



W.P.(MD)Nos.14115 of 2022 & batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 22.02.2026

Pronounced on : 15.06.2026

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

**W.P.(MD)Nos.14115, 14116, 14117, 14118, 14119,
14120, 14208, 18602 and 26403 of 2022**

and

**W.M.P.(MD)Nos.10083, 10084, 10082, 10086,
10087, 10085, 10153, 13530 and 20583 of 2022**

W.P.(MD)No.14115 of 2022:-

M/s. Guru and Co.,

Rep. by its Partner,

No.101, South Raja Street,

Thoothukudi – 628 002.

... Petitioner

Vs.

1.Union of India,

Rep. by its Secretary,

Department of Revenue, Ministry of Finance,

Room No.46, North Block,

New Delhi – 110 001.

2.Government of Tamil Nadu,

Rep. by its Principal Secretary and Commissioner
of Commercial Taxes,

Ezhilagam, Chepauk,

Chennai – 600 005.

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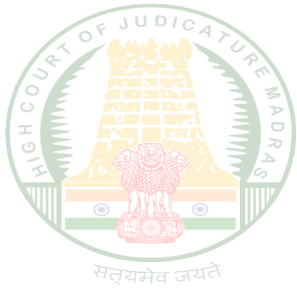
3. Goods And Services Tax Council,
Rep. by its Secretary,
East Wing, 4th Floor,
World Mark 1, Aerocity,
New Delhi – 110 037.

4. Central Board of Indirect Taxes and Customs,
Rep. by its Chairman,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.

5. The Deputy Director,
Directorate General of Good and Services
Tax Intelligence Unit,
No.4, Sri Lakshmi Complex,
P and T Nagar Main Road,
Madurai – 625 104.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, to declare the Notification No.28/2017- Central Tax (Rate) dated 22.09.2017 and Notification No.28/2017 - Integrated Tax (Rate) dated 22.09.2017 issued by the 4th Respondent to the extent of Clause (b) in Sl.No.A1 to A5 and the Annexure - I in C in the above said notification and clause (b) in Sl.No.A in GO(Ms).No.114 dated 22.09.2017 issued by the 2nd Respondent as Ultra -Vires Article 279 A of the Constitution of India and consequently to declare the Show Cause Notices No.29/2012 - GST dated 31.03.2022 on the file of the 5th Respondent as null and void.



W.P.(MD)Nos.14115 of 2022 & batch

For Petitioner : Mr.J.V.Niranjan

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For Respondents : Mr.AR.L.Sundarasean,
Addl. Solicitor General of India,
Assisted by Mr.K.Govindarajan,
Deputy Solicitor General of India,
Assisted by Mr.V.Malaiyendran,
Senior Central Govt. Standing Counsel for R1.
Mr.R.Suresh Kumar,
Addl. Government Pleader for R2
Mr.N.Dilip Kumar for R3 to R5.

W.P.(MD)No.14116 of 2022:-

M/s.Jeyabalan and Co.,

Rep. by its Partner,

No.104, South Raja Street,

Thoothukudi – 628 001.

... Petitioner

Vs.

1.Union of India,

Rep. by its Secretary,

Department of Revenue, Ministry of Finance,

Room No.46, North Block,

New Delhi – 110 001.

2.Government of Tamil Nadu,

Rep. by its Principal Secretary and Commissioner

of Commercial Taxes,

Ezhilagam, Chepauk,

Chennai – 600 005.

3.Goods And Services Tax Council,

Rep. by its Secretary,

East Wing, 4th Floor,

World Mark 1, Aerocity,

New Delhi – 110 037.

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4. Central Board of Indirect Taxes and Customs,
Rep. by its Chairman,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.

5. The Deputy Director,
Directorate General of Good and Services
Tax Intelligence Unit,
No.4, Sri Lakshmi Complex,
P and T Nagar Main Road,
Madurai – 625 104.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, to declare the Notification No.28/2017- Central Tax (Rate) dated 22.09.2017 and Notification No.28/2017 - Integrated Tax (Rate) dated 22.09.2017 issued by the 4th Respondent to the extent of Clause (b) in Sl.No.A1 to A5 and the Annexure - I in C in the above said notification and clause (b) in Sl.No.A in GO(Ms).No.114 dated 22.09.2017 issued by the 2nd Respondent as Ultra -Vires Article 279 A of the Constitution of India and consequently to declare the Show Cause Notices No.31/2022 - GST dated 31.03.2022 on the file of the 5th Respondent as null and void.

For Petitioner : Mr.J.V.Niranjan

For Respondents : Mr.AR.L.Sundarasean,
Addl. Solicitor General of India,
Assisted by Mr.K.Govindarajan,
Deputy Solicitor General of India,
Assisted by Mr.V.Malaiyendran,
Senior Central Govt. Standing Counsel for R1.



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Mr.R.Suresh Kumar,
Addl. Government Pleader for R2
Mr.N.Dilip Kumar for R3 to R5.

W.P.(MD)No.14117 of 2022:-

M/s. Guru Dhall Mill,
Rep. by its Partner,
No.73G/8A, Polepettai,
Thoothukudi – 628 002.

... Petitioner

Vs.

- 1.Union of India,
Rep. by its Secretary,
Department of Revenue, Ministry of Finance,
Room No.46, North Block,
New Delhi – 110 001.
- 2.Government of Tamil Nadu,
Rep. by its Principal Secretary and Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.
- 3.Goods And Services Tax Council,
Rep. by its Secretary,
East Wing, 4th Floor,
World Mark 1, Aerocity,
New Delhi – 110 037.
- 4.Central Board of Indirect Taxes and Customs,
Rep. by its Chairman,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.



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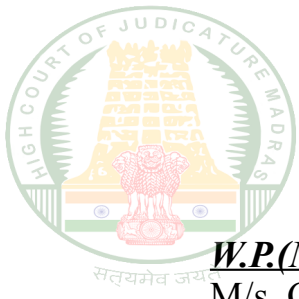
5. The Deputy Director,
Directorate General of Good and Services
Tax Intelligence Unit,
No.4, Sri Lakshmi Complex,
P and T Nagar Main Road,
Madurai – 625 104.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, to declare the Notification No.28/2017- Central Tax (Rate) dated 22.09.2017 and Notification No.28/2017 - Integrated Tax (Rate) dated 22.09.2017 issued by the 4th Respondent to the extent of Clause (b) in Sl.No.A1 to A5 and the Annexure - I in C in the above said notification and clause (b) in Sl.No.A in GO(Ms).No.114 dated 22.09.2017 issued by the 2nd Respondent as Ultra -Vires Article 279 A of the Constitution of India and consequently to declare the Show Cause Notices No.36/2022 - GST dated 31.03.2022 on the file of the 5th Respondent as null and void.

For Petitioner : Mr.J.V.Niranjan

For Respondents : Mr.AR.L.Sundarasean,
Addl. Solicitor General of India,
Assisted by Mr.K.Govindarajan,
Deputy Solicitor General of India,
Assisted by Mr.V.Malaiyendran,
Senior Central Govt. Standing Counsel for R1.
Mr.R.Suresh Kumar,
Addl. Government Pleader for R2
Mr.N.Dilip Kumar for R3 to R5.



W.P.(MD)Nos.14115 of 2022 & batch

W.P.(MD)No.14118 of 2022:-

M/s. Guru Agencies,
Rep. by its Partner,
No.73G/8A, Polepettai,
Thoothukudi – 628 002.

... Petitioner

Vs.

1. Union of India,
Rep. by its Secretary,
Department of Revenue, Ministry of Finance,
Room No.46, North Block,
New Delhi – 110 001.
2. Government of Tamil Nadu,
Rep. by its Principal Secretary and Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.
3. Goods And Services Tax Council,
Rep. by its Secretary,
East Wing, 4th Floor,
World Mark 1, Aerocity,
New Delhi – 110 037.
4. Central Board of Indirect Taxes and Customs,
Rep. by its Chairman,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.
5. The Deputy Director,
Directorate General of Good and Services
Tax Intelligence Unit,
No.4, Sri Lakshmi Complex,
P and T Nagar Main Road,
Madurai – 625 104.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, to declare the Notification No.28/2017- Central Tax (Rate) dated 22.09.2017 and Notification No.28/2017 - Integrated Tax (Rate) dated 22.09.2017 issued by the 4th Respondent to the extent of Clause (b) in Sl.No.A1 to A5 and the Annexure - I in C in the above said notification and clause (b) in Sl.No.A in GO(Ms).No.114 dated 22.09.2017 issued by the 2nd Respondent as Ultra -Vires Article 279 A of the Constitution of India and consequently to declare the Show Cause Notices No.30/2022 - GST dated 31.03.2022 on the file of the 5th Respondent as null and void.

For Petitioner : Mr.J.V.Niranjan

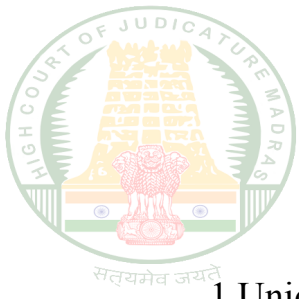
For Respondents : Mr.AR.L.Sundarasean,
Addl. Solicitor General of India,
Assisted by Mr.K.Govindarajan,
Deputy Solicitor General of India,
Assisted by Mr.V.Malaiyendran,
Senior Central Govt. Standing Counsel for R1.
Mr.R.Suresh Kumar,
Addl. Government Pleader for R2
Mr.N.Dilip Kumar for R3 to R5.

W.P.(MD)No.14119 of 2022:-

M/s. KKG Traders,
Rep. by its Partner,
No.30, South Raja Street,
Thoothukudi – 628 001.

... Petitioner

Vs.



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1. Union of India,
Rep. by its Secretary,
Department of Revenue, Ministry of Finance,
Room No.46, North Block,
New Delhi – 110 001.
2. Government of Tamil Nadu,
Rep. by its Principal Secretary and Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.
3. Goods And Services Tax Council,
Rep. by its Secretary,
East Wing, 4th Floor,
World Mark 1, Aerocity,
New Delhi – 110 037.
4. Central Board of Indirect Taxes and Customs,
Rep. by its Chairman,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.
5. The Deputy Director,
Directorate General of Good and Services
Tax Intelligence Unit,
No.4, Sri Lakshmi Complex,
P and T Nagar Main Road,
Madurai – 625 104.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, to declare the Notification No.28/2017- Central Tax (Rate) dated 22.09.2017 and Notification No.28/2017 - Integrated Tax (Rate) dated 22.09.2017 issued



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by the 4th Respondent to the extent of Clause (b) in Sl.No.A1 to A5 and the Annexure - I in C in the above said notification and clause (b) in Sl.No.A in GO(Ms).No.114 dated 22.09.2017 issued by the 2nd Respondent as Ultra -Vires Article 279 A of the Constitution of India and consequently to declare the Show Cause Notices No.18/2022 - GST dated 31.03.2022 on the file of the 5th Respondent as null and void.

For Petitioner : Mr.J.V.Niranjan

For Respondents : Mr.AR.L.Sundarasean,
Addl. Solicitor General of India,
Assisted by Mr.K.Govindarajan,
Deputy Solicitor General of India,
Assisted by Mr.V.Malaiyendran,
Senior Central Govt. Standing Counsel for R1.
Mr.R.Suresh Kumar,
Addl. Government Pleader for R2
Mr.N.Dilip Kumar for R3 to R5.

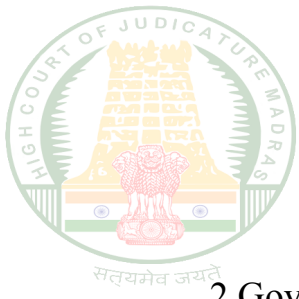
W.P.(MD)No.14120 of 2022:-

M/s. K.K.CHandrasekaran and Brothers,
Rep. by its Partner,
No.27, South Raja Street,
Thoothukudi – 628 002.

... Petitioner

Vs.

1.Union of India,
Rep. by its Secretary,
Department of Revenue, Ministry of Finance,
Room No.46, North Block,
New Delhi – 110 001.



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2. Government of Tamil Nadu,
Rep. by its Principal Secretary and Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

3. Goods And Services Tax Council,
Rep. by its Secretary,
East Wing, 4th Floor,
World Mark 1, Aerocity,
New Delhi – 110 037.

4. Central Board of Indirect Taxes and Customs,
Rep. by its Chairman,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.

5. The Deputy Director,
Directorate General of Good and Services
Tax Intelligence Unit,
No.4, Sri Lakshmi Complex,
P and T Nagar Main Road,
Madurai – 625 104.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, to declare the Notification No.28/2017- Central Tax (Rate) dated 22.09.2017 and Notification No.28/2017 - Integrated Tax (Rate) dated 22.09.2017 issued by the 4th Respondent to the extent of Clause (b) in Sl.No.A1 to A5 and the Annexure - I in C in the above said notification and clause (b) in Sl.No.A in GO(Ms).No.114 dated 22.09.2017 issued by the 2nd Respondent as Ultra -Vires Article 279 A of the Constitution of India



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and consequently to declare the Show Cause Notices No.32/2022 - GST dated 31.03.2022 on the file of the 5th Respondent as null and void.

For Petitioner : Mr.J.V.Niranjan

For Respondents : Mr.AR.L.Sundarasean,
Addl. Solicitor General of India,
Assisted by Mr.K.Govindarajan,
Deputy Solicitor General of India,
Assisted by Mr.V.Malaiyendran,
Senior Central Govt. Standing Counsel for R1.
Mr.R.Suresh Kumar,
Addl. Government Pleader for R2
Mr.N.Dilip Kumar for R3 to R5.

W.P.(MD)No.14208 of 2022:-

M/s. K.Karupiah Nadar & Co.,
Rep. by its Partner, K.Rajendran,
No.104, South Raja Street,
Thoothukudi – 628 001.

... Petitioner

Vs.

1.Union of India,
Rep. by its Secretary,
Department of Revenue, Ministry of Finance,
Room No.46, North Block,
New Delhi – 110 001.

2.Government of Tamil Nadu,
Rep. by its Principal Secretary and Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.



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3. Goods And Services Tax Council,
Rep. by its Secretary,
East Wing, 4th Floor,
World Mark 1, Aerocity,
New Delhi – 110 037.

4. Central Board of Indirect Taxes and Customs,
Rep. by its Chairman,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.

5. The Deputy Director,
Directorate General of Good and Services
Tax Intelligence Unit,
No.4, Sri Lakshmi Complex,
P and T Nagar Main Road,
Madurai – 625 104.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, to declare the Notification No.28/2017- Central Tax (Rate) dated 22.09.2017 and Notification No.28/2017 - Integrated Tax (Rate) dated 22.09.2017 issued by the 4th Respondent to the extent of Clause (b) in Sl.No.A1 to A5 and the Annexure - I in C in the above said notification and clause (b) in Sl.No.A in GO(Ms).No.114 dated 22.09.2017 issued by the 2nd Respondent as Ultra -Vires Article 279 A of the Constitution of India and consequently to declare the Show Cause Notices No.38/2022 - GST dated 31.03.2022 on the file of the 5th Respondent as null and void.



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For Petitioner : Mr.J.V.Niranjan

For Respondents : Mr.AR.L.Sundarasean,
Addl. Solicitor General of India,
Assisted by Mr.K.Govindarajan,
Deputy Solicitor General of India,
Assisted by Mr.V.Malaiyendran,
Senior Central Govt. Standing Counsel for R1.
Mr.R.Suresh Kumar,
Addl. Government Pleader for R2
Mr.N.Dilip Kumar for R3 to R5.

W.P.(MD)No.18602 of 2022:-

M/s. V.N.Moorthy & Co.,
Rep. by its Proprietrix,
K.Premalath,
No.366, Ramamoorthy Road,
Virudhunagar – 626 001.

... Petitioner

Vs.

1.Union of India,
Rep. by its Secretary,
Department of Revenue, Ministry of Finance,
Room No.46, North Block,
New Delhi – 110 001.

2.Government of Tamil Nadu,
Rep. by its Principal Secretary and Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.



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3. Goods And Services Tax Council,
Rep. by its Secretary,
5th Floor, Tower II, Jeevan Building,
Janpath Road, New Delhi – 110 001.

4. Central Board of Indirect Taxes and Customs,
Rep. by its Chairman,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.

5. The Deputy Director,
Directorate General of Good and Services
Tax Intelligence Unit,
No.4, Sri Lakshmi Complex,
P and T Nagar Main Road,
Madurai – 625 104.

6. Additional / Joint Commissioner of GST
and Central Excise, GST Bhavan,
Bibikulam, Madurai – 625 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, declaring the Notification No. 27/2017 - Central Tax (Rate) dated 22.09.2017 and Notification No. 27/2017 - Integrated Tax (Rate) dated 22.09.2017 issued by the 4th respondent in so far as sub-clause (b) in clause (i) in Serial (A) and Annexure in Serial (H) in the above Notifications are concerned and Notification No. 28/2017 - Central Tax (Rate) dated 22.09.2017 and Notification NO. 28/2017 - Integrated Tax (Rate) dated 22.09.2017 issued by the 4th Respondent in so far as sub-clause (b) in clauses (i) to (v) in serial (A) and Annexure I in serial (C) in the above said



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Notifications are concerned and sub-clause (b) in clause (i) in serial (A) and Annexure in serial (H) in Notification No. II(2)/CTR/793(d-1)/2017 issued by the 2nd Respondent in G.O.Ms.No. 114 dated 22.09.2017 and sub-clause (b) in clauses (i) to (v) in serial (A) and Annexure I in serial (C) in Notification No. II(2)/CTR/793(d-2)/2017 issued by the 2nd respondent in G.O.Ms.no. 115 dated 22.09.2017 as illegal, without jurisdiction and ultra-vires Article 279A of the Constitution of India and consequently declare the Show Cause Notice No. 65/2022-GST dated 08.07.2022 issued by the 5th respondent as illegal, without jurisdiction and void.

For Petitioner : Mr.A.Chandrasekaran

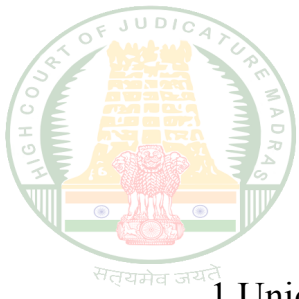
For Respondents : Mr.AR.L.Sundarasean,
Addl. Solicitor General of India,
Assisted by Mr.K.Govindarajan,
Deputy Solicitor General of India,
Assisted by Mr.V.Malaiyendran,
Senior Central Govt. Standing Counsel for R1.
Mr.R.Suresh Kumar,
Addl. Government Pleader for R2
Mr.N.Dilip Kumar for R5 & R6.
No appearance for R4

W.P.(MD)No.26403 of 2022:-

M/s. S.V.Sankaralinga Nadar,
Rep. by its Partner,
S.Vel Shankar,
No.16, Swami Sannathi Lane,
East Masi Street,
Madurai – 625 001.

... Petitioner

Vs.



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1. Union of India,
Rep. by its Secretary,
Department of Revenue, Ministry of Finance,
Room No.46, North Block,
New Delhi – 110 001.
2. Government of Tamil Nadu,
Rep. by its Principal Secretary and Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.
3. Goods And Services Tax Council,
Rep. by its Secretary,
5th Floor, Tower II, Jeevan Building,
Janpath Road, New Delhi – 110 001.
4. Central Board of Indirect Taxes and Customs,
Rep. by its Chairman,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.
5. The Superintendent (HPU),
Office of the Commissioner of GST and Central Excise,
C.R.Buildings, Lal Bahadur Shastri Road,
Bibikulam, Madurai - 625 002.
6. Deputy Commissioner,
Madurai I Division,
Madurai, No.5, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai - 625 002. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, declaring the Notification No.27/2017- Central Tax (Rate) dated 22.09.2017 and

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Notification No.27/2017- Integrated Tax (Rate) dated 22.09.2017 issued by the 4th Respondent in so far as sub-clause (b) in clause (i) in serial (A) and ANNEXURE in Serial (H) in the above Notifications are concerned and Notification No.28/2017- Central Tax (Rate) dated 22.09.2017 and Notification No.28/2017 - Integrated Tax (Rate) dated 22.09.2017 issued by the 4th Respondent in so far as sub-clause (b) in clauses (i) to (v) in serial (A) and ANNEXURE I in serial (C) in the above said Notifications are concerned and sub-clause (b) in clause (i) in serial (A) and ANNEXURE in serial (H) in Notification No. II(2)/ CTR/ 793(d-1)/2017 issued by the 2nd Respondent in G.O.Ms.NO.114 dated 22.09.2017 and sub-clause (b) in clauses (i) to (v) in serial (A) and ANNEXURE I in serial (C) in Notification No. II(2) / CTR/ 793 (d-2)/2017 issued by the 2nd Respondent in G.O.Ms.No. 115 dated 22.09.2017 as illegal, without jurisdiction and ultra-vires Article 279A of the Constitution of India and consequently declare the Notice in CASE O.R.No. 47/2019-20/GST dated 14.07.2021 issued by the 6th respondent in FORM GST DRC-01 as illegal, without jurisdiction and void.

For Petitioner : Mr.A.Chandrasekaran

For Respondents : Mr.AR.L.Sundarasean,
Addl. Solicitor General of India,
Assisted by Mr.K.Govindarajan,
Deputy Solicitor General of India,
Assisted by Mr.V.Malaiyendran,
Senior Central Govt. Standing Counsel for R1.
Mr.R.Suresh Kumar,
Addl. Government Pleader for R2
Mr.N.Dilip Kumar for R5 & R6.



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W.P.(MD)Nos.14115 of 2022 & batch

COMMON ORDER
(By G.R.SWAMINATHAN, J.)

Taxation is often a cat and mouse game between the authority and the assessee. The authority spreads the net and seeks to ensnare the assessee who makes every effort to slip away. The game may witness more than one round with fluctuating fortunes.

2. Two issues arise for consideration in these writ petitions :

a) Whether Notifications issued by the Central Government under Sections 9 and 11 of the CGST Act, 2017 can go beyond the recommendations made by the GST Council?

b) Whether the GST Council has the power to ratify any Notification issued by the Central Government either under Section 9 or Section 11 of the CGST Act, 2017?

3. Before we answer the questions, let us set out the facts. The writ petitioners are suppliers of pulses such as Moong Dhal and Thoor Dhal. They have been selling their products under brand names which were not registered under the Trade Marks Act, 1999 or the Copyright Act, 1957. Following the implementation of the GST regime, the Ministry of



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Finance issued Notification No.1/2017 – Central Tax (Rate), dated 28.06.2017 levying Central Tax of 2.5% on the goods specified in

Schedule I. Entry No.25 of the Schedule read as follows :

“Dried leguminous vegetables, shelled, whether or not skinned or split (put up in unit container and bearing a registered brand name).”

In view of the plain language of the aforesaid entry, products though sold in unit containers but not bearing a registered brand name did not attract GST.

4.Notification No.2/2017 – Central Tax (Rate), dated 28.06.2017 exempted intra-State supplies of certain goods which were catalogued in the Schedule. Entry 45 of the Schedule read as follows :

“Dried leguminous vegetables, shelled, whether or not skinned or split”

Corrigendum dated 12.07.2017 was issued and it was notified that the aforesaid entry should be read as “Dried leguminous vegetables, shelled, whether or not skinned or split (other than put up in unit container and bearing a registered brand name).” Since the writ petitioners were



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dealing in goods that did not carry a registered brand name, they were not liable to GST.

5. On account of the aforesaid notifications, a substantial volume of trade transactions in pulses fell outside the tax net. Hence, the Ministry of Finance came out with amendments. Vide Notification No.27/2017 - Central Tax (Rate), dated 22.09.2017 and Notification No.27/2017 - Integrated Tax (Rate), dated 22.09.2017, Notification No.1/2017 - Central Tax (Rate), dated 28.06.2017 was amended. Vide Notification No.28/2017 - Central Tax (Rate), dated 22.09.2017 and Notification No. 28/2017 - Integrated Tax (Rate) dated 22.09.2017, Notification No. 2/2017 - Central Tax (Rate), dated 28.06.2017 was amended. Vide GO(MS) No. 114 dated 22.09.2017 issued by the State Government, the Commercial Taxes and Registration Department Notification No.II(2)/CTR/532(d-4)/2017 dated 29.06.2017 was amended. As a result of these amendments, a product bearing a brand name on which an actionable claim or enforceable right in the court of law is available (other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily, subject to the



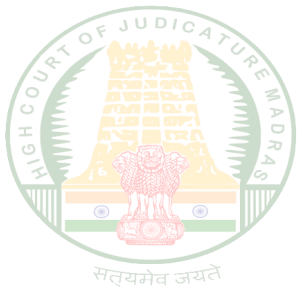
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conditions as in the ANNEXURE I) would also attract GST.

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Consequently, the impugned show cause notices were issued to the writ petitioners herein. Aggrieved by the same, the petitioners herein filed these writ petitions seeking to declare the aforesaid amending notifications as ultra vires Article 279A of the Constitution of India to the extent it affected them and to quash the impugned show cause notices as null and void. The writ petitioners in W.P(MD) No. 14120 of 2022 as well as W.P(MD) No. 14208 of 2022 have challenged GO (MS) No. 114 dated 22.09.2017 issued by the Government of Tamil Nadu which has verbatim reproduced the notifications issued by the Central Government.

6.The learned counsel appearing for the writ petitioners took us through the contents of the affidavit filed in support of the writ petitions and reiterated all the grounds set out therein. They also filed written submissions. They primarily relied on the decision reported in **(2022) 10 SCC 700 (Union of India Vs. Mohit Minerals Private Limited)** in support of their contentions.



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7.The respondents have filed a detailed counter affidavit and the

learned Additional Solicitor General of India took us through the same.

He submitted that the recommendations of the GST Council are not binding on the Union and the States in the sense that they are not bound to reproduce a mirror view of the GST Council's recommendations in the notification. He also relied on *(2022) 10 SCC 700 (Union of India Vs. Mohit Minerals Private Limited)* in support of this contention. He drew our attention to the minutes of the meetings of the GST Council held on 09.09.2017 and 06.10.2017. According to him, certain mistakes in the drafting of the recommendation of the Council held on 09.09.2017 were noted. They were rectified vide Notifications No.27/2017 and 28/2017 issue by the Central Government. These notifications were duly ratified in the 22nd GST Council meeting held on 06.10.2017. His argument is that the impugned notification capture the actual intention and object sought to be achieved by the 21st GST Council Meeting recommendations. He submitted that the object and purpose which was sought to be achieved by the Council can always be understood by the Government and the notifications can appropriately be issued by the Government to achieve the object of the recommendations made by the



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GST Council. Written submissions were also filed. He pressed for dismissal of the writ petitions. His stand was endorsed by the learned standing counsel for the fifth respondent.

8. We carefully considered the rival contentions and went through the materials on record. The system of taxation underwent a paradigm shift with the introduction of GST regime through the 101st Constitutional Amendment in the year 2016. “Goods and Services Tax” means any tax on supply of goods or services or both except taxes on the supply of the alcoholic liquor for human consumption (vide Article 366(12A) of the Constitution of India). Article 246A, 269A and 279A are some of the relevant provisions introduced under the said amendment. Article 279A provided for constitution of GST Council. The function of the GST Council is to make recommendations on any matter relating to goods and services tax. The binding nature of the recommendations was dealt with in *UOI v. Mohit Minerals Private Ltd., (2022) 10 SCC 700*. One of the conclusions arrived at by the Hon'ble Supreme Court is as follows :



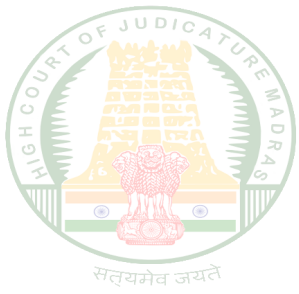
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“**171.1.3.** The Government while exercising its rule-making power under the provisions of the CGST Act and the IGST Act is bound by the recommendations of the GST Council. However, that does not mean that all the recommendations of the GST Council made by virtue of the power Article 279-A(4) are binding on the legislature's power to enact primary legislations.”

The Government can make subordinate legislation either by exercising its rule-making power or by issuing statutory notifications. Section 164 of the CGST Act, 2017 confers the rule-making power. There are many provisions in the Act empowering the Government to issue notifications. As far as CGST Act is concerned, rules issued under Section 164 and statutory notifications issued under Sections 9 and 11 are on the same pedestal. Both have to be laid before the Parliament (vide Section 166 of the CGST Act, 2017). If the Government is bound by the GST Council's recommendations while exercising its rule-making power, it is by clear implication bound by the GST Council's recommendations when exercising the power to issue notifications under Sections 9 and 11 of the Act.

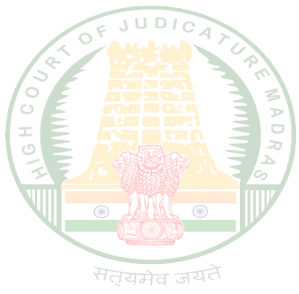


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9. Both rules as well as notifications would fall in the realm of subordinate legislation. The Hon'ble Supreme Court of India in the decision reported in *(2006) 4 SCC 517 (State of Tamil Nadu v. P.Krishnamurthy)* laid down the following parameters for striking down a subordinate legislation :

- “(a) Lack of legislative competence to make the subordinate legislation.
- (b) Violation of fundamental rights guaranteed under the Constitution of India.
- (c) Violation of any provision of the Constitution of India.
- (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
- (e) Repugnancy to the laws of the land, that is, any enactment.
- (f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).”

Of course, the subordinate legislation too would carry the presumption of constitutionality and it is for the one attacking its validity to show that it is invalid.



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WEB COPY 10. Article 279A of the Constitution and Sections 9 and 11 of the CGST Act are as follows :

“279A. (1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

(2) The Goods and Services Tax Council shall consist of the following members, namely:—

(a) the Union Finance Minister..... Chairperson:

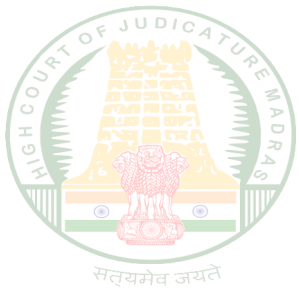
(b) the Union Minister of State in charge of Revenue or Finance Member;

(c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.....Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

(a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;



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(b) *the goods and services that may be subjected to, or exempted from the goods and services tax;*

(c) *model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;*

(d) *the threshold limit of turnover below which goods and services may be exempted from goods and services tax;*

(e) *the rates including floor rates with bands of goods and services tax;*

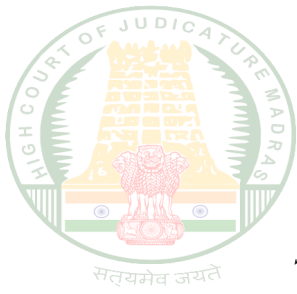
(f) *any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;*

(g) *special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and*

(h) *any other matter relating to the goods and services tax, as the Council may decide.*

(5) *The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.*

(6) *While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and*



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services.

(7) *One-half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.*

(8) *The Goods and Services Tax Council shall determine the procedure in the performance of its functions. Insertion of new article 279A. Goods and Services Tax Council.*

(9) *Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:—*

(a) *the vote of the Central Government shall have a weightage of one-third of the total votes cast, and*

(b) *the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.*

(10) *No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—*

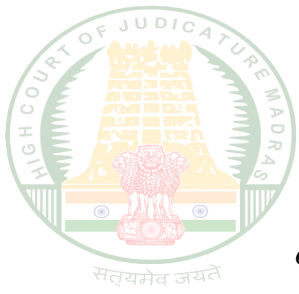
(a) *any vacancy in, or any defect in, the constitution of the Council; or*

(b) *any defect in the appointment of a person as a Member of the Council; or*

(c) *any procedural irregularity of the Council not affecting the merits of the case.*

(11) *The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute —*

(a) *between the Government of India and one or more States;*



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or

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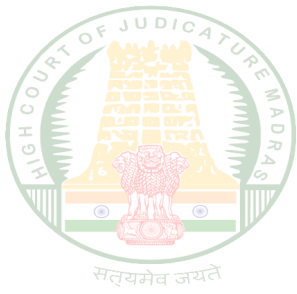
(b) between the Government of India and any State or States on one side and one or more other States on the other side; or

(c) between two or more States, arising out of the recommendations of the Council or implementation thereof.”

“9. Levy and collection.- *(1) Subject to the provisions of subsection (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under Section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.”*

“11. Power to grant Exemption.— *(1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.*

(2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an



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exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.”

While the GST Council's function is to make recommendations, the Central Government has the power to issue notifications. From the language of Sections 9 and 11 of the Act, it is seen that the notification by the Government will have to be “on the recommendations” of the Council. In other words, the notification should be preceded by the recommendations. Since **Mohit Minerals** has held that the



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recommendations are binding on the Government when it is engaged in rule-making, applying the very same yardstick, the recommendations of the GST Council will bind the Government when it issues statutory notifications under Sections 9 and 11 of the Act.

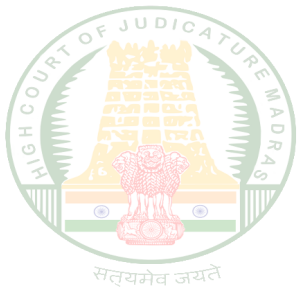
11. We are conscious that a learned Single Judge of this Court in *Ms Tata Play Limited Vs Union of India* (WP No.17184 of 2024 etc batch dated 12.06.2025) held that a recommendation of the GST Council for issuance of notification under Section 168A of CGST Act is mandatory but not binding on the government. This decision was confirmed by the Division Bench of this Court also in *Oasys Cybernetics Pvt Ltd v. STO, Veppery Assessment Circle (2025) 36 Centax 228 (Mad.)*. There are divergent views of different High Courts on this issue pertaining to Section 168A of the Act. The matter is presently pending before the Hon'ble Supreme Court in **SLP (C) No.4240 of 2025**.

12. Be that as it may, the impugned notifications herein have been issued under Sections 9 and 11 of the Act, which are charging and exempting provisions respectively. They have pan-India implications.



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They have a direct bearing on cooperative federalism. The stated goal of GST regime is to have a uniform taxation system. The GST Council is a representative body. If *Mohit Mineral* ratio and conclusions are not strictly enforced, there is every possibility that it may lead to dissonance in federal relationship. The Central Government is not obliged to consult the State Governments while issuing notifications. Unless the GST Council recommendations are made binding on the Central Government when exercising the power of notification, the very object of the GST regime may be defeated. When the GST Council makes a recommendation, it is a reflection of the combined wisdom of the States and the Centre. Such a recommendation cannot be lightly cast aside or gone beyond unilaterally by the Centre. That is why, even while holding that the GST Council recommendations are not binding on the legislatures (Parliament and the State Legislatures) in the making of primary legislations, it was held in *Mohit Minerals* that the Government while exercising its rule-making power under the provisions of CGST and IGST Acts is bound by the recommendations of the GST Council. We have already held that what applies to rule-making power will apply to the power to notify also.



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13.Having arrived at this proposition, we have to verify if the GST

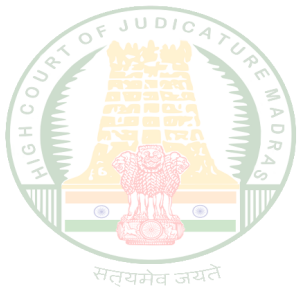
Council had indeed made the recommendations which are reflected in the impugned notifications. Notification No.1/2017 – Central Tax (Rate) dated 28.06.2017 and Notification No.2/2017 – Central Tax (Rate) dated 28.06.2017 levied GST on dried leguminous vegetables, shelled, whether or not skinned or split (put up in unit container and bearing a registered brand name). The Explanation to the notification is as follows :

“The issue of avoidance of 5% GST on pulses, cereals and flours, put up in unit container and bearing a registered brand name, was also discussed by the GST Council. After detailed deliberations, the Council recommended that the following amendments may be made to the existing Notifications, so as to provide that:

1) A brand registered as on 15.05.2017 shall be deemed to be a registered brand for the purposes of levy of 5% GST, irrespective of whether or not such brand is subsequently deregistered.

2) A brand registered as on 15.05.2017 under the Copyright Act, 1957 shall also be treated as a registered brand for the purpose of levy of 5% GST.

3) A brand registered as on 15.05.2017 under any law for the time being in force in any other county shall also be deemed to be a registered brand for the purposes of levy of 5% GST.



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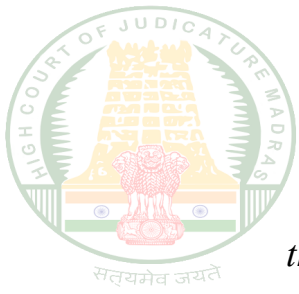


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4) *A mark or name in respect of which actionable claim is available shall be deemed to be a registered brand name for the purposes of levy of 5% GST”.*

Since only registered brand names fell within the tax net, quite a few assesseees de-registered their brand names but continued to trade by using their brand names. In other words, by de-registering their brand names, they sought to escape from the tax liability. This mischief was debated in the 21st GST Council meeting. The relevant extract of the minutes are as under :

"All goods i.e. cereals, put up in unit container and bearing a registered brand name (Sr. No.3): The Joint Secretary(TRU-I), CBEC, stated that in the 15111 Meeting of the Council held on 3 June 2017, it was decided that since branded cereals were a value-added product, they could be taxed at the rate of 5%. The Council had also taken a view that this tax rate should not apply for all types of branding but should be restricted to only registered brand names. He added that the legal meaning of the registered brand names was derived from the Trade Marks Act. He stated that after



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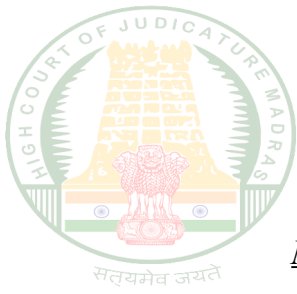
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this provision was put into place, a process of deregistration of registered brand names of cereals had started...

*... He stated that in this view, the definition of registered brand name was proposed to be modified by adding to it 3 conditions as mentioned in the agenda note. The Hon'ble Chairperson stated that there was a flaw in the original drafting as a Trade Mark need not be registered. He stated that if a Trade Mark was registered, then the person holding the Trade Mark could sue for infringement, but if a Trade Mark was well known, the user of the Trade Mark could still sue for passing off under the common law. **He suggested that in addition to the 3 conditions recommended by the Fitment Committee for amendment in the definition of the registered brand name, a fourth condition could also be added namely, a mark or name in respect of which actionable claim is available shall be deemed to be a registered brand name. The Council approved this proposal.**"*

14. Thereafter, the impugned Notifications dated 22.09.2017 and G.O(MS) No.114 dated 22.09.2017 were issued. The relevant portions read as follows:-

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Notification 27

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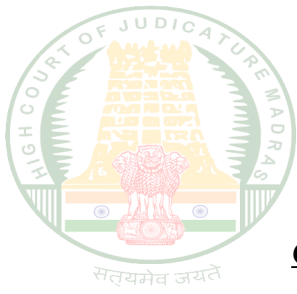
"In the said notification,- (A) in Schedule I-5%,- (i) against serial numbers 11, 13, 25, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58 and 59, in column (3), for the words 'put up in unit container and bearing a registered brand name', the words, brackets and letters 'put up in unit container and,-'"...name shall, on each such unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name as defined in Explanation (ii)(a) printed on the unit containers he has foregone his actionable claim or enforceable right voluntarily."

Notification 28

(ii) against serial numbers 29 and 45, in column (3), for the words other than put up in unit container bearing a registered brand name", the words, brackets and letters "other than those put up in unit container and, -

(a) bearing a registered brand name; or

(b) bearing a brand name on which actionable claim or enforceable right in a court of law is available (other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily, subject to the conditions as in the ANNEXURE I), shall be substituted."



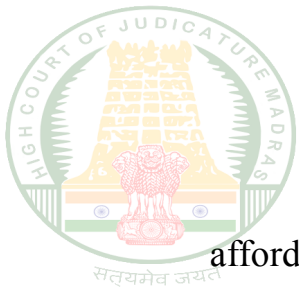
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GO(MS) No. 114

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(A)in Schedule 1-2.5%.- (i) against serial numbers 11, 13, 25, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58 and 59, in column (3), for the words “put up in unit container and bearing a registered brand name”, the words, brackets and letters “put up in unit container and.- (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as in the ANNEXURE]”, shall be substituted.”

A bare comparison of the notifications with the Council recommendations would show that there has been an addition of the words “enforceable right in a court of law” along with the Annexure that lays down the procedure for voluntarily forgoing an actionable claim or an enforceable right. The expression “actionable claim” is defined in Section 3 of the Transfer of Property Act, 1882 as “a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as



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affording grounds for relief, whether such debt or beneficial interest be existing, accruing, conditional or contingent;”. The expression “enforceable right in a court of law” is of a very wide ambit. “Enforceable” has been defined as “capable of being enforced” (Ramanatha Aiyar's Advanced Law Lexicon). In our respectful view, this definition is not capable of enhancing our understanding. According to Oxford Advanced Learner's Dictionary, the word “enforce” means “to make sure the people obey”. It is too obvious that the expressions “actionable claim” and “enforceable right in a court of law” are not synonymous. While actionable claims may be enforceable rights, the vice versa may not hold good. It is for this reason, “enforceable right in a court of law” found in the impugned notifications should be considered as additions. The Government had gone over and above what was recommended by the GST Council. It is not a case where the Government disregarded the recommendations of the GST Council. The Notifications reflect the recommendations but also go beyond. The Government in *Tata Play Limited case* had notified without there being a GST Council recommendation; only a subordinate committee (GIC) made its recommendation. In that context, it was held that the

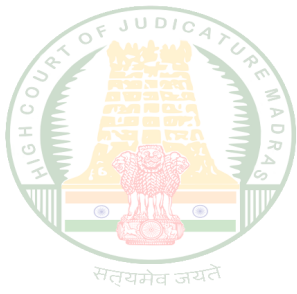


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Government may decline to act on the recommendation but cannot act without it. The case on hand is also in a sense similar. The notifications also contain aspects on which there were no recommendations. It is a case of “no recommendation” in respect of aspects in which the Government had gone beyond. We are of the view that the additions lack the foundation of recommendation and it is not “on the recommendation” of the GST Council. Thus, the impugned notifications by the Central Government as well as the State Government have to be declared as *ultra vires* the parent statute insofar as they incorporate the expression “enforceable right in a court of law”. Minus this expression, the notifications are *intra vires*. The first issue is answered accordingly.

15.The impugned GO(MS) No. 114 issued by the State Government was not ratified by the GST Council. But in its 22nd Meeting, the Council ratified the impugned notifications issued by the Central Government as a whole. The relevant portion of the minutes reads as follows :

"29.31.To ratify the notifications no.27/2017-Central Tax (Rate), 28/2017-Central Tax (Rate), 27/2017-Integrated Tax (Rate), 28/2017-Integrated Tax (Rate), 27/2017-Union Territory Tax (Rate), 28/2017



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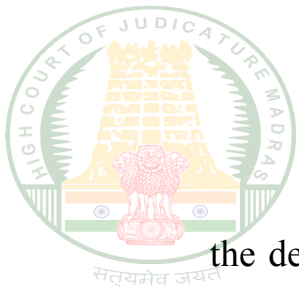


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-Union Territory Tax (Rate) including the drafting changes made therein while implementing the decision of the Council taken during its 21st Meeting held on 9 September 20 17 relating to rate of tax on cereals, pulses and flours etc. put up in unit container and bearing a registered brand name." "29.32. Where the person having actionable claim or enforceable right on a brand name and the person undertaking packing of such goods in unit containers are two different persons, it shall be necessary for the person having actionable claim or enforceable right on such brand name to file an affidavit... stating the following: (a) He is voluntarily foregoing his actionable claim or enforceable right on such brand name, and (b) He has authorised the person (undertaking packing of such goods in unit containers bearing said brand name) to print on such unit containers in indelible ink, both in English and the local language, that in respect of such brand name, he (the person owning the brand name) is voluntarily foregoing the actionable claim or enforceable right on such brand name."

The next question that calls for consideration is whether the GST Council could have ratified the impugned notifications issued by the Central Government.

16.The power of GST Council is traceable to Article 279A of the Constitution of India. Article 279A empowers the GST Council to make recommendation with respect to the matters set out in Article 279A(4). The power to ratify has no where been conferred. It is relevant to refer to



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the decision of the Hon'ble Supreme Court reported in *(1989) 3 SCC 132*

(Marathwada University v. Seshrao Balwant Rao Chavan). While

dealing with the effect of ratification with regard to exercise of statutory

power, the Hon'ble Supreme Court held that the principle of ratification

is alien to exercise of power under statutory provision. The relevant

extracts are as follows:

“27. These principles of ratification, apparently do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is ab initio void and cannot be ratified.”

17.The Hon'ble Telangana High Court was confronted with the

issue as to whether the GST Council could have ratified and given its

stamp of approval to the recommendation of the implementation/law

committee (an in-house creation of the GST Council) with retrospective

effect. Answering in the negative, the Hon'ble Division Bench in the

decision reported in *(2025) 139 GSTR 657 (Brunda Infra (P) Ltd. v.*

Commr. of Central Tax) held that ratification cannot be equated to

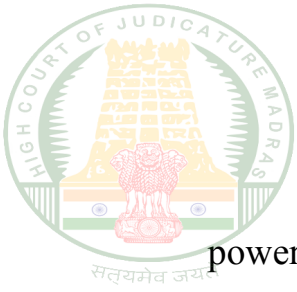


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recommendation and that “ratification” done after issuance of Notification will not provide life to the Notification.

18. ‘Ratification’ is the approval by act, word, or conduct, of that which was attempted (of accomplishment), but which was improperly or unauthorisedly performed in the first instance (*vide Hartman v. Hornsby [142 Mo 368, 44 SW 242, 244]*). The principle is derived from the Latin maxim *ratihabitio mandato aequiparatur*, namely, “a subsequent ratification of an act is equivalent to a prior authority to perform such act”. Therefore, ratification assumes an invalid act which is retrospectively validated (*vide Maharashtra State Mining Corpn. v. Sunil, (2006) 5 SCC 96*).

19. Any authority, whether constituted by the Constitution or a statute, can exercise only such of those powers that have been specifically conferred or by implication. Such bodies do not have any inherent power. If the power of review is not conferred, the authority cannot exercise such a power (*vide Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844*). Likewise, the



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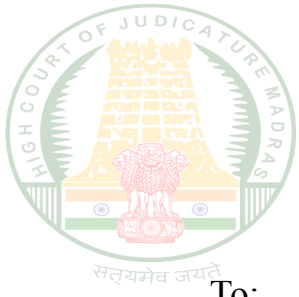
power to ratify should also be conferred explicitly or by necessary implication. Neither the Constitution nor any statute has invested the GST Council with the power of ratification. We, therefore, hold that ratification made by the GST Council in 22nd meeting is without jurisdiction. The second issue is answered accordingly. Since the impugned show cause notices are a fallout of the impugned notifications, they are liable to be set aside and stand set aside. Liberty is given to the department to issue fresh show cause notices if they can be issued in terms of the impugned notifications to the extent they have been held valid.

20.The writ petitions stand allowed accordingly. No costs.

Consequently, connected miscellaneous petitions are closed.

(G.R.S. J.) & (R.K.M. J.)
15.06.2026

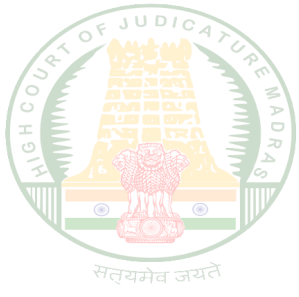
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W.P.(MD)Nos.14115 of 2022 & batch

To:
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The Principal Secretary and Commissioner
of Commercial Taxes,
Ezhilagam, Chempauk,
Chennai – 600 005.



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G.R.SWAMINATHAN, J.
and
R.KALAIMATHI, J.

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**W.P(MD)Nos.14115, 14116, 14117, 14118,
14119, 14120, 14208, 18602 & 26403 of 2022**

15.06.2026