus:

“6. *** *The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. **The mere fact that the order of the appellate authority is not “acceptable” to the***



department— in itself an objectionable phrase— and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws.

8. *** The observations of the High Court should be kept in mind in future and utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them.”

6.23. In the case of *Tirupati Balaji Developers Private Ltd. Vrs. State of Bihar*, (2004) 5 SCC 1, the Supreme Court held thus:

“The very conferral of appellate jurisdiction carries with it certain consequences. Conferral of a principal substantive jurisdiction carries with it, as a necessary concomitant of that power, the power to exercise such other incidental and ancillary powers without which the conferral of the principal power shall be rendered redundant. As held by Their Lordships of the Privy Council in *Nagendra Nath Dey Vrs. Suresh Chandra Dey*, AIR 1932 PC 165 (Sir Dinshah Mulla speaking for the Bench of five), an appeal is an application by a party to an appellate court asking it to set aside or revise a decision of a subordinate court. The appeal does not cease to be an appeal though



irregular or incompetent. Placing on record his opinion, Subramania Ayyar, J. as a member of the Full Bench (of five Judges) in Chappan Vrs. Moidin Kutti (1899) 22 ILR Mad 68 (at page 80) stated, inter alia, that appeal is ‘the removal of a cause or a suit from an inferior to a superior judge or court for re-examination or review’. According to Wharton’s Law Lexicon such removal of a cause or suit is for the purpose of testing the soundness of the decision of the inferior court. In consonance with this particular meaning of appeal, ‘appellate jurisdiction ‘means’ the power of a superior court to review the decision of an inferior court.’ ‘Here the two things which are required to constitute appellate jurisdiction, are the existence of the relation of superior and inferior court and the power on the part of the former to review decisions of the latter. This has been well put by Story:

*‘The essential criterion of appellate jurisdiction is, that it revises and corrects the proceedings in a cause already instituted and does not create that cause. In reference to judicial Tribunals an appellate jurisdiction, therefore, necessarily implies that the subject-matter has been already instituted and acted upon by some other court, whose judgment or proceedings are to be revised, (Section 1761, Commentaries on the Constitution of the United States). ***’*

6.24. In *Orissa Forest Corporation Ltd. Vrs. Assistant Collector*, 1982 SCC OnLine Ori 209 this Court made the following observation:

“4. We do not think this should be the attitude of the Union Government. The demand is under the Statute and the statutory appellate authority, on the set of facts which are common both to the period when



*relief was granted and the period for which the impugned demand has been made, has already determined that no levy is exigible. **As long as the appellate order stands, it must be duly respected and only when the revisional authority vacates the order and holds that the decision of the appellate authority is wrong and the demand was justified, no demand should be raised. It has been indicated on more than one occasions by the Supreme Court with reference to directions of the Appellate Tribunal under the Income Tax Act that such directions are binding and decisions rendered by appellate authorities should be respected by the subordinate revenue authorities and no attempt should be made to wriggle out of the binding decisions of higher authorities as long as they remain in force.** The same principle should be applied to the present set of facts and we are, therefore, inclined to take the view that the demand under Annexure-4 should be set aside but we would make it clear that in the event of the appellate orders being vacated, under the Statute the liability would revive and notwithstanding our quashing Annexure-4 the statutory authority would be entitled to raise a demand in terms of the decision which may be ultimately sustained under the Statute."*

6.25. The following dicta laid down in *BSNL Vrs. Union of India*, (2006) 3 SCC 1 may usefully be kept in mind in the present context:



“20. The decisions cited have uniformly held that *res judicata* does not apply in matters pertaining to tax for different assessment years because *res judicata* applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. **The Courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why the Courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of *res judicata* but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view.** This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is *per incuriam*. However, these are fetters only on a coordinate Bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior strength or in some cases to a Bench of superior jurisdiction.”

6.26. Therefore, this Court is of the considered view that the Order-in-Appeal (Nos.123/CUS/CCP/2023 and 02/CUS/CCP/2024), dated 30.09.2025, issued on 08.10.2025 (Annexure-1) is flawed and pernicious and the Commissioner (Appeals), Bhubaneswar in the said



appeals arising out of the subject-Bills of Export could not take a different view than what had already been taken by the Principal Commissioner (Appeals) (In-Situ), Bhubaneswar *vide* Order-in-Appeal dated 30.09.2023 in Appeal bearing Nos.39/CUS/CCP/2023 and 110/CUS/CCP/2020.

Conclusions:

7. Upholding the Order-in-Appeal dated 30.09.2025 (Annexure-1) apropos the present set of facts and circumstances would not only contradict established precedents but would also facilitate the Authorities to revise/review/recall/revisit the findings and observations made in earlier round of litigation. Giving *quietus* to the issue already decided/adjudicated upon is the policy, or else it would incentivise never-ending/perpetual litigation on the same issue. The policy described is central to the stability of the legal system, ensuring protection of individuals from 'double jeopardy' that once a competent Court has rendered a decision on a specific set of facts *qua* the parties, the matter is laid to rest permanently. In the wake of above discussions and analysis of legal perspective, the Order-in-Appeal dated 30.09.2025, (Appeal Nos. 123/CUS/CCP/ 2023 and 02/CUS/CCP/2024), issued on 08.10.2025 (Annexure-1) passed by the Commissioner (Appeals), Bhubaneswar cannot withstand judicial scrutiny and



hence, it is liable to be set aside. This Court, therefore, does so.

7.1. Having thus set aside the impugned Order, further order is felt necessary to be given. The matter is now remitted to the Commissioner (Appeals), Bhubaneswar to consider the merit of the grounds of respective appellants before him in Appeal Nos.123/CUS/CCP/2023 and 02/CUS/CCP/2024 and after affording opportunity of hearing to them may pass appropriate orders keeping in view the observations made hereinabove.

8. *Ergo*, the writ petition is allowed to the extent indicated above and pending interlocutory application(s), if any, shall stand disposed of, but in the circumstances there shall be no order as to costs.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE