***THE HON'BLE SRI JUSTICE SUJOY PAUL**
AND
***THE HON'BLE Dr. JUSTICE G. RADHA RANI**

+WRIT PETITION Nos.1154 OF 2024 & BATCH

% 02-01-2025

M/s.Brunda Infra Pvt. Limited and Others.

...Petitioners

vs.

$ The Additional Commissioner of Central Tax,
O/o. The Principal Commissioner of Central Tax,
Hyderabad GST Commissionerate, GST Bhavan,
Basheerbagh, Hyderabad and Others

... Respondents

!Counsel for the Petitioners: Sri S.Ravi, learned Senior Counsel, assisted by Sri P.Venkata Prasad

Sri V.Bhaskar Reddy, learned Senior Counsel, assisted by Sri V.Siddarth Reddy

Sri V.Sridharan, learned Senior Counsel, assisted by Sri Narendra Dave

Sri Singam Srinivasa Rao

Sri A.V.A. Siva Karthikeya

Sri Nishant Mishra, learned counsel assisted by Sri Omer Farooq

Sri SRR Viswanath, learned counsel assisted by Ms. S.N. Sreedevi

Sri P. Govind Reddy

Sri M. Ramachandra Murthy

Sri Karthik Ramana Puttamreddy

Dr. Avinash Poddar

^Counsel for Respondents: Sri B.Narasimha Sharma, learned Additional Solicitor General of India, assisted by Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India

Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC, assisted by Ms.Pravalika Goud

Sri R.Sushanth Reddy, learned Standing Counsel for CBIC

<Gist :

>Head Note :

? Cases referred

1. MANU/SC/0408/2017
2. (2024) 19 Centax 82 (Allahabad)
3. 2024(9) TMI 1398 Gauhati High Court
4. (2024) 25 Centax 55 (Pat.)
5. (2016) 12 SCC 613
6. (2022) 104 G S.T.R. 51 (Telangana)
7. 2023 SCC OnLine SC 1592
8. (1989) 3 SCC 132
9. (2021) 1 SCC 539
10. (2001) 4 SCC 215
11. AIR 1964 SC 1742
12. 1971 (2) SCC 564
13. (2016) 4 SCC 769
14. (2017) 8 SCC 307
15. (2004) 9 SCC 686
16. 2023 SCC OnLine Jhar 1188
17. (2008) 9 SCC 306
18. (1990) 2 SCC 378
19. (2001) 7 SCC 71
20. AIR 2012 SC 3791
21. 2017 (6) ADR 707
22. (1984) 4 SCC 27
23. (2024) 2 S.C.R. 194
24. 2024 (10) TMI 286
25. (2022) 10 SCC 700
26. O.M.P. (I) (COMM.) No.88/2020, dated 29.05.2020.
27. 1957 SCC OnLine SC 27
28. 2022 SCC OnLine SC 587
29. 2024 (10) TMI 1166
30. (1988) 2 SCC 351
31. W.P.A.No.11578 of 2021, dated 01.10.2021
32. 2015 (11) SCC 669
33. 2023 SCC Online SC 550
34. (2019) 9 SCC 1
35. (2023) 6 SCC 451
36. 2006(4) SCC 517
37. 2020 SCC OnLine Mad 1026
38. (2011) 1 SCC 236
39. (2022) 2 SCC 221
40. AIR 1977 SC 1302
41. AIR 1963 SC 274
42. (1869) LR 4 HL 100
43. (1921) 1 kb 64

44. JT 1999 (2) SC 272
45. (1951) 2 All ER 473
46. 1936 SCC OnLine PC 41
47. (1999) 8 SCC 266
48. (1999) 3 SCC 422
49. (2015) 7 SCC 690
50. (2016) 9 SCC 20
51. (2019) 3 SCC 224
52. (2020) 13 SCC 234
53. (2021) 6 SCC 707
54. (2022) 8 SCC 713
55. (2023) 10 SCC 461
56. (1986) 1 SCC 264
57. (1977) 2 SCC 256
58. (1987) 1 SCC 424
59. (2013) 3 SCC 489
60. (2007) 8 SCC 338
61. (2010) 13 SCC 98
62. (2020) 9 SCC 121
63. AIR 1980 SC 286
64. (2008) 13 SCC 1
65. (2023) 2 SCC 597
66. (1985) 3 SCC 545

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD
* * * *

WRIT PETITION Nos.1154 OF 2024 & BATCH

Between:

M/s.Brunda Infra Pvt. Limited and Others.

...Petitioners

vs.

The Additional Commissioner of Central Tax,
O/o. The Principal Commissioner of Central Tax,
Hyderabad GST Commissionerate, GST Bhavan,
Basheerbagh, Hyderabad and Others

... Respondents

JUDGMENT PRONOUNCED ON: 02.01.2025

THE HON'BLE SRI JUSTICE SUJOY PAUL
AND
THE HON'BLE Dr. JUSTICE G. RADHA RANI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? :

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? :

3. Whether His Lordship wishes to see the fair copy of the Judgment? :

_____
SUJOY PAUL, J

_____
Dr. G.RADHA RANI, J

THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HON'BLE Dr. JUSTICE G. RADHA RANI

WRIT PETITION NOS. 1154, 2123 2851, 3624, 4680, 5238, 5485, 5567, 5617, 5911, 5917, 6692, 6856, 7140, 7208, 7596, 8015, 8022, 8133, 8196, 8273, 8530, 8569, 8768, 9177, 9435, 9490, 9790, 9947, 9979, 10322, 10331, 10565, 10591, 10725, 10733, 10766, 10790, 13212, 13291, 13737, 13746, 13756, 13767, 13777, 13779, 13786, 13795, 13799, 13804, 13818, 13819, 13821, 13822, 13823, 13841, 13842, 13853, 13859, 13917, 13934, 13940, 14100, 14179, 14182,
14268, 14281, 14289, 14437, 14476, 14496, 14729, 14843, 14896, 14947, 15013, 15150, 15201, 15332, 15381, 15439, 15452, 15479, 15483, 15492, 15510, 15569, 15648, 15855, 15863, 16038, 16118, 16281, 16350, 16374, 16656, 16875, 16920, 17012, 17015, 17224, 17294, 17682, 17684, 17766, 17916, 17967, 17990, 18097, 18115, 18117, 18126, 18172, 18176, 18198, 18310, 18425, 18438, 18486, 18613, 18618, 18684, 18894, 19008, 19205, 19594, 19757, 19992, 20150, 20164, 20232, 20233, 20234, 20235, 20355, 20371, 20429, 20671, 20676, 20680, 22410, 22472, 22524, 22535, 22552, 22588, 23087, 23282, 23538, 23962, 25177, 25272, 25742, 26603, 26606, 26621, 26646, 27082, 27228, 27725, 28511, 28653, 28657, 28757, 28808, 29363, 29507, 29516, 29531, 29539, 29544, 29554, 29560, 29806, 29881, 29915, 30025, 30047, 30113, 30133, 30142, 30194, 30471, 30474, 30621, 30638, 30657, 30784, 30815, 30858, 30896, 30945, 31071, 31125, 31178, 31199, 31210, 31229, 31286, 31348, 31363, 31463, 31479, 31498, 31650, 31666, 31704, 31716, 31792, 31807, 31864, 31885, 31967, 31984, 32008, 32080, 32113, 32116, 32118, 32131, 32133, 32180, 32183, 32185, 32243, 32270, 32333, 32393, 32431, 32433, 32453, 32466, 32472, 32484, 32487, 32502, 32509, 32573, 32585, 32606, 32665, 32685, 32690, 32693, 32716, 32722, 32755, 32790, 32821, 32826, 32883, 32888, 32988, 33023, 33026, 33032, 33046, 33048, 33050, 33071, 33075, 33138, 33212, 33219, 33220, 33286, 33355, 33361, 33375, 33385, 33390, 33402, 33448, 33506, 33513, 33552, 33584, 33631, 33651, 33710, 33717, 33732, 33747, 33889, 33896, 33935, 33954, 34002, 34006, 34010, 34031, 34035, 34065, 34069, 34077, 34094, 34117, 34135, 34174, 34177, 34208, 34273, 34468, 34482, 34486, 34533, 34550, 34584, 34625, 34628, 34677, 34706, 34712, 34737, 34887, 34927, 34988, 35008, 35034, 35040, 35073, 35126, 35167, 35191, 35201, 35211 35228, 35246, 35247, 35249, 35296, 35340, 35345, 35396, 35409, 35434, 35590,

35628, 35828, 35835, 35968, 35974, 35976, 35994, 36027, 36065, 36102, 36103, 36112, 36129, 36251, 36288, 36324, 36383, 36602, 36626, 36808, 36811, 36812 and 36912 of 2024

COMMON ORDER *(per Hon'ble SP,J)*:

In this batch of writ petitions, the petitioners have called in question the legality, validity and propriety of notification Nos.13/2022, dated 05.07.2022, 9 and 56/2023, dated 31.03.2023 and 28.12.2023, respectively. The *pari materia*/ corresponding notification Nos.118/2023, dated 25.08.2023 and 170/2023, dated 17.12.2023 issued by State of Telangana are also subject matter of challenge. These notifications are admittedly issued in purported exercise of power under Section 168A of **The Central Goods and Services Tax Act, 2017** (for short, 'the GST Act').

Factual background and Contention of the petitioners:

2. The facts are taken from W.P. No. 33390 of 2024. Sri S. Ravi, learned Senior Counsel representing Sri P. Venkata Prasad, learned counsel for the petitioner, submits that this matter relates to F.Y. 2019-2020. The show-cause notice was issued on 31.05.2024. The Order-in-Original ('OIO') was passed on 29.08.2024 after the maximum period of limitation prescribed under Section 73(10) of the GST Act. Under the garb of extension of limitation as per impugned notifications, said OIO came to be

passed. Criticizing the impugned notification Nos. 9 and 56 of 2023, it is contended that on the date of issuance of these notifications, no *force majeure* conditions were in existence. Section 168A of the GST Act, in no uncertain terms makes it clear that limitation can be extended on availability of 'special circumstances'. In absence of *force majeure* circumstance on the date of issuance of notifications, these notifications cannot be said to be passed based on enabling provision.

3. To buttress aforesaid contention, the letter written by Secretary, Home Department to Chief Secretaries of all the States, dated 22.03.2023 was highlighted to establish that there was no need to invoke provisions of the Disaster Management Act, 2005. Thus, COVID-19 period, admittedly, came to an end before impugned notifications were issued. Paragraph Nos. 6(1), (6), (7) and (8) of said letter were relied upon.

4. The next limb of argument is that COVID-19 relaxations/extensions are not available to the Government. Notification Nos. 35/2020, dated 03.04.2020 and 14 of 2021, dated 01.05.2021, were referred to show that time for completion or compliance of any action was extended upto 30.06.2021. Hence, only for compliance of Section 73 of the GST Act, the time

limit was extended till 31.12.2023 or 30.04.2024/31.08.2024. For any other compliance, time limit was extended only upto 30.06.2021. Thus, any extension of time beyond 30.06.2021 is impermissible even by invoking Section 168A of the GST Act.

5. Furthermore, the extension was made *vide* Notification No.13/2022-Central Tax, dated 05.07.2022, wherein time limit under Section 73(10) of the CGST Act for F.Y. 2017-18 was extended upto 30.09.2023 by excluding the intervening period between 01.03.2020 to 20.08.2022 for recovery of erroneous refund cases under Section 73(10) and refund claims under Section 54. The above extension was issued on 05.07.2022 allowing the Department to issue notices on or before 30.09.2023. Assuming that above extension was valid and is in consonance with Section 168A, there was no requirement for any further extension. Thus, it appears that the Department is using the COVID-19 pandemic as an excuse and reason to undo their failure of not completing assessments and raising demands under Section 73 within stipulated time.

6. Heavy reliance is placed on CBIC Circular No.157/13/2021-GST, dated 20.07.2021, to canvass the point that the understanding of respondent-Department is that the orders

passed by Supreme Court in *suo motu* jurisdiction extending limitation period are not applicable to the Department. Similarly, CBIC instructions No. 2/2021, dated 22.09.2021, expects strict adherence to the time line provided under Section 73 of the GST Act and does not take excuse of difficulties arising out of COVID-19 pandemic.

7. The time limit can be extended only on availability of *force majeure* conditions and not based on the administrative difficulties faced by the Department.

8. In this era of technological advancement, exercise of issuance of notice, filing or reply, hearing and passing orders is being done through virtual/electronic mode. CBIC has mandated to conduct the hearing through virtual mode. Thus, even otherwise, there existed no practical difficulty for Revenue to complete their exercise within the stipulated time. The judgment of Supreme Court in **Energy Watchdog v. Central Electricity Regulatory Commission**[1] was referred to show that necessary ingredients to attract *force majeure* clause were absent in the instant case.

[1] MANU/SC/0408/2017

9. It was common ground taken by learned counsel for the parties that Section 168A of the GST Act provides that extension notification can be issued on the recommendation of the GST Council. So far as notification No. 56/2023 is concerned, there was no prior notification of GST Council. The counter of the Department filed in these cases shows that the notification No. 56/2023 was issued on the basis of decision taken by GST Implementation Committee/Law Committee. Thus decision of Implementation/Law Committee was ratified by GST Council after six months from the date of issuance of notification No. 56/2023. The meaning of words 'recommendation' and 'ratification' were highlighted to show the difference between the two. The 'recommendation' is always prior in time which forms basis for taking a decision, whereas, 'ratification' is a subsequent exercise for a decision which has already been taken. In view of statutory mandate ingrained in Section 168A of the GST Act, subsequent 'ratification' cannot satisfy the requirement of statute i.e., 'on the recommendation of the GST Council'.

10. The next submission is that repeated extensions given in purported exercise of Section 168A of the GST Act are arbitrary and violative of Article 14 of the Constitution. The impugned

notifications are discriminatory to the extent they partly modify the earlier notifications dated 01.05.2021 and 28.06.2021. The Revenue has taken undue benefit of extension of limitation for initiating and completing adjudicating proceedings.

11. The judgment of Allahabad High Court in **Graziano Transmissions v. Goods and Services Tax**[2] was referred to suggest that Division Bench, despite noting that the impugned notification No. 56/2023 was issued pursuant to the decision of GST Implementation Committee and not by GST Council, did not deal with the difference between the 'recommendation of committee' and 'ratification by Council'. Thus, said judgment is distinguishable. The Allahabad High Court has also opined that orders of Supreme Court in *suo motu* jurisdiction relaxing limitation are inapplicable for proceedings under the GST Act.

12. The judgment of Gauhati High Court in **M/s. Barkataki Print and Media Services, Dhrubajyoti Barkotoku v. Union of India**[3] was relied upon wherein the Court opined that recommendation of GST Council is *sine qua non* for exercising power under Section 168A of the Act. An attempt is made to

[2] (2024) 19 Centax 82 (Allahabad)
[3] 2024(9) TMI 1398 Gauhati High Court

distinguish the Division Bench judgment of Patna High Court in **Barhonia Engicon Private Limited v. State of Bihar**[4] by contending that COVID-19 relaxations given by Supreme Court in *suo motu* jurisdiction was treated to be a reasons for extending limitation by the Revenue, but CBIC Circular dated 20.07.2021 speaks otherwise and this Circular has escaped notice of Patna High Court. Thus, this judgment is also distinguishable.

13. Sri S. Ravi, learned Senior Counsel, submits that the respondents may rely on certain judgments, including **Bajaj Hindustan Limited v. State of Uttar Pradesh**[5] and other judgments to support their stand that 'ratification' is permissible and 'ratification' relates back to the original date of the decision. However, it must be noticed that the said judgments are relating to 'ratification' in exercise of executive/administrative power. It does not deal with exercise of subordinate legislative power. Counter of State Government (para No. 33) filed in W.P. No. 21851 of 2024 was pointed out where State itself treated the power of issuing impugned notifications as 'legislative power'. The judgment of Allahabad High Court in **Graziano Transmissions** (supra) was also referred to support the same point. Since

[4] (2024) 25 Centax 55 (Pat.)
[5] (2016) 12 SCC 613

impugned notifications are issued in exercise of legislative power therefore, 'ratification' aspect dealt with in certain judgments of Supreme Court while exercising executive/administrative power cannot be pressed into service. Putting it differently, it is urged that subordinate legislative and administrative actions cannot be judged on the same parameters. Since statute envisages the requirement of recommendation of council before taking decision of extension of limitation, no other method can be adopted.

14. The meaning of words 'approval' and 'recommendation' as used in Black's Law dictionary and considered by Gauhati High Court in **M/s. Barkataki Print and Media Services, Dhrubajyoti Barkotoku** (supra) was also referred.

15. The alternative submission of learned Senior Counsel is that by the time notification No. 56/2023 was issued, the original period of limitation for F.Y. 2018-2019 which was upto 31.03.2024 was over. The notification No.56/2023 was issued after 31.03.2024 and therefore, it cannot revive or extend the limitation which already stood exhausted.

16. Paragraph 138 of judgment of this Court in **Sri Sri Engineering Works and Ors. v. The Deputy Commissioner**

(CT), Begumpet Division, Hyderabad and Others[6] which got stamp of approval by Supreme Court is relied upon to show that limitation cannot be extended after previous period of limitation is over. The judgment of **Dr.Premchandran Keezhoth v. Chancellor, Kannur University**[7] was relied upon to submit that in the matter of these notifications, no 'ratification' will serve the purpose and improve the case of Revenue.

17. Article 279A of the Constitution on which reliance may be placed by the Revenue is of no assistance because provision saves the irregularity committed by GST Council. In the instant case, the impugned notification No. 56/2023 is issued by Government and irregularity of Government cannot be ignored by taking shelter of aforesaid Article.

18. The first *suo motu* order of Supreme Court relating to COVID-19 was passed on 23.03.2020. The ordinance whereby Section 168A of the GST Act was brought into existence was issued on 31.03.2020. Thus, respondents were conscious that order of Supreme Court in *suo motu* matter will not extend the limitation in the matter of this nature. Otherwise, there was no

[6] (2022) 104 G S.T.R. 51 (Telangana)
[7] 2023 SCC OnLine SC 1592

occasion to issue the said notification. There exists no pleading in the counter to show that *suo motu* extensions given by Supreme Court are applicable to the present Department.

19. Sri V. Sridharan, learned Senior Counsel representing M/s. Lakshmi Sukumaran Sridharan, learned counsel for the petitioners in W.P.Nos.15855, 15863 and 18117 of 2024, placed reliance on the judgment of Supreme Court in the case of **Marathwada University v. Seshrao Balwant Rao Chavan**[8] and urged that when the Act provides a function for a particular body to exercise power, it must be exercised only by that body. The exercise of power by different body *de hors* the statutory provision is impermissible and unsustainable in law. In this case, ratification by the GST Council had taken place after six months from the date of issuance of notification No.56/2023, dated 28.12.2023. **Rakesh Kumar Agarwalla v. National Law School of India University**[9] and **V.M. Kurian v. State of Kerala**[10] were relied upon to show difference between the words 'consultation' and 'recommendation'.

[8] (1989) 3 SCC 132
[9] (2021) 1 SCC 539
[10] (2001) 4 SCC 215

20. **Banarsi Debi v. Income-Tax Officer**[11] was referred to submit that in view of the principle laid down therein, a conjoint reading of Sections 73(10) and 168A of the GST Act shows that the provisions are substantive in nature. Such provisions deserve strict interpretation. Section 168A talks about extension of time limit 'specified', 'prescribed' or 'notified' in the GST Act. This power can be once exercised and the law does not permit extension by issuing subsequent notification whereby the time limit originally specified under Section 73(10) can be extended.

21. Section 73(2) of the GST Act envisages issuances of notice and for this, time limit is specified. This time limit is regarding initiation of proceedings, whereas Section 75(10) prescribes expiry date by putting a deeming clause.

22. The bone of contention of the learned Senior Counsel is that Section 168A of the GST Act permits extension of limitation prescribed as per Section 73(10). This original limitation prescribed in Section 73(10) can be extended, but Section 168A does not give power to extend the limitation which was extended by issuing different notification. In other words, the power of extension can be exercised in relation to the limitation provided

[11] AIR 1964 SC 1742

under Section 73(10) and not relating to limitation provided under the notification issued under Section 168A of the GST Act.

23. The judgment of Supreme Court in **Atlas Cycle Industries Ltd. v. State of Haryana**[12] was cited wherein it was held that if language of statute is clear, nothing can be added through interpretative process.

24. In total, on five occasions, the limitation was extended. The 2nd notification was issued on 31.03.2023. It was argued that notification No.3/2022 could not have been further extended. As per Section 73(10) of the GST Act, the limitation for F.Y.2017-18 was up to 31.12.2021. By notification dated 31.03.2023, the time limit was extended for F.Y. 2017-18, which runs contrary to Section 73(10) and Section 75(10). To support this contention, judgment of Supreme Court in the cases of **State of Punjab v. Shreyans Industries Ltd.,**[13] and **Union of India v. Kumho Petrochemicals Co. Ltd.,**[14] were referred. Once period of limitation expires, the right to assessment gets extinguished.

25. Furthermore, the words 'due date' mentioned in Section 73(10) of the GST Act must be read in the context of Section 44.

[12] 1971 (2) SCC 564
[13] (2016) 4 SCC 769
[14] (2017) 8 SCC 307

Prakash Nath Khanna v. Commissioner of Income Tax[15] is relied upon to submit the meaning of 'due time' used in taxation statutes.

26. The extension of limitation by impugned notification is also criticised on the ground that Section 168A of the GST Act only permits extension of period and does not permit the extension of time financial year wise or extension by prescribing future dates and months showing as to when limitation will expire. Since statute prescribes about extension of time, it should be understood in the same sense and method adopted by the respondents is impermissible.

27. The different last dates prescribed in the impugned notifications for different financial years was also criticised by the learned Senior Counsel. Learned Senior Counsel borrowed the argument of Sri S. Ravi, learned Senior Counsel, for distinguishing the judgment in **Barhonia Engicon Private Limited** (supra) and relied on the judgment of Division Bench of Jharkhand High Court in **Rungta Mines Limited v. State of Jharkhand**[16] to show that aforesaid circular of CBIC dated 20.07.2021 was considered by

[15] (2004) 9 SCC 686
[16] 2023 SCC OnLine Jhar 1188

the High Court in relation to Value Added Tax and it was made clear that COVID-19 relaxation is not applicable for extending limitation in such matters.

28. Sri V. Sridharan, learned Senior Counsel relied upon the judgment of Privy Council, which was followed in **T. Kaliamurthi v. Five Gori Thaikkal Wakf**[17] to submit that such limitation cannot be extended with retrospective effect. The exercise of extension of limitation is an exercise of substitutive nature. The judgment of **P.K. Unni v. Nirmala Industries**[18] was relied upon to submit that such extension of limitation is impermissible. Although, the judgment of **P.K.Unni** (supra) was overruled by the Constitution Bench in **Dadi Jagannadham v. Jammulu Ramulu**[19], it is not overruled on the point in question (paragraph No.15 of the judgment of **P.K.Unni**).

29. Lastly, learned Senior Counsel submits that GST Implementation Committee was established as in-house mechanism to take care of 'urgent procedural' matters. It was decided that the said committee awaiting meeting of GST Council can take decision in such matters and get ratified the decisions

[17] (2008) 9 SCC 306
[18] (1990) 2 SCC 378
[19] (2001) 7 SCC 71

subsequently. Clause 10.8 of minutes of 14th GST Council meeting and Clause 8.10 of 17th GST Council meeting were relied upon for this purpose. This goes to show that GST General Implementation Committee/Law Committee is different than GST Council. The ratification of a decision taken by Law Committee does not satisfy the requirement of Section 168A of the Act. The COVID-19 related difficulties were not falling within ambit of 'urgent and procedural matters', which were looked upon under administrative arrangement by the Implementation Committee.

30. Sri V.Bhaskar Reddy, learned Senior Counsel, submits that Section 166 of the GST Act makes it obligatory for the Revenue to place notification before both the houses of the Parliament. This mechanism provides a check and eschews the possibility of arbitrariness and unreasonableness. Although, this procedure is not prescribed in Section 168A, similar procedure could have been followed to ensure purity and transparency. For this purpose, he also placed reliance on Section 172 of the GST Act.

31. Sri SRR Viswanath, learned counsel representing Ms. SN Sreedevi, learned counsel for the petitioners in W.P.Nos.17967, 30621 and 33513 of 2024, placed reliance on an Article i.e., 'GST Saga'. It is submitted that GST Council is a constitutional body,

the purpose of bringing GST Act is to provide nationwide uniform taxation mechanism.

32. He relied upon para No.23 of the judgment of the Supreme Court in **Union of India v. S.Srinivasan[20]** to submit that the recommendation of GST Council is *sine quo non* and in absence thereof the notification becomes vulnerable. He has also relied upon para No.26 of the judgment of the Delhi High Court in **Vishal Puri v. Union of India[21]** to submit that the delegated legislation must ensure that purpose of enactment is satisfied. The judgment in **Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Sheth[22]** is cited to show that essential conditions for fulfilling a provision must be satisfied.

33. By taking this Court to Minutes of 53rd GST Council Meeting, it is urged that COVID-19 pandemic was not only considered for recommending extension of limitation. The other administrative bottlenecks were also cited as reasons which cannot form part of *force majeure* clause. The ratification of

[20] AIR 2012 SC 3791
[21] 2017 (6) ADR 707
[22] (1984) 4 SCC 27

notification No.56/23 took place only on 22.06.2024. Such ratification is unknown to GST Act.

34. Sri P. Govind Reddy, learned counsel appearing in W.P.No.2851 of 2024, relied upon Section 168A of the GST Act and urged that the purpose of insertion of this provision is for empowering and enabling the primary legislation. Such provisions must be strictly construed. The power under Section 168A can be used for the purpose of cases 'not complied' or 'completed'. It cannot be used for the purpose of initiation of proceedings. A judgment of United States of America distinguishing between 'cause of action' and 'action' is also relied upon. Why the benefit of extension of limitation was extended only in favour of department and not for tax payers is another limb of argument. The *force majeure* period at best covers five months that is equal to the duration of COVID-19 pandemic period.

35. Sri M. Ramachandra Murthy, learned counsel for petitioners in W.P.No.14729 of 2024 and other matters, submits that the Apex Court in **Naresh Chandra Agrawal v. The Institute of Chartered Accountants of India**[23] culled out the principle on which a provision can be declared as *ultra vires*. The present

[23] (2024) 2 S.C.R. 194

matter falls within Clause B of the example. The impugned notification Nos.9, 13 and 56 are *ultra vires* to the parent Act. Lastly, by placing reliance para 25 of the judgment in **Chief Commissioner of Central Goods and Service Tax v. M/s.Safari Retreats Private Ltd.**[24], it is submitted that since language of Section 168A of the GST Act is unambiguous, it has to be given effect to.

36. Article 279A (4) of the Constitution envisages that GST Council 'shall' make recommendation. The language used is in mandatory form. Thus, reading this Article with Section 168A leaves no room for any doubt that existence of recommendation of GST Council is a condition precedent for exercising power under Section 168A.

37. It is further urged that the 1st notification No.35/2020, dated 03.04.2020, was issued when first wave of COVID-19 Pandemic came into being, Notification No.14/2021, dated 01.05.2021, relates to the 2nd wave of COVID-19 Pandemic and Notification No.13/2022, dated 05.07.2022, extends the limitation from 01.03.2022 to 06.02.2023, whereas, COVID-19 relaxation period as per *suo motu* order of Supreme Court was related to a period

[24] 2024 (10) TMI 286

between March, 2021 to February, 2022. The Notification No.9/2023 and 56/2023 were issued, when COVID-19 Pandemic was over. No ingredient of '*force majeure*' clause was available. Thus, it is a simple exercise showing abuse of power and is *ultra vires* to the enabling provision.

38. In W.P.No.5238 of 2024, Sri Karthik Ramana Puttamreddy, learned counsel, also urged that the impugned Notification Nos.9/2023 and 56/2023 were examples of misuse of power. So far, Notification No.9/2023 is concerned, it has backing of recommendation of 49th Meeting of GST Council. But, Notification No.56/2023 is admittedly issued without there being any recommendation of GST council. A subsequent ratification on the decision of the Law Committee became a reason to justify Notification No.56/2023. For this reason, the Gauhati High Court has already disapproved Notification No.56/2023. Furthermore, it is submitted that an attempt is being made to make un-equals as equals, which hits Article 14 of the Constitution. In the Notification No.13/2022, the benefit was granted to the Tax payers as well, whereas, no such benefit was extended in the impugned Notification Nos.9/2023 and 56/2023. If COVID-19 was a global Pandemic, the Revenue was not the only sufferer.

Tax payers were also sufferers. Thus, extending limitation only for Department by Notification Nos.9/2023 and 56/2023 hits Article 14 of the Constitution. However, on a specific query from the Bench, learned counsel for the petitioner, fairly, admitted that there is no pleading regarding discrimination in the body of the writ affidavit. It is strenuously contended by Sri Karthik Ramana Puttam Reddy, learned counsel, that the period for which limitation could have been extended is only between 05.07.2022 to 31.07.2023. While issuing Notification No.13/2022, dated 05.07.2022, it is presumed that the Revenue was aware of the hardship, which took place in interregnum period and therefore, there was no occasion to extend it any further in subsequent meeting. The hardship period can be between May 2021 and 05.07.2022 only. The minutes of the 49th Meeting of GST Council and Clause 5.7 shows that there was no *force majeure* ingredient available with them.

39. Dr.Avinash Poddar, learned counsel for the petitioner(s) in W.P.No.10591 of 2024 and other matters, urged that the Notification No.9 of 2023 is impugned in this petition. In order to exercise power under Section 168A of the GST Act, there must be a nexus between the *force majeure* condition and difficulty being

faced by the department. The instruction dated 21.08.2020 was referred to show that in the proceedings flowing from Section 73, Video Conferencing was made mandatory. Thus, issuance of notice, receiving reply, personal hearing, passing and uploading orders were smoothly going on during COVID-19 period as well. Thus, there was no difficulty for smoothly running the system. Thus, *force majeure* conditions are not satisfied. For same purpose, the instructions dated 20.07.2021 and 22.09.2021, were referred.

40. The Judgment of Supreme Court in **Energy Watchdog** (supra) is referred to show that COVID-19 order of the Supreme Court does not cover the situation like present one. Emphasis is laid on interpretation of *force majeure* as well. The Judgment of Supreme Court in **Union of India v. Mohit Minerals Pvt. Ltd.**[25] was relied upon to submit that the recommendation of GST Council is not binding on the Government. Lastly, the Judgment of Delhi High Court in **M/s.Halliburton Offshore Services Inc. v. Vedanta Limited**[26] is referred to strengthen the aforesaid arguments.

[25] (2022) 10 SCC 700
[26] O.M.P. (I) (COMM.) No.88/2020, dated 29.05.2020.

41. Sri Nishant Mishra, learned counsel, through video conference represented Sri Mohammed Omer Farooq, learned counsel for the petitioner(s) in W.P.No.2123 and 8196 of 2024 and submitted that in his matters, Notification No.9 of 2023 issued by Central Government and corresponding *pari materia* Notification No.118 of 2023 is subject matter of challenge. It is contended that Section 168A does not provide any power to 'modify' the previous notification, whereby, the limitation has already been extended. Thus, only source of power can be traced from Section 21 of the General Clauses Act. In order to exercise power under Section 21 of the said Act, twin conditions are required to be satisfied. First is that it has to be passed in like manner and on like condition. When impugned notifications were issued, the COVID-19 situation was not there. Interestingly, for Notification No.56, there existed no condition of existence of recommendation of the Council. In support of this submission, the judgment in **Kamla Prasad Khetan v. Union of India**[27] was relied upon. It is further supported by para No.24 of the judgment in **Gomantak Mazdoor Sangh v. State of Goa**[28].

[27] 1957 SCC OnLine SC 27
[28] 2022 SCC OnLine SC 587

42. The judgment of Allahabad High Court in **Graziano Transmissions** (supra) is highlighted to show that High Court clearly held that the recommendation of Council is *sine qua non* for issuing the notification. The Gauhati High Court in **M/s. Barkataki Print and Media Services** (supra) rightly held that Notification No.56 is assailable, because it is not issued pursuant to any recommendation of GST Council. The judgment of the Patna High Court in **Barhonia Engicon Private Limited** (supra) is sought to be distinguished on the ground that difference of 'recommendation' and 'ratification' was not considered. The Circular dated 20.07.2021 was not considered and erroneously the *force majeure* order of the Supreme Court was treated to be a reason justifying extension of limitation whereas even Revenue cannot raise that point in view of their own Circular.

43. The Karnataka High Court's judgment in **M/s. Sahaj Construction v. Union of India**[29] is cited wherein the Court held that *suo motu* extension order of the Supreme Court is not applicable in the proceeding like present one.

[29] 2024 (10) TMI 1166

44. It is further urged that impugned ratification runs contrary to the findings of GST Council's 49th meeting. The recommendation of Law Committee was to extend the limitation only for one time, but, it was further extended. The Circulars of Department i.e., G.O.Ms.No.45, dated 22.03.2020, G.O.Ms.No.102, dated 11.05.2021, G.O.Ms.No.116, dated 30.05.2021 and G.O.Ms.No.119, dated 08.05.2021 were relied upon to submit that the Departments were fully functional during COVID-19 period. There was no impact of COVID-19 during this period and therefore, condition of *force majeure* was not available. Lastly, it is submitted that for issuing Notification Nos.118 and 170 by Telangana State, there exists no independent recommendation by the GST Council. In absence thereof, these notifications are liable to be set aside.

45. Sri V.Bhaskar Reddy, learned Senior Counsel, further urged that in W.P.Nos.8569, 14268, 14281, 14289, 15483, 15492, 17015, 17684, 17766, 29881, 31864, 33026, 33048, 34035, 34069 & 34077 of 2024, Sri Bhaskar Reddy Vemireddy, learned Senior Counsel representing Sri V. Siddharth Reddy, learned counsel for the petitioners, submits that initially two notifications extending period of limitation were issued on 03.04.2020 and

01.05.2021 respectively. Both the notifications, except the dates mentioned therein are almost identical. In these notifications, the reason for extending time i.e. COVID-19 pandemic was specifically mentioned. However, in the third notification No.13 of 2022, dated 05.07.2022, there was no mention of COVID-19 pandemic. Similar are the notifications dated 31.03.2023 and 28.12.2023. Section 73 of the GST Act was read out to submit that this is a *simpliciter* provision and does not deal with element of suppression, fraud or misrepresentation. Section 74 is pregnant with such aspects of misrepresentation, misstatement, suppression or fraud. Section 74 provides limitation of five years, wherein assessee has committed misrepresentation, fraud or misstatement etc. By extending limitation by impugned notification confined to the cases relating to Section 73, a common assessee covered under Section 73 is brought at par with the assessee covered under Section 74 who is differently situated. Thus, un-equals are treated to be equals which hits Article 14 of the Constitution. No data is considered as to how many cases were pending during COVID-19 period which could not be decided and without undertaking aforesaid necessary exercise, as a matter of course, the limitation was extended which is bad in law.

46. Section 172 of the GST Act envisages the power of removal of difficulties. When such power is exercised, the order is required to be placed before the Parliament. Whereas, under Section 168A, there exists no such requirement to place the notification before the Parliament. Thus, there is always a possibility of abuse of power in issuing notification in purported exercise of power under Section 168A. Learned Senior Counsel also placed reliance on the minutes of the GST Council and pointed out that ratification had taken place without application of mind. The judgment in **S.Srinivasan** (supra) is cited to show that any such order which shows colorable exercise of power is bad in law. The judgment in **General Officer Commanding-in-Chief v. Subhash Chandra Yadav**[30] is referred to show that *force majeure* requirement is also not satisfied. For this purpose, the judgment in **Energy Watchdog** (supra) is also referred. The judgment of Calcutta High Court in **Gobindo Das v. Union of India**[31] was cited to show that COVID-19 relaxation by order of the Supreme Court cannot be pressed into service in the present matter.

[30] (1988) 2 SCC 351
[31] W.P.A.No.11578 of 2021, dated 01.10.2021

47. The aforesaid Notification No.13 of 2022 was issued after expiry of limitation as extended in the previous notification. For this reason also, the said notification is bad in law.

48. Sri SRR Vishwanath, learned counsel representing Ms. S.N. Sreedevi, learned counsel for the petitioners in W.P.Nos.17967, 30621 and 33513 of 2024, urged that GST Council was constituted under Article 279A of the Constitution of India. The nature of function of the Council is prescribed in this Article. The source of power of GST Council can be traced from these clauses. The extension of limitation is not one of the function/power given to the GST Council. Thus, in exercise of power under Section 168A of the CGST Act, the limitation cannot be extended because it is not in consonance with Article 279A of the Constitution. Reference is made to **Mohit Minerals Pvt. Ltd**. (supra).

Contentions of Respondents:

49. Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC, submits by petitioners much emphasis is laid on Section 168A of the GST Act. However, Section 168A must be read in the context of Section 44. Section 44 talks about filing of 'annual returns'. Thus, the due date is the date as flowing from Section 44 of the Act and Rule 80 of the GST Rules. By highlighting a

'table', which reflects last dates for different financial years, it is submitted that the time was extended for tax payers as well. The petitioners were not correct in contending that a step-motherly treatment was given to the tax payers and limitation was extended in various installments only in favour of Revenue.

50. Section 73 of the GST Act was relied upon to contend that one of the reason to invoke power relating to the amount 'erroneously refunded'. This 'amount' has a nexus with Section 54 and for this reason, the impugned notifications do not relate to 'erroneously refunded' amount.

51. While reading Section 168A of the GST Act, it is urged that it begins with a non-obstante/overriding clause notification can be given retrospective effect. It gives power to extend limitation relating to any provision under the GST Act.

52. Sri Dominic Fernandes placed reliance on different notifications issued from time to time. He relied on the first notification i.e., notification No.35 of 2020, dated 03.04.2020, to highlight that there is a specific mention about *force majeure* reason i.e., 'COVID-19 pandemic'. The second notification i.e. notification No.14/2021, dated 01.05.2021, also talks about

pandemic. The third notification i.e., Notification No.13/2022, dated 05.07.2022 was issued by referring both the previous notifications and it partially modified the previous notifications. Thus, only modification done is relating to limitation portion which stood substituted. Hence, contents of both the said notification Nos.35/2020 and 14/2021 must be read into notification No.13/2022. If it is read conjointly in the said manner, there will be no doubt that the reason of 'pandemic' must be read into the subsequent notifications.

53. The above notifications show that benefits were given to tax payers also. Section 54 of the GST Act contains limitation of two years. After exemption for the purpose of this Section, the limitation became four years.

54. The fourth notification i.e., notification No.9/2023, dated 13.03.2023, was affirmed by the Allahabad High Court in the case of **M/s.Graziano Trasmissioni** (supra). It is submitted that this notification is outcome of recommendation of 49th meeting of GST Council. This notification is also issued in partial modification of previous notifications and therefore, *force majeure* reason namely COVID-19 pandemic must be read into this notification.

55. The minutes of 49th meeting and deliberations shows that a conscious decision was taken by the GST Council. By elaborately reading the minutes and recommendations, Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC has taken pains to contend that the tax administration pointed out during the discussion in 49th meeting of GST Council about difficulties being faced by them in proceeding and completing the relevant exercise because of administrative problems arising out of impact of COVID-19 pandemic.

56. The notification No.56/2023, dated 28.12.2023, was referred and it was fairly contended that this notification is not outcome of any previous meeting of GST Council. He fairly admitted that notification No.56/2023 was issued on 28.12.2023 and there exists no prior recommendation of GST Council for issuance of this notification. However, on 22.06.2024 the 53rd meeting of GST Council 'ratified' the decision of 'law committee'.

57. A draft note was prepared by the 'law committee' for extending limitation for financial year 2018-19 and 2019-20. The same was proposed to be extended till 30.04.2024 and 31.08.2024 respectively. However, there was no further extension of limitation for financial year 2017-18.

58. Referring to the item Nos.6, 7, 11, 12 and 13 of discussion recorded in minutes dated 20.12.2023 (53rd GST Council meeting), it is submitted that the difficulties being faced by tax administration were highlighted before the GST Council. Item No.4 and other items of the minutes show that benefit was extended to the tax payers in Tamil Nadu and other states.

59. Noticing the words 'deemed ratification' used in GST Council Meeting, Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC, fairly submits that there appears to be no statutory backing for recording any such 'deemed ratification'. The ratification is broadly referred as 'deemed ratification'. The learned Standing Counsel further urged that five High Courts have considered the impugned notifications. The Kerala High Court in **Faizal Traders Private Limited v. Deputy Commissioner**, considered the Notification Nos.9/2023 and 13/2022 and dismissed the petition. Likewise, the Division Bench of Allahabad High Court in **M/s.Graziano Trasmissioni** (supra) considered the challenge to Notification Nos.9/2023 and 13/2022 and did not interfere in the said notifications.

60. He further urged that the Karnataka High Court in **M/s. Sahaj Construction** (supra) considered the challenge to Notification No.9/2023 and declined interference. The Patna High Court in **M/s. Barhonia Engicon Private Limited** (supra) considered the Division Bench judgment of Allahabad High Court and refused to interfere in the Notifications Nos.9/2023, 56/2023 and 13/2022. The singular judgment in which Notification No.56/2023 was interfered with, is a Single Bench Judgment of Guwahati High Court in **M/s. Barkataki Print and Media Services** (supra). In **M/s. Barhonia Engicon Private Limited** (supra), the Patna High Court did not agree with this Single Bench judgment of Gauhati High Court. By taking this Court to different orders passed by Supreme Court in *suo motu* proceeding relating to COVID-19 Pandemic, learned Standing Counsel submits that the first order was passed on 23.03.2020, granting exemption for limitation w.e.f., 15.03.2020, till further orders. Subsequently, on 06.05.2020, the limitation periods were extended in relation to Section 29(A) of the Arbitration and Conciliation Act, 1996 and under relevant provisions of the Negotiable Instruments Act, 1881. It is urged that Section 29(A) aforesaid provides a time limit for taking a decision, which in that respect is similar to Section 73(10) of the GST Act. However, in the order dated 06.05.2020,

the Supreme Court only considered aforesaid Acts namely:- the Arbitration and Conciliation Act, 1996 and the Negotiable Instruments Act, 1881.

61. Furthermore, it is pointed out that on 10.07.2020, the Supreme Court included the Commercial Courts Act, 2015 for the purpose of extending limitation and opined that the limitation shall remain extended upto forty five (45) days from the date, ban/lockdown is lifted by the Government. The order of Supreme Court dated 27.04.2021 in aforesaid COVID-19 period was referred to establish that the Supreme Court made it clear that the time limit was extended not only in relation to the aforesaid enactment, but, for other laws as well. Similar orders were passed on 23.09.2021 and 10.01.2022. The order dated 10.01.2022 refers to the previous order dated 23.03.2020. It was made clear by order dated 10.01.2020 by the Supreme Court that time between 15.03.2020 to 28.02.2022 shall stand excluded in relation to any general or special law. Adverting to the circular of department dated 20.07.2021, it is urged that although, circular of department is binding, it must be noticed that the Supreme Court passed aforesaid *suo motu* orders in exercise of power under Articles 141 and 142 of the Constitution.

62. It is strenuously contended that this aspect has been dealt with by Patna High Court in **M/s. Barhonia Engicon Private Limtied** (supra) and it was held that the Supreme Court's orders extending limitation in *suo motu* jurisdiction are applicable to quasi judicial proceedings under the GST Act. The impugned notifications were issued by the department as an abundant caution.

63. It is the subjective satisfaction of the Law makers to decide the period of limitation and this Court is under no obligation to examine the period of extension of limitation on any mathematical scale. Heavy reliance is placed on the expression "in respect of" used in Section 168A and its consideration by Allahabad High Court. The Allahabad High Court made it clear that the extension of limitation cannot be treated to be a one-time exercise. Repelling the challenge to the notification, liberty was reserved to the petitioners to avail the remedy of appeal by giving them forty five (45) days' time to prefer the appeal.

64. The judgment of Karnataka High Court in **M/s.Garej Constructions** (supra) was highlighted to show that challenge to Notification No.9/2023 has failed. Heavy reliance is placed on the

judgment of Patna High Court in **M/s.Barhonia Engicon Private Limited** (supra) to buttress the submission that the general orders of Supreme Court issued in *suo motu* jurisdiction relating to COVID-19 Pandemic are indeed applicable to the proceedings under the GST Act. The Patna High Court is in agreement with the Allahabad High Court. The Circular of the Department dated 20.07.2021, on which heavy reliance is placed by the petitioners, was considered by Allahabad High Court and the judgment of Allahabad High Court was considered in *extenso* by Patna High Court. Therefore, Circular of the Department, dated 20.07.2024 is deemed to have been considered by Patna High Court.

65. Learned Standing Counsel relied on the judgment of Supreme Court in **National Institute of Technology v. Pannalal Choudhury**[32] to submit that the ratification is permissible. The ratification could very well be retrospective in nature. For the same purpose, he relied on the judgment of **Municipal Commissioner, Jamnagar** v. **R.M.Doshi**[33]. Clause 10(c) of Article 279A of the Constitution was referred to highlight that any procedural flaw or irregularity is immaterial and will not cause any dent on the decision of GST Council. To elaborate, it is

[32] 2015 (11) SCC 669
[33] 2023 SCC Online SC 550

submitted that, although, before issuing Notification No.56/2023, there existed no prior recommendation of GST council, the fact remains that while undertaking the exercise of "ratification", the GST Council could have retrospectively recommended for the extension of limitation covering the same period, for which, ratification exercise was undertaken. In that event, no fault could have been found against such decision making and issuance of notification. Thus, it is a simple procedural infirmity/irregularity, which does not cause dent on the decision. Thus, in the teeth of Clause (10)(c) of Article 279A of the Constitution, said irregularity deserves to be ignored.

66. Sri R. Sushanth Reddy, learned counsel appeared for Revenue and relied on Article 279A (7) of the Constitution to show the nature of quorum and sub Article (9) regarding decision making. He submits that the word 'may' is used in Section 168A before the expression 'on the recommendation' of the Council. This expression 'on the recommendation' of the Council is used in various sections of the GST Act. However, in many sections, this expression was used with the word 'shall'. In those provisions only where 'shall' is used, it can be said to be mandatory in nature, otherwise, it will not be inconsonance with Cooperative

Federalism Doctrine. He placed reliance on the judgment of Supreme Court in **Mohit Minerals Pvt. Ltd.** (supra) to submit that the recommendations of GST Council are not binding on the Government/legislature.

67. Learned Special Government Pleader for State Tax and Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC relied upon the judgment of Supreme Court in **Safari Retreat Private Limited** (supra) and urged that if language of taxation statute is plain and unambiguous, it should be given effect to and there is no question to search for the intention of the law makers. Equitable considerations are out of question while interpreting taxing statute. Reliance is placed on **Satish Ukey v. Devendra Gangadharrao Fadnavis**[34] and **Checkmate Services (P) Ltd. v. CIT,**[35].

Stand of Union Government:-

68. Sri B. Narsimha Sharma, learned Additional Solicitor General, while borrowing the argument of Sri Dominic Fernandes, learned Standing Counsel for CBIC, urged that the jurisprudence relating to limitation shows that no one has any vested right in

[34] (2019) 9 SCC 1
[35] (2023) 6 SCC 451

relation to the limitation. Before insertion of Section 168A in the GST Act, Section 172 was the only enabling provision to remove the difficulty. This provision also could be invoked only on the recommendation of the Council. Section 168A was introduced during COVID-19 Pandemic to take care of 'special circumstances'. Thus, language of this provision and each word used must be given full meaning. It is urged that first principle of interpretation of statute is that each word must be considered in its context and if language is plain and unambiguous, it has to be implemented irrespective of consequences. The words 'in respect of' used in Section 168A were highlighted to submit that it is not necessary to confine the extension of limitation during the currency of COVID-19 Pandemic.

69. The next contention is that the word 'recommendation' is on a lower pedestal than the word 'approval'. A plain reading of language of Section 168A shows that there was no condition put for 'prior' recommendation of the GST Council. COVID-19 created a rarest condition and in that peculiar situation, the limitations were required to be extended. No pre-existing vested right of petitioners have been infringed. The constitutionality of enabling provision i.e., Section 168A is not under challenge. Only

consequential notifications are called in question. Since impugned notifications are in conformity with Section 168A of the Act, no interference is warranted. So far, the expression 'deemed ratification' used in GST meeting is concerned, learned counsel fairly submitted that it may not be grammatically correct, but, it was used to show that once ratification takes place, the decision dates back to the original date of the notification. In this sense, the expression 'deemed ratification' is used. It is further submitted that notification No.9/2023 and other impugned notifications are conditional legislations. The scope of judicial review of sub-ordinate legislation is limited to examine: **i)** lack of competence **ii)** breach of fundamental rights **iii)** breach of constitutional rights **iv)** whether notification has travelled beyond the scope of enabling provision and **v)** whether, it is manifestly arbitrary/unreasonable. Reference is made to judgment in the case of **State of Tamil Nadu v. P. Krishnamurthy**[36].

70. Since "special circumstances" were existing to invoke Section 168A of the Act, no fault can be found in the impugned notifications. The notifications satisfied all the conditions laid down by Supreme Court in the case of **P. Krishnamurthy** (supra).

[36] 2006(4) SCC 517

In the light of argument of learned Senior Standing Counsel for CBIC, the learned Additional Solicitor General submits that the impugned notifications were issued in 'modification' of previous notifications. Thus, *force majeure* reasons given in the previous notifications must be read into the impugned notifications. The impugned notifications cannot be interfered with, merely, because in these notifications, the reason for *force majeure* is not spelled out separately.

71. It is submitted that the Law Committee requested for providing larger period of limitation, but GST Council provided lesser period. It shows that Council has applied its independent mind. Clause 2.8.1 of GST Implementation Committee minute was read out to show the march of events. It was done to highlight the circumstances in which the ratification exercise had been undertaken. **Bajaj Hindustan Limited** (supra) was relied upon to show that the word 'approval' can be at a later stage and once 'approval' or 'ratification' takes place it will date back to the date of original decision.

72. Learned Additional Solicitor General further submitted that in view of various circumstances prevailing, in the fitness of things, it was thought proper to extend the limitation and

accordingly, impugned notifications have been issued. The inconvenience in holding the meeting of GST Council is evident by reading clause 2.8.1 mentioned above. All the States are the members of Council and it was not easy to bring them on one platform during Pandemic. Thus, compelling circumstance became reason to 'ratify' the decision of 'Law Committee' at a later point of time. But, ratification relates back to the original date.

REJOINDER SUBMISSIONS:-

73. Learned Senior Counsel Sri S.Ravi, Sri Sridharan, Sri V.Bhaskar Reddy and learned counsel Sri Karthik Ramana Puttamreddy, reiterated their stand and urged that the time limit can be extended, provided, notifications extending limitation are issued during the period of extended limitation.

74. Sri Karthik Ramana Puttamreddy, learned counsel, urged that the first notification extending time limit shows that the reasons assigned for extension is 'spread of COVID'. There was no spread of COVID-19 when impugned notification Nos.13/2022, 9/2023 and 56/2023 were issued. Thus, the argument of Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC, that in the impugned notifications the reason mentioned in the previous notifications must be read cannot be of any help. The

judgment of Madras High Court in **Settu v. State, represented by Inspector of Police**[37] is cited to submit that a question cropped up, whether limitation arising out of a provision of Cr.P.C., can be extended, the Court made it clear that *suo motu* COVID-19 related orders of the Supreme Court have no application in such cases.

75. Sri Nishanth Mishra, learned counsel for petitioners, submitted that notification No.13/2022 was under challenge before the Allahabad High Court. The impugned notifications are in fact conditional legislation. Thus, conditions for issuance of such legislations must be satisfied and subsequent ratification has no role to play. He placed reliance on the judgment in **Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal**[38].

76. The word 'may' used in Section 168A of the GST Act is for the Government and not for the GST Council. The interpretation advanced by Revenue must fail.

77. Lastly, it is submitted that in *suo motu* exercise of power the Supreme Court extended the limitation on 10.01.2022.

[37] 2020 SCC OnLine Mad 1026
[38] (2011) 1 SCC 236

Thereafter, the respondents issued notification Nos.13/2022, 9/2023 and 56/2023. Hence, they have waived their right to take benefit of extension of limitation as per the said order of Supreme Court dated 10.01.2022. For this purpose, **Arce Polymers (P) Ltd. v. Alphine Pharmaceuticals (P) Ltd.,**[39] is pressed into service.

78. The parties confined their arguments to the extent indicated above.

79. We have bestowed our anxious consideration on rival contentions and perused the record.

FINDINGS:-

80. Taxation fundamentally operates as a legal principle, structured by a comprehensive set of laws, regulations, and statutory provisions that establish the processes for calculating, levying, and allocating taxes. These legal instruments, enacted by legislative bodies, aim to ensure fairness, equity and the effective financing of public services. They are crafted to prevent tax evasion, stimulate economic progress, and equitably distribute the tax obligation. However, the application of tax law is not a mere

[39] (2022) 2 SCC 221

application of set rules. The determination of taxes involves a deep dive into the factual background.

81. In order to gather the extension of time limit under various notifications at a glance, it is apposite to mention the same in a table, which reads thus:-

Year	**Last date of filing Annual Returns**	**Notf.No. 35/2020 dated 03-04-2020**	**Notf. No.14/2021 dated 01-05-2021**	**Notf. No.13/2022 dated 05-07-2022**	**Notf. No.9/2023 dated 31-03-2023**	**Notf. No.56/2023 dated 28-12-2023**
2017-18	07-02-2020	N/A	N/A	30-09-2023	31-12-2023	-
2018-19	31-12-2020	N/A	N/A	-	31-03-2024	30-04-2024
2019-20	31-03-2021	N/A	N/A	-	30-06-2024	31-08-2024

82. In the instant case, notification Nos.9/2023, 13/2022 and 56/2023 are subject matter of challenge. Section 168A of the Act reads thus:-

> "**168A. Power of Government to extend time limit in special circumstances.—**
> (1) Notwithstanding anything contained in this Act, the Government may, **on the recommendations of the Council**, by notification, extend the time limit specified in, or prescribed or **notified** under, this Act **in respect of actions** which cannot be completed of complied with **due to *force majeure***.
>
> (2) The power to issue notification under sub-section (1) shall include the power to give **retrospective effect** to such notification from a date not earlier than the date of commencement of this Act.

> *Explanation.*--For the purposes of this section, the expression "*force majeure*" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act."
>
> (Emphasis Supplied)

83. A plain reading of this provision makes it clear that it gives power to the Government to the extend time limit in 'special circumstances'. The provision begins with a *non-obstante* clause and provides that on the recommendation of the Council, the time limit 'specified in' or 'prescribed' or 'notified' under this Act can be extended. It is noteworthy that the time limit can be extended '*in respect of actions'* which cannot be completed or complied with due to '*force majeure'*. Sub-section (2) of Section 168A enables the Government to issue notification with retrospective effect. The 'explanation' defines the expression 'force *majeure'*. In the instant case, it is not in dispute that COVID-19 Pandemic falls within the ambit of '*force majeure'*.

84. The contention of the petitioners is that the letter of the Home Department to Chief Secretaries issued on 22.03.2022 shows that COVID-19 Pandemic came to an end on 23.02.2022 and therefore restrictions imposed under the Disaster Management Act, 2005 were decided to be lifted. Thus, when impugned notifications were issued, the Pandemic was no more

there and therefore 'force *majeure'* conditions are not satisfied. The argument on the first blush appears to be attractive, but, lost much of its shine when minutely examined in the light of language employed in Section 168A of the GST Act. Section 168A in no uncertain terms makes it clear that the time limit can be extended *'in respect of actions'* which could not be completed or complied with, due to force *majeure*. The words 'in respect of' were considered by the Supreme Court in the context of Section 23(1)(B) and it means that '*being connected with*' (see **Union of India and another** v. **Vijay Chand Jain**[40]).

85. The Allahabad High Court considered the words '*in respect of*' in the case of **Graziano Transmissioni** (supra) and opined as under:

> "126. As submitted by Sri Mahajan, the words "due to force majeure" are preceded with a general expression "in respect of". Thus, besides intrinsic evidence existing in the Explanation to Section 168-A of the Act (as discussed above), there is equally convincing evidence available in the use of the words "in respect of". The legislature clearly did not intend to provide for additional limitation only to complete actions that had been already undertaken. The words "in respect of" are clearly used to enlarge the scope of exercise of the conditional legislation function. Thus, anything directly linked to the performance of action for which time-limitation may have been specified, prescribed or notified under the Central Act and the State Act and which action is perceived "cannot be completed or complied",the delegated/conditional legislation in the shape of Section 168-A, may arise.

[40] AIR 1977 SC 1302

127. As discussed above, scrutiny and audit of returns was directly linked to framing of adjudication orders. To the extent that scrutiny and audit work was obstructed directly for reason of spread of the pandemic COVID-19, as was judicially noted in the order passed by the Supreme Court *Cognizance for Extension of Limitation, In re* [*Cognizance for Extension of Limitation, In re*, 2022 SCC OnLine SC 2391] for the duration 15-3-2020 to 28-2-2022, it is not for this Court to reach another conclusion in that regard. Thus, the decision of the Supreme Court in *Energy Watchdog case* [*Energy Watchdog* v. *CERC*, (2017) 14 SCC 80 : (2018) 1 SCC (Civ) 133] and *Dhanrajamal Gobindram case* [*Dhanrajamal Gobindram* v. *Shamji Kalidas & Co.*, 1961 SCC OnLine SC 28 : AIR 1961 SC 1285] are therefore not decisive of the issue involved in the present case. In view of judicial notice taken as to existence of "force majeure" circumstance up to 28-2-2022, there is no reason to conduct any further/deeper enquiry — as to its exact duration, in the context of challenge laid to a legislative action.

128.xxx

129. The submission that the issuance of the impugned notifications are prejudicial to the rights and interest of the taxpayers does not find our acceptance in the context of the discussion made above. A legislative action cannot be complained of as being prejudicial on account of extension of limitation. Limitation, though statutory, is not a pre-existing vested right of any party. It gets created and extinguished in accordance with the statutory law. Insofar as the statutory law prescribes a limitation, no argument may arise against such prescription made. Further, in the case of conditional legislation, the submission that it is not peripheral but substantive also looses its relevance in face of conditions seen fulfilled. Once the conditions for exercise of delegated legislative function stood fulfilled, no further test or scrutiny may arise, in that regard. Therefore, the decision of the Supreme Court in *Sudhir Kumar Singh case* [*State of U.P.* v. *Sudhir Kumar Singh*, (2021) 19 SCC 706 : AIR 2020 SC 5215] and *Independent Schools' Association, Chandigarh (Registered) case* [*Independent Schools' Assn.* v. *Union of India*, (2022) 14 SCC 387] are also of no avail. Here, conditional legislation arose in accordance with law. Therefore, no fault is found therein. Accordingly, the decision in *Lachmi Narain case* [*Lachmi Narain* v. *Union of India*, (1976)

> 2 SCC 953 : 1976 SCC (Tax) 213 : (1976) 37 STC 267] is also not applicable to the present facts."
>
> (Emphasis Supplied)

86. We are in agreement with the view taken by the Allahabad High Court that the words '*in respect of actions'* are very wide and brings within its ambit the previous actions of COVID-19 period, which could not be completed or complied with, due to *force majeure*. Thus, we are unable to persuade ourselves with the line of argument of learned counsel for the petitioners that the time limit could have been extended only in relation to the period during which COVID-19 was subsisting. In the manner statute i.e., Section 168A is worded, there is no cavil of doubt that the Law makers intended to give it a broader umbrella to bring within its shadow, such actions which could not be completed or complied with, due to *force majeure*. The deliberations in the GST Council Meeting on which heavy reliance is placed by learned Senior Standing Counsel for CBIC and learned Additional Solicitor General, shows that there were continuous deliberations in this regard and GST Council was aware that *due to COVID*, the Revenue administration was facing difficulties and is not in a position to complete the relevant exercise within the stipulated time.

87. So far, argument of Sri V.Bhaskar Reddy, learned Senior Counsel, regarding non-availability of data to show the number of cases and nature of handicap faced by Revenue administration is concerned, we are only inclined to observe that, as rightly held by Allahabad High Court, the same is beyond the scope of judicial review. The existence of *force majeure* conditions is one of the condition precedents. The magnitude of the difficulty based on quantifiable data cannot be subject matter of adjudication. This Court is under no obligation to examine the said data as an appellate Court to give a finding whether such a decision was warranted or not. No such exercise with mathematical accuracy and precession can be undertaken in exercise of jurisdiction under Article 226 of the Constitution of India.

88. Another argument forcefully canvassed was based on conjoint reading of Sections 44, 73(1) and Section 168A of the GST Act. Section 44 and relevant portion of Section 73(10) are reproduced for ready reference:

> "**Section 44. Annual return:**
>
> (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return **furnished for the financial year**, with the audited annual financial statement for every financial year

> electronically, within such time and in such form and in such manner as may be prescribed:
>
> **Section 73(10):** The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund."
>
> (Emphasis Supplied)

89. The contention of Sri Sridharan, learned Senior Counsel, is that the limitation is to be gathered from a conjoint reading of Sections 44 and 73(10) of the GST Act. By invoking Section 168A, the notification can be issued to extend the limitation provided in the aforesaid sections. In other words, the power to extend the limitation is relating to the limitation prescribed in Section 73(10). Thus, such limitation could have been extended by issuing notification under Section 168A, whereas, respondents have issued multiple notifications including the impugned notifications, whereby they extended the time limit extended by notifications and not the time limit mentioned in Section 73(10). This argument deserves serious consideration. No doubt, Section 73 (10) provides that the Proper Officer must issue order under Sub-Section 9 of Section 73 within three years from the due date of issuing annual return. The interesting *conundrum* is, whether, extension notification issued under Section 168A can be confined

to this limitation only and cannot be issued to extend the limitation extended by notifications.

90. A microscopic reading of Sub-Section 1 of Section 168A of the GST Act shows that it enables the Government to issue notification on the recommendations of the Council and extend the time limit 'specified in' or 'prescribed' or 'notified' *under the Act.* It is noteworthy that the Law makers have not chosen the words 'in/by the Act'. Instead, they employed the expression 'under the Act'. The expression 'under the Act' is wider than the words 'in the Act'. The Apex Court had an occasion to consider this expression in **Indramani Pyarelal Gupta** v. **W.R.Natu**[41] and held as under:

> "15. A more serious argument was advanced by learned counsel based upon the submission that a power conferred by a bye-law framed under Section 11 or 12 was not one that was conferred "by or under the Act or as may be prescribed". Learned counsel is undoubtedly right in his submission that a power conferred by a bye-law is not one conferred "by the Act", for in the context the expression "conferred by the Act" would mean "conferred expressly or by necessary implication by the Act itself". It is also common ground that a bye-law framed under Section 11 or 12 could not fall within the phraseology "as may be prescribed", for the expression "prescribed" has been defined to mean "by rules under the Act" i.e. those framed under Section 28 and a bye-law is certainly not within that description. The question therefore is whether a power conferred by a bye-law could be held to be a power "conferred *under* the Act". The meaning of the word "*under the Act*" is well known. "*By*" an Act would mean by a provision directly enacted in the statute in question and which is

[41] AIR 1963 SC 274

> gatherable from its express language or by necessary implication therefrom. The words "**under the Act**" would, in that context, signify what is not directly to be found in the statute itself but is conferred or imposed by virtue of powers enabling this to be done; in other words, bye-laws made by a subordinate law-making authority which is empowered to do so by the parent Act. The distinction is thus between what is directly done by the enactment and what is done indirectly by rule-making authorities which are vested with powers in that behalf by the Act. (Vide *Hubli Electricity Company Ltd.* v. *Province of Bombay* [76 IA 57 at p. 66] and *Narayanaswamy Naidu* v. *Krishnamurthi* [ILR 1958 Mad 513 at p. 547]..."
>
> (Emphasis Supplied)

91. Thus, the expression "under the Act" is wide enough to include the notifications issued as per Section 168A of the GST Act and time limit extended under these notifications can very well be further extended, while exercising power "under the Act". Putting it differently, the time limit can be extended in three situations namely:- i) 'specified' in ii) 'prescribed' in or iii) 'notified' under the Act. The impugned notifications extending time limit fall within the ambit of 'notified' *under the Act* and such time limit can be extended by invoking power under Section 168A. It is equally important to note that the opening words of Sub-Section 1 of Section 168A. It opens with an overriding clause, which makes it clear that notwithstanding anything contained in the GST Act, such notifications extending time limit can be issued. In view of this analysis, this argument must fail.

92. The next limb of argument is based on the words "on the recommendation" of the Council. As noticed, the parties have taken diametrically opposite stand on the interpretation of this provision.

93. Before dealing further, it is apposite to remind ourselves about general principles of construction in taxing statutes. In a classic passage LORD CAIRNS stated the principle thus: 'If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute (see **Partington v.A.G**.[42]). VISCOUNT SIMSON quoted with approval a passage from ROWLATT, J., expressing the principle in the following words: 'In a taxing Act one has to look merely at what is clearly said. There is no room for any

[42] (1869) LR 4 HL 100

intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used (see **Cape Brandy Syndicate v. IRC**[43]). The above principle of strict construction of taxing statutes was quoted with approval in **Commissioner of Income-tax, Madras v. Kasturi & Sons**[44] where the word 'moneys' in the expression 'moneys payable' in Section 41(2) of the Income-tax Act, 1961 was not construed to include 'money's worth'. In interpreting a section in a taxing statute, according to LORD SIMONDS, 'the question is not at what transaction the section is according to some alleged general purpose aimed, but what transaction its language according to its natural meaning fairly and squarely hits (see **St. Aubyn (LM) v. A.G.**[45]. LORD SIMONDS call this 'the one and only proper test'."

94. The expression *on the recommendation of Council* leaves no room for any doubt that this is a condition precedent or *sine qua non* for the Government for taking a decision regarding issuance of notification. During the course of hearing, learned counsel for the parties relied on the judgment of **Mohit Minerals Pvt. Ltd.** (supra) to canvass that the recommendation of the GST Council is

[43] (1921) 1 kb 64
[44] JT 1999 (2) SC 272
[45] (1951) 2 All ER 473

not binding on the Government. In our view, this is not the point involved in the present case. This is nobody's case that the GST Council passed any recommendation, which became foundation of Notification No.56/2023. The Government, in its wisdom may take a decision to modify or not to accept the recommendation of GST Council. Thus, the judgment of **Mohit Minerals Pvt. Ltd.** (supra) is of no assistance to Revenue. We are in respectful agreement with the findings given in this regard by Allahabad High Court in **Graziano Transmissioni** (supra) and Patna High Court in **M/s. Barhonia Engicon Private Limited** (supra).

95. The plain and unambiguous language of the statute in Section 168A leaves no room for any doubt that *on the recommendation of the Council* alone, Government can issue the notification. Thus, the argument and judgments relating to 'ratification' and giving stamp of approval to the decision of implementation committee/law committee with retrospective effect of GST Council fades into insignificance. We find substance in the argument of learned Senior Counsel Sri S. Ravi and V. Sridharan based on the judgment of **Martwada University** (supra) that when the statute gives power to a particular statutory body to act in a particular way, the said decision cannot be taken by any other

body. This is trite that when the statute prescribes thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden. This was held to be cardinal principle of interpretation way back in 1875, 1 Ch.D.426 p.431) in **Taylor** v. **Taylor**. The Privy Council and Supreme Court consistently followed said ratio in **Nazir Ahmad** v. **King-Emperor**[46], **Chandra Kishore Jha** v. **Mahavir Prasad**[47], **Babu Verghese** v. **Bar Council of Kerala**[48], **Zuari Cement Ltd.** v. **ESI Corpn**[49], **Brajendra Singh Yambem** v. **Union of India**[50], **Public Interest Foundation** v. **Union of India**[51], **Muncipal Corpn.of Greater Mumbai** v. **Abhilash Lal**[52], **OPTO Circuits (India) Ltd.** v. **Axix Bank**[53], **Krishna Rai** v. **Banaras Hindu University**[54] **and Dharmin Bai Kashyap** v. **Babli Sahu**[55].

96. As analyzed above, we are unable to follow the line of argument of learned Senior Standing Counsel for CBIC and learned Additional Solicitor General that 'ratification' can be a substitute of 'recommendation'. The judgments cited by the

[46] 1936 SCC OnLine PC 41
[47] (1999) 8 SCC 266
[48] (1999) 3 SCC 422
[49] (2015) 7 SCC 690
[50] (2016) 9 SCC 20
[51] (2019) 3 SCC 224
[52] (2020) 13 SCC 234
[53] (2021) 6 SCC 707
[54] (2022) 8 SCC 713
[55] (2023) 10 SCC 461

Revenue about 'ratification' and 'approval' are based on different statutes and cannot be pressed into service in the instant case considering the plain language of Section 168A of the GST Act. In the case of **Bajaj Hindustan Ltd.** (supra), the Apex Court considered its previous judgment in **LIC v. Escorts**[56] laid emphasis on 'contextual situation' and 'design of legislation demand'. The textual and contextual interpretation of unambiguous language of Section 168A does not permit any 'ratification' exercise.

97. Article 279A of the Constitution of India deals with the constitution and role of GST Council. Learned Senior Standing Counsel for CBIC placed reliance on Clause 10 (c) of Article 279A of the Constitution to establish that procedural irregularity of Council, which does not affect the merits of the case, will not make the decision or proceeding of Council as invalid. We do not see any merit in this contention, because, the petitioners have not challenged any act or proceeding of the GST Council, which could have been saved under Clause 10 (c) of Article 279A. Instead, the notification of the Government No. 56/23 which is admittedly issued without there being any recommendation of Council is

[56] (1986) 1 SCC 264

subject matter of challenge. Thus aforesaid provision of Constitution does not insulate the notification issued by the Government on the basis of any irregularity of the Council. Even otherwise, the irregularity cannot be said to be a 'procedural irregularity'. The Implementation Committee/Law Committee is neither a constitutional nor a statutory body. It is an in-house creation of GST Council for convenience to run the administration. The decision taken by Implementation Committee/Law Committee, on which Notification No.56/2023 is based, cannot be said to be the decision of GST Council. The ratification of such legislative action is unknown to law. The judgments cited by Revenue were related to the executive action and were not dealing with legislative action, whereas, the judgment of **Maratwada University** (supra) deals with such subordinate legislative action. Thus, 'ratification' done after issuance of Notification No.56/2023 will not provide life to Notification No.56/2023.

98. Sri R. Sushanth Reddy, learned counsel appeared for Revenue, submits that the word "may" is used in Section 168A of the GST Act, whereas, in certain other sections before the words 'on the recommendation of the Council', the Law makers used the

word "shall". Thus, existence of recommendation is not a *sine qua non* or a precondition for issuing notification under Section 168A.

99. This is trite that as a rule of thumb, it cannot be said that the use of word 'may' makes the provision directory and conversely, use of word 'shall' makes it imperative or mandatory. The interpretation depends on 'text' and context both. '*Deha*' and '*Dehi*' both are important (see **Board of Mining Examination and Chief Inspector of Mines v. Ramjee**[57], **RBI v. Peerless General Finance & Investment Co. Ltd.,**[58] and **Ajay Maken v. Adesh Kumar Gupta**[59])

100. Thus, the scheme of provision, purpose for bringing it in the statute book and serious or general inconvenience or injustice to persons likely to be effected are relevant factors for the purpose of interpretation of a provision. The Apex Court in **Dhampur Sugar Mills Ltd. v. State of U.P.,**[60] opined thus:

> "35. Reading the substantive provisions in the Act as also subordinate legislation by way of the Rules, there is no doubt in our minds that the submission of the learned counsel for the writ petitioner that such a Committee ought to have been constituted by the State is well founded and must be upheld. The High Court dealt with the submission of the writ petitioner but did not accept it observing that the

[57] (1977) 2 SCC 256
[58] (1987) 1 SCC 424
[59] (2013) 3 SCC 489
[60] (2007) 8 SCC 338

> legislature had used the expression "*may*" and not "*shall*" in Section 3 of the Act. The Court ruled that the provision was merely directory and not mandatory.
>
> 36. We are unable to subscribe to the above view. In our judgment, mere use of word "*may*" or "*shall*" is not conclusive. The question whether a particular provision of a statute is directory or mandatory cannot be resolved by laying down any general rule of universal application. Such controversy has to be decided by ascertaining the intention of the legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue."
>
> (Emphasis Supplied)

101. The Apex Court in **May George v. Tahsildar**[61], at paragraph Nos.15 and 25 held as under:

> "15. While determining whether a provision is mandatory or directory, **in addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve. It may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application.** The provision is mandatory if it is passed for the purpose of enabling the doing of something and prescribes the formalities for doing certain things.
>
> 25. The law on this issue can be summarised to the effect that in order to declare a provision mandatory, **the test to be applied is as to whether non-compliance with the provision could render the entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of the legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject-matter and object of the statutory provisions in question.**

[61] (2010) 13 SCC 98

> **The Court may find out as to what would be the consequence which would flow from construing it in one way or the other and as to whether the statute provides for a contingency of the non-compliance with the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid.**"
>
> (Emphasis Supplied)

102. The purpose behind using the phrase 'on the recommendation of Council' is to equip the Government with the expert opinion of an expert constitutional body i.e., GST Council. This enables the Government to take an informed decision based on such opinion of Council. Since all the States have participation in the Council, the recommendation of Council will certainly be in consonance with doctrine of cooperative federalism. The decision of Government on such recommendation in the shape of notification will certainly has serious impact on taxpayers. Section 73(10) prescribes period of three years from due date for issuing order and Section 75(10) is pregnant with a deeming clause that if order is not passed within three years as per Section 73(10) the proceeding shall be deemed to be concluded. Hence, notification extending time limit issued under Section 168A can impact the tax payer for the purpose of conclusion of proceedings as per conjoint reading of Section

73(10) and 75(10) of the GST Act. Therefore, in our judgment, the word 'may' does not make the provision i.e., Section 168A as directory.

<u>*Suo motu* orders of Supreme Court relating to extension of COVID-19 pandemic:</u>

103. The parties are at logger heads on the aspect whether the orders of Supreme Court in *suo motu* jurisdiction can be pressed into service.

104. Sri S. Ravi, learned Senior Counsel and Sri Sreedharan, learned Senior Counsel, have taken pains to submit that as per the CBIC Circular No.157/13/2021-GST, dated 20.07.2021, the Department itself understood that said COVID-19 related extensions granted by Supreme Court cannot be made applicable in the proceedings under Section 73/quasi judicial proceedings under the GST Act. Interestingly, Sri Nishant Mishra, learned counsel for the petitioners submitted that despite directions of Supreme Court in *suo motu* jurisdiction extending limitation, the Department issued impugned notifications. Thus, they have waived their right to take benefit of extension of limitation as per the order of Supreme Court. He placed reliance on the judgment of Supreme Court in **Arce Polymers (P) Ltd.** (supra).

105. Before dealing with this argument, it is apposite to consider the orders of Supreme Court, passed time to time, in *suo motu* Writ Petition (C) No.3 of 2020. On 23.03.2020, as rightly pointed out by Sri Dominic Fernandes this first order was related to Section 29A of the Arbitration and Conciliation Act, 1996 and the Negotiable Instruments Act. However, on 8th March, 2021, in the said *suo motu* jurisdiction, the following directions were passed:

> "2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions: -
>
> 1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.
>
> 2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.
>
> 3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 **and any other laws, which prescribe period(s) of limitation for instituting proceedings,** outer limits (within which the court or tribunal can condone delay) and termination of proceedings."
>
> (Emphasis Supplied)

106. Likewise, on 27.04.2021, the Supreme Court directed as under:

> "We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant- public in all the states. **We, therefore restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.**
>
> It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.
>
> We have passed **this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India.** Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities."
>
> (Emphasis Supplied)

107. On 23.09.2021, the Supreme Court again ordered as under:

> "8. Therefore, we dispose of the M.A. No.665 of 2021 with the following directions: -
>
> I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

> II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.
>
> III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 **and any other laws, which prescribe period(s) of limitation for instituting proceedings**, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."
>
> (Emphasis Supplied)

108. Lastly, on 10.01.2022, the Supreme Court directed as under:

> "III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.
>
> **IV.** It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 **and any other laws, which prescribe period(s) of limitation for instituting proceedings,** outer limits (within which the court or tribunal can condone delay) and termination of proceedings."
>
> (Emphasis Supplied)

109. A conjoint reading of these orders, make it clear that the direction of Supreme Court for excluding the period of limitation is not confined to only Arbitration and Conciliation Act, Commercial Courts Act and Negotiable Instruments Act. The directions were extended in relation to "any other laws which prescribe period(s) of limitation for instituting proceedings". It cannot be doubted that Section 73 is one of such provision whereby proceeding can be instituted.

110. We will be failing in our duty if argument of Sri V. Bhaskar Reddy, learned Senior Counsel, is not considered based on the portion which is within bracket in para IV of order of Supreme Court dated 10.01.2022. The contention of learned Senior Counsel was that it relates to such limitation for instituting proceedings where outer limit is prescribed in relation to any proceeding of Court or Tribunal. The superficial reading of this direction No.IV can certainly lead to such confusion. However, a microscopic reading of para IV shows that there exists a "comma" between the expression ….. 'and any other laws, which prescribe period(s) of limitation for instituting proceeding' and 'outer limits (within which the Court or Tribunal can condone the delay)'. The punctuation has great significance in this paragraph. The

"comma" is also used in similar manner by Supreme Court when direction was issued on 23.09.2021.

111. Justice G.P. Singh in *Principle of Statutory Interpretation* (12th Edition) recorded thus:

> **6. Punctuation**
>
> ".....When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to punctuation...."
>
> ".....But it would appear, at any rate, with respect to modern statutes. State that if the statute in question is found to be careful punctuated, punctuation, though a minor element, may be resorted to for purposes of construction. An illustration of the aid derived from punctuation may be furnished from the case of **Mohd. Shabbir v. State of Maharashtra (AIR 1979 SC 564)** where section 27 of the Drugs and Cosmetics Act, 1940 came up for construction. By this section whoever 'manufactures for sale, sells, stocks or exhibits for sale or distributes a drug without a licence is liable for punishment. In holding that mere stocking is not an offence within the section, the Supreme Court pointed out the presence of comma after 'manufactures for sale' and 'sells' and absence of any comma after 'stocks'. It was, therefore, held that only stocking for sale could amount to offence and not mere stocking. For another example of the use of punctuation, reference may be made to *M.K. Salpekar (Dr.) Sunil Kumar Shamsunder Chaudhari (AIR 1988 SC 1841)* where the court construed clause 13(3)(v) of the C.P. and Berar Letting of Houses and Rent Control Order. This provision permits ejectment of a tenant on the ground that "the tenant has secured alternative accommodation, or has left the area for a continuous period of four months and does not reasonably need the house". In holding that the requirement that the tenant 'does not reasonably need the house' has no application when he 'has secured alternative accommodation' the court referred and relied upon the punctuation comma after the words alternative accommodation...."
>
> (Pages 173-174)

112. The Apex Court in **Kantaru Rajeevaru v. Indian Young Lawyers Assn.**[62] held as under:

> "18. When a statute is carefully punctuated and there is doubt about its meaning, weight should undoubtedly be given to the punctuation. [See: *Crawford: Interpretation of Law (Statutory Construction).*]…"
>
> (Emphasis Supplied)

113. The order of Supreme Court is carefully punctuated by providing a 'comma' as highlighted above and therefore weight must be given to such punctuation. In this view of the matter, we are unable to hold that the order of Supreme Court was confined to such proceedings alone which were pending in the Court or Tribunal.

114. The aforesaid orders of the Supreme Court leave no room for any doubt that the power was exercised under Article 141/142 of the Constitution. In peculiar situation like COVID-19, the Supreme Court exercised its extraordinary power and declared the law for the nation. This is trite that while a judgment of a Court binds only the parties to the litigation before it, a judgment of Supreme Court is something more, by virtue of Article 141/142, it declares the law for the nation (see **Ganga Sugar Corporation Limited v. State of Uttar Pradesh**[63]). The directions issued by

[62] (2020) 9 SCC 121
[63] AIR 1980 SC 286

Supreme Court in *suo motu* jurisdiction binds the entire nation and it cannot be said that the same are inapplicable in the present proceedings. A Constitution Bench of Apex Court in **CCE v. Ratan Melting & Wire Industries**[64] has drawn the curtains and held as under:

> "7. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."
>
> (Emphasis Supplied)

This view is recently followed by the Supreme Court in **Commissioner of Central Excise and Service Tax, Rohtak v. Merino Panel Product Limited**[65].

115. We concur with the view taken by the Patna High Court. The High Court, in our respectful view, rightly opined that issuance of impugned notifications may be an exercise in abundant caution. Relevant portion reads as under:

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[64] (2008) 13 SCC 1
[65] (2023) 2 SCC 597

> "40. We emphasize that insofar as the three-year period; relatable to the statutory limitation, there is substantial exclusion, as provided for by the Hon'ble Supreme Court in Para-1 of the directions in its decision. Hence, it is paragraph-5(I) which is applicable to the instant case, and not paragraph-5(III) and there can be no ground raised that the issuance of orders should have been within three months from 28.02.2022, especially since, as per the extension of time for filing final returns, the limitation for the years of 2017-2018, 2018-2019 and 2019-2020 would have fallen only on 07.02.2023, 31.12.2023 and 31.03.2024; all of which fall after 28.02.2022. The entire period or portions of the period excluded by the Hon'ble Supreme Court, fall within the three year limitation period in each of the subject years, as we have already detailed. The limitation hence stand extended to the extent of the periods exempted by the Hon'ble Supreme Court. However, since notifications are issued by the respective Governments extending the period of limitation, necessarily the limitation for the three subject years would stand extended only to that notified.
>
> 41. We find absolutely no reason to interfere with the orders passed, on the ground of limitation."
>
> (Emphasis Supplied)

116. In **Olga Tellis v. Bombay Municipal Corporation**[66], the Supreme Court held that there can be no *estoppel* against the constitution. It was further held that plea of *estoppel* is closely connected with the plea of waiver. The object of both being is to ensure bona fides in day to day transactions. In view of foregoing analysis, we are constrained to hold that order of Supreme Court dated 10.01.2022 passed in *suo motu* Writ Petition (Civil) No.3 of 2020, is indeed, applicable to the proceeding under the GST Act. Thus, the question of validity of notifications pales into

[66] (1985) 3 SCC 545

insignificance. Since the period between 15.03.2020 to 28.02.2022 stood excluded for the purpose of counting limitation by an order which became law of the land, the remaining argument relating to validity of notifications became academic in nature. After excluding limitation from 15.03.2020 to 28.02.2022, it cannot be said that action of respondents in proceeding against the petitioners is barred by limitation.

117. The COVID-19 Pandemic created extraordinary difficulties which could not have been anticipated, measured and solved with mathematical precision. COVID-19 was not a creation of Government. Thus, hair-splitting in many aspects must be eschewed. For example, the argument of Sri Karthik Ramana Puttamreddy that in the initial notification extending limitation, 'spread of COVID' was shown as a reason which cannot be a justification for issuance of impugned notifications issued after COVID-19 was over. While dealing with such an extraordinary crisis, Government's action must be viewed in a broad perspective.

118. In view of our finding that period between 15.03.2020 to 28.02.2022 stood excluded for limitation as per Supreme Court's order, remaining points raised by the petitioners relating to legality of impugned notifications need not be dealt with.

119. In this batch of matters, admittedly, the petitioners have a statutory efficacious alternative remedy of appeal. These matters were entertained despite availability of above remedy because the petitioners assailed the impugned notifications Nos.13 of 2022, 9 and 56 of 2023. In view of order of Supreme Court dated 10.01.2022, since we find no reason and justification to interfere with those notifications. The petitioners may avail the statutory remedy of appeal.

120. The Allahabad High Court in **Graziano Transmissions** (supra), in this regard held as under:

> "138. Seen in that light the decisions cited by learned counsel for the petitioners are found to be distinguished. The writ petitions challenging the issuance of the impugned notifications must fail. Hearing of all cases where adjudication proceedings are pending may recommence and be concluded, after excluding the duration of stay of the extended limitation to frame the adjudication order. Wherever adjudication orders have been passed and recovery stayed by this Court, the petitioners shall have 45 days from today to file appropriate appeals.
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> 139. The writ petitions are thus dismissed. No order as to costs."
>
> (Emphasis Supplied)

121. These Writ Petitions are accordingly **disposed of** by reserving liberty to the petitioners to avail the remedy of statutory appeal. If the appeal is preferred by the petitioners within 45 days before the appellate authority, the said authority shall consider

and decide the appeal on merits and it shall not be thrown overboard on the ground of limitation. It is made clear that this Court has not expressed any opinion on merits of the cases. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

SUJOY PAUL, J

Dr. G. RADHARANI, J

02nd January, 2025.
Note: L.R. copy be marked.
B/o. TJMR