

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11470 of 2019

M/s AFCONS- SIBMOST Joint Venture through Mr. Chandraprakash Jain alias Mr. Chandraprakash, Senior Manager (Accounts), aged about 52 years, Male, S/o Bhagchand, Registered Office at 4th Floor, 401 Asiana Chamber, Exhibition Road, P.S. Gandhi Maidan, Patna-800001, presently residing at 4 AI 8, Dadabadi, Sektar-4, Blak-AI, Vadarnan-03, P.S.-Kota, District-Kota, State-Rajasthan 324009

... .. Petitioner/s

Versus

1. The Union of India through its Secretary, Ministry of Finance, Department of Revenue, No. 137 North Block, New Delhi-110001
2. Goods and Services Tax Council Office of the GST Council Seceretary, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi-110001
3. Joint Commissioner State Tax Patliputra Circle, Patna Bhawan, 4th Floor, Bailey Road, Patna (Bihar)

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 11501 of 2019

M/S AFCONS - SIBMOST Joint Venture, through Mr. Chandraprakash Jain @ Mr. Chandraprakash, Senior Manager (Accounts) aged about 52 years, Male, S/o Bhagchand, Registered office at 4th Floor, 401 Asiana Chamber, Exhibition Road, P.S. Gandhi Maidan, Patna 800001, presently residing at 4 AI 8, Dadabadi, Sektar- 4, Blak- AI, Vadarnan- 03, P.S.- Kota, District- Kota, State- Rajasthan- 324009.

... .. Petitioner/s

Versus

1. Bihar Commercial Taxes Department through its Secretary, Vikas Bhawan, Bailey Road, Patna- 800001.
2. Goods and Services Tax Council, office of the GST Council Seceretary, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi- 110001.
3. Joint Commissioner State Tax, Patliputra Circle, Patna Bhawan, 4th Floor, Bailey Road, Patna (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sujit Ghosh, Sr. Advocate Mr. Anujit Sinha, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11 Dr. K.N. Singh, ASG Mr. Anshuman Singh, Sr. SC CGST & CX



**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 13-01-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

- (i) An appropriate writ(s), order(s) or direction(s) declaring the explanation (a) to Rule 89(5) of the Central Goods and Services Tax, Rules 2017 ("CGST Rules" or "the Rules") on the ground that it is ultra-vires Section 54(3) of the Central Goods and Services Tax Act, 2017 ("CGST Act" or "the Act") by giving a restrictive definition to the expression "Net ITC" in the formula prescribed therein.
- (ii) An appropriate writ of Mandamus directing that if Rule 89(5) is indeed in consonance with Section 54 of the Act, by virtue of Proviso (ii) to Section 54(3), then proviso (ii) to Section 54(3) is ultra-vires Articles 14, 19 and 300A of the Constitution of India.



Mr. Sujit Ghosh, learned Senior Counsel, under instructions from the petitioner, seeks permission to withdraw the present writ petitions for the reason that the issue already stands settled in view of the decision rendered by Hon'ble the Apex Court in Civil Appeal No. 4810/2021, Union of India and Ors. Vs VKC Footsteps India Pvt. Limited.

Permission granted.

The present petitions stand disposed of as withdrawn.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	17.01.2022
Transmission Date	

