IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (T) No. 4572 of 2021 Anvil Cables Pvt. Ltd. through its Director, Tushar Dalmia ……. Petitioner Versus 1.The State of Jharkhand through its Secretary cum Commissioner, State Tax Department, having its office at Project Building, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi. 2.The Joint Commissioner of State Tax (Administration), Jamshedpur Division, Jamshedpur, having its office at Sakchi, P.O. & P.S.-Sakchi, District-Jamshedpur. 3.The Deputy Commissioner of State Tax, Adityapur Circle, Jamshedpur, having its office at Sakchi, P.O. & P.S.-Sakchi, District-Jamshedpur. ……. Respondents CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh Hon'ble Mr. Justice Deepak Roshan ….. For the Petitioner : Ms. Amrita Sinha, Adv. For the Respondents : Mr. Sachin Kumar, AAG-II Mr. Gaurav Raj, A.C. to A.A.G-II 07/21.02.2023 Heard learned counsel for the parties. 2. The instant writ petition has been filed by the petitioner praying therein for the following reliefs:- (i) For a direction upon the concerned respondent authority to allow the petitioner to avail/utilize its excess Tax Deducted at Source (in short TDS) Credit amounting to Rs. 1, 19, 41, 937.36 available as on 30th June, 2017 i.e. Pre Goods and Services Tax regime. (ii) For a direction upon the concerned respondent to accept the FORM GST TRAN-1 filed by the petitioner within time in terms of Rule 117 of the JGST Rules, 2017 claiming therein its excess TDS credit available as on 30th June 2017, which has been rejected by the respondent authority merely on the instance of Audit Observation by Accountant general, Jharkhand Ranchi on vide I.R. 48/2018-19. (iii) For issuance of an appropriate writ or a writ in the nature of certiorari for quashing and setting aside the ex-parte revision order dated 30.07.2021 (Annexure-10) passed under section 108 of the Jharkhand Goods and Services Tax Act, 2017, at its preliminary stage itself and even without forming its independent reasoning for disallowing the amount as transited in TRAN-1 and simply copy paste the audit observation and even without giving an opportunity of hearing to the petitioner passed the order and consequential Demand Notice in Form GST APL-04 being No. 694 dated 31.07.2021 under rule 109 B, 113(1) and 115 of the Jharkhand Goods and Services Tax Rules, 2017 (Annexure-11) raising a total demand of Rs. 1,60,02,196.69/- including penalty and interest therein. (iv) For issuance of an appropriate writ or a writ in the nature of certiorari for quashing and setting aside the Audit Observation by Accountant General, Jharkhand Ranchi on vide I.R. 48/2018-19 para 11: Incorrect claim/availment of transitional credit of ITC (Annexure-13) 2 3. The brief facts of the case is that the petitioner is engaged in the manufacturing and selling of aluminum cable and conductor, having its manufacturing unit at Jamshedpur. Petitioner is one of the main dealers of the Jharkhand Bijli Vitran Nigam Limited (for short JBVNL). The JBVNL while releasing the payment of the petitioner used to deduct tax under section 45 of the JVAT Act by way of advance recovery. Section 45 of JVAT Act deals with "Special Provision relating to Advance Recovery of Tax on Sales and Supplies to Governments and the other persons", which include the Electricity Board. The said amount so deducted is liable for adjustment from the tax liability of the person from whose bills such deduction has been made.Accordingly, the petitioner used to take credit of tax deducted and paid from his bills and remaining, if any, was being carried forward to next period as Tax Deducted at Source (TDS). On 26.09.2017 petitioner filed its quarterly return for the period 01.04.2017 to 30.06.2017. As per column 57 of the aforesaid return the total TDSfor the aforesaid period was Rs.2,59,26,991/-. After being adjusted from the VAT payable during the period and other adjustment the balance amounting to Rs.1,24,68,378.36/- was auto populated in column 61 of the Return being "Excess Input Tax Credit to be C/F to next period". On 01.07.2017, the GST Law was implemented, wherein section 140(1) of the JGST Act, 2017 makes every person entitled to take in his electronic credit ledger credit of the amount of Value Added Tax and Entry Tax, if any, carried forward in the return relating to the period ending 30.06.2017.In order to take credit of the aforesaid amount, the petitioner filed statutory form i.e., GST TRAN-1 migrating Rs.1,19,41,397/- from VAT regime to GST regime. The TRAN-1 filed by the petitioner was duly accepted by the respondent-Department and the petitioner was allowed to carry forward the amount deducted toward TDS under JVAT Act. However, to the utter surprise of the

petitioner and after lapse 2½ years the petitioner was in receipt of a notice granting opportunity of hearing to the petitioner in a revisional proceeding initiated under section 108 of the JGST Act suo-moto by the Commissioner, fixing a date of hearing on 10.02.2021. No reason, whatsoever, was assigned therein for initiating the said proceeding.In compliance, the petitioner duly appeared wherein he was informed that pursuant to audit objection (Annexure-13) revisional proceeding has been initiated against the petitioner for wrongly availing the 3 TDS amount in its TRAN-1 not being ITC. On 15.02.2021 the petitioner filed its written statement raising a preliminary objection with respect to audit objections and other grounds.Without considering the preliminary objection raised by the petitioner and ground mentioned therein and even without granting any opportunity of hearing, Joint Commissioner of State Tax (Respondent No.2)passed the Ex-Parte impugned order dated 30.07.2021 rejecting the TRAN-1 and directing the petitioner to refund excess ITC claimed amounting to Rs.1,19,41,937.86/- along with penalty under section 73(9)@10% and interest @24%, total amounting Rs. 1,60,02,196.69/-. 4. Ms. Amrita Sinha, learned counsel for the petitioner submits that the present case of the petitioner is squarely covered by the Judgment & order of this Court dated 09.01.2023 passed in W.P.(T) No.2404/2020, namely M/s Subhash Singh Choudhry & other analogous matter. She submits that in the present writ petition the issue is same; herein also the Respondent Authorities has denied the migration of TDS amount in term of section 140(1) of the JGST Act holding therein that the TDS is not an ITC and that the ITC for the Financial Year 2017-2018 as on 30.06.2017 is NIL. She further submits that the amount so deducted from the bills of the petitioner is nothing but Tax Deducted at Source. The amount credited in advance by the payer assumes the character of tax in the light of Article 265 as held by Madras High court in D.M.R constructions Vs. The Asst. Commissioner passed in W.P. No. 9991/2020 & others analogous matters. She lastly submits that the advance recovery of the tax under section 45 of JVAT Act is a Tax deducted at source and the same assume the character of tax the moment it is deducted and deposited in the Govt. Treasury. Section 45(4) deals with such situation which says “Payment of the amount deducted under sub-section (1) into the Government Treasury by the person making the deduction shall be deemed to be a payment by or on behalf of the seller or supplier concerned.” Further section 45(7) says that sub section (4) and (5) of section 44 of the Act shall mutatis mutandis, apply. Sub section (4) and (5) of section 44 deals with issuance of certificate of Tax Deduction and adjustment of tax from the total output tax liability of the dealer.Thus, the petitioner is duly entitled for migration of TDS amount in term of section 140(1) of JGST Act as held by this Court in W.P(T) No. 2404/2020 vide order dated 09.01.2023. 4 5. Mr. Sachin Kumar, learned AAG-II submits that the records of the petitioner Anvil Cables (P) Ltd. for F/Y 2017-18 in Adityapur Circle, Jamshedpur were audited by the Accountant General Jharkhand, Ranchi vide I.R. 48/2018-19. In audit report it has been pointed out that the petitioner Company has claimed transitional credit of I.T.C. for Rs. 1, 31, 77, 963.63 by TRAN-1 dated 23.12.2017 and had wrongly claimed and availed ITC of Rs.1,19,41,937/- which was to be reversed and deposited along with interest under section 50(3) and penalty under section 73(9) of the JGST Act amounting to Rs. 28,66,064.96 and Rs. 11,94,197.74/- respectively till 25.01.2018. He further submits that on perusal of the Audit Report by the Revisional authority it was found that the adjudicating authority had passed an order dated 17.01.2019 and consequently issued a demand notice on the company in DRC-07 for Rs.1,81,577.15 each for SGST & CGST and revised DRC-08 was served on the company. However, after receipt of the I.R. by Accountant General proceeding was initiated on 03.04.2019 by the DCST Adityapur. On perusal of the audit observation and examination of the assessment records of the Company and upon information received by the DCST Adityapur Circle prima facie it appeared that the order dated 29.01.2019 passed by the adjudicating authority required to be revised. Therefore, it was decided to initiate proceeding under section 108 of the JGST Act, 2017 for Revision of the order passed by the DCST Adityapur Circle. He also submits that in revision proceeding notice was issued under section 108 dated 05.02.2021 and 06.03.2021 to the

Petitioner Company as well as DCST, Adityapur Circle. He further submits that Revisional authority after going through the entire records of the case and also the judgment of the Bombay High Court relied upon by the petitioner-company revised the order under section 108 of the JGST Act, 2017 holding that the Kiran Gems Private Limited case related to Section 72A of the Finance Act 1994 and in said act there was a provision of CERA (Central Excise and Revenue Audit) whereunder the audit is conducted under the overall supervision of the Principal Director of Audit (Central) Kolkata in the Indian Audit Department of Government of India. In M/s Kiran Gems Pvt. Ltd case audit was conducted of the accounts of M/s Kiran Gems Pvt. Ltd. without proper permission as required under the Act and the present case audit has been 5 conducted of the assessment record for F/Y 2017-18 in Adityapur Circle and not the books of accounts of Anvil Cables Pvt. (Ltd.). He lastly submits that from the revisional order dated 30.07.2021 it is crystal clear that petitioner-company was issued notice and the petitioner□company appeared and filed its written submission in the case and after considering the same order dated 30.07.2021 was passed giving proper opportunity of hearing to the petitioner-company. 6. Having heard learned counsel for the parties it appears that the issue involved in this case is “whether the petitioner is entitled to migrate in its electronic credit ledger the credit of amount of Excess Tax Deducted at source under section 45 of the JVAT Act, 2005 amounting to Rs. 1,19,41,937/- available as on 30.06.2017 under section 140(1) of the JGST Act being “ a credit of the amount of the Value Added Tax’ which a registered person is entitled to migrate in its electronic credit ledger”. The issue before this Court in W.P.(T) No. 2404/2020 was “Where the amount deducted towards TDS under section 44 of the Jharkhand Value Added Tax is a credit of the amount of Value Added Tax which a registered person is entitled to migrate in its electronic credit ledger”. This Court in para 15 of the aforesaid judgment has interpreted the proviso to section 140(1) of the JGST Act and has held therein that the proviso restricts the migration of credit, if the credit pertains to transactions which were prohibited under section 17(5) of the JGST Act in which no input tax credit is available. Any contrary interpretation given to the proviso would have an effect of nullifying and/or setting at naught the real object of the transitional provision. This Court has further at para 16 of the aforesaid order observed that one provision under statute cannot be used to defeat another and it should not be lightly assumed that what legislation has given with one hand has taken away the same with other. Accordingly, it was held that action of respondent Authority denying the migration of TDS amount and consequently, levying interest and penalty thereupon is not sustainable in the eye of law and has quashed impugned order and the demand Notice.For brevity para 16 to 18 is quoted hereinbelow: “16. It is also a well settled principal of law that one provision under a statute cannot be used to defeat another and it should not be lightly assumed that what legislature has given with one hand has taken away the same with other. If we give a wider interpretation to the proviso as suggested by the Respondent, the use of the words ‘entry tax’ under Section 140(1) of the JGST Act would be rendered nugatory as admittedly by virtue of 101st 6 Constitutional Amendment, Entry 52 of List II has been deleted and, under no circumstances, entry tax would have been available as input tax credit under the GST Regime. Thus, we are of the opinion that proviso Clause (i) to Section 140(1) of the JGST Act only restricts migration of such amount of credit where there is an express prohibition in respect of such transaction of claiming input tax credit under Section 17(5) of the GST Act. 17. We have also carefully examined Rule 117 of the JGST Rules which restricts the transitional provision of Section 140(1) of the JGST Act and permits only, migration of ‘input tax credit’ as against credit of value added tax and entry tax stipulated under Section 140(1) of the JGST Act. Admittedly, Rule 117 of the JGST Rules, is a subordinate legislation and is restricts the scope of Section 140(1) of the JGST Act. As a Constitutional Court, we are bound to ignore Rule 117 of the JGST Rules when the question of its enforcement arises and mere fact that there was no specific relief sought for to strike down or to declare the said Rules as ultra vires would not stand in our way of not enforcing them. [See Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise

&Anr. (Supra)]. The aforesaid view has also been expressed by the Hon'ble Apex Court in the case of Bharthidasan University v. All-India Council for Technical Education reported in (2001) 8 SCC 676, wherein it was held as under:- "14. The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make Regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific relief sought for strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would therefore, be a myth to state that the Regulations made under Section 23 of the Act have 'constitutional' and legal status, even unmindful of the fact that any one or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or blind a university in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions." 18. Apart from the above, we cannot ignore the fact that unadjusted TDS amount would have been otherwise refundable to the Petitioners if the same were not allowed to be carried forward as excess input tax credit in the statutory format of quarterly return being Form JVAT 200. We have examined the format of quarterly return, wherein vide column 61, unadjusted TDS amount has been treated as input tax credit amount and was required to be carried forward in the next succeeding months. The Petitioners at the time of filing of their returns were left with no option but to forward the unadjusted TDS amount as excess input 7 tax credit in the succeeding months and were not required or compelled to claim refund of unadjusted TDS amount. Thus, at this stage, the Respondents cannot contend that unadjusted TDS amount cannot be allowed to be migrated in terms of Section 140(1) of the JGST Act. Even otherwise, the stand of the Respondents is self-destructive, as if the Petitioners are not allowed to migrate the unadjusted TDS amount under the GST Regime, they would have become entitled for refund of the same with effect from 1st July, 2017 and would have certainly been entitled to statutory interest @ 9% on the said amount in terms of Section 52/53 of the JVAT Act." 7. Having regard to the facts of the case; since the issue involved in this case is squarely covered by the judgment passed by this Court in W.P.(T) No. 2404 of 2020, the impugned order dated 30.07.2021 passed in revision and Demand Notice dated 31.07.2021 are quashed and set aside. The amount, if any, recovered or paid shall be refunded or adjusted for future liabilities. As a result, the instant application is allowed.