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W.P.Nos.17184 of 2024 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.04.2025

Pronounced on : 12.06.2025

CORAM

THE HONOURABLE MR JUSTICE MOHAMMED SHAFFIQ

W.P.Nos.17184, 22511, 22516, 34667, 36344, 36347, 36599, 36604,
36611, 36872, 36876, 37543, 37546, 37551, 1505, 15584, 15621,
1497, 1514, 6472, 6476, 6485, 9899, 9906, 9904, 12122, 12289, 12293,
12351, 12567, 13311, 13317, 17397, 18677, 18803, 19886, 20107,
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34963, 35108, 35173, 35430, 35626, 35650, 35779, 35857, 35907,
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W.P.Nos. 34065, 34073, 34074, 35455, 35463, 35458 of 2023

and

W.M.P.No.35436, 35431, 35435, 35429, 35436, 35427 of 2023

and

W.P.Nos. 94, 173, 177, 178, 196, 198, 200, 207, 210, 372, 970, 1221, 1224, 1297, 1324, 1396, 1401, 1404, 1720, 1730, 1736, 1922, 1927, 1974, 1984, 1982, 2031, 2037, 2034, 2035, 2041, 2078, 2229, 2350, 2412, 2592, 2788, 2794, 2848, 3122, 3138, 3195, 3338, 3386, 3443, 3577, 3766, 3883, 3886, 3905, 3942, 4223, 4443, 4510, 4515, 4519, 4558 of 2025

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W.M.P.Nos. 117, 115, 177, 179, 185, 184, 186, 187, 210, 212, 215, 217, 228, 230, 231, 227, 423, 418, 420, 1193, 1191, 1467, 1468, 1469, 1471, 1546, 1543, 1577, 1579, 1645, 1640, 1644, 1647, 1638, 1648, 1969, 1970, 1984, 1981, 2197, 2195, 2203, 2204, 2574, 2573, 2672, 2722, 2721, 2910, 2912, 2309, 2310, 2319, 2316, 2375, 2377, 2367, 2369, 2370, 2371, 2372, 2373, 2381, 2438, 2440, 3115, 3112, 3113, 3114, 3150, 3151, 3435, 3436, 3459, 3460, 3541, 3543, 3705, 3706, 3758, 3760, 3829, 3830, 3959, 3960, 4321, 4323, 4713, 4714, 4179, 4180, 4301, 4303, 4305, 4373, 4955, 5024, 5026, 5030, 5031, 5036, 5039, 5040, 5041, 5074, 5075 of 2025

and

W.P.(MD).Nos.1116, 1918, 1919, 12870, 16409, 5687, 1644, 1645, 1646, 5280, 6155, 7311, 6967, 7320, 7485, 7729, 7730, 7734, 7735, 7736, 7874, 9598, 9599, 10048, 10049, 10628, 10674, 11930, 12505, 15016, 16073, 16541, 16715, 23146, 23643, 23652, 23653, 24685, 25442, 26353, 25639, 25932, 25970, 26218, 26219, 26220, 27295, 27634, 27632, 27635, 28242, 29198, 29952, 29951, 30180, 30276, 30277, 30312, 30487, 31166, 31459 of 2024

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W.M.P.(MD) Nos. 11442, 14223, 5381, 1927, 1143, 1142, 11441, 5382, 1928, 19737, 19734, 1683, 1682, 1686, 1687, 1688, 1681, 1685, 19736, 1684, 5062, 5063, 5775, 6736, 6729, 6491, 6737, 6490, 6728, 6874, 6870, 7070, 7071, 7074, 7073, 7076, 7081, 7079, 7082, 7077, 7084, 7165, 7167, 8698, 8727, 8728, 9084, 9085, 9086, 9511, 9512, 9550, 9553, 10628, 11163, 11165, 11166, 13180, 13181, 13963, 13965, 14323, 14324, 14465, 14466, 19616, 19617, 20023, 20021, 20059, 20061, 20029, 20030, 21011, 21010, 21744, 22331, 22332, 21742, 21592, 21593, 21999, 21998, 22032, 22034, 22223, 22224, 22225, 22220, 22221, 22222, 23451, 23452, 23455, 23456, 23953, 23954, 24699, 24700, 25230, 25235, 25231, 25234, 30180, 25399, 25398, 25477, 25470, 25476, 25469, 25497, 25499, 25620, 25621, 26133, 26134, 26340, 26339, 23115, 23117, 23158, 23163 of 2024

and

W.P.(MD)Nos.510, 625, 1366, 1369, 1370, 1367, 1368 & 1517 of 2025

and

W.M.P.(MD)Nos.363, 364, 415, 416, 940, 941, 948, 949, 955, 958, 982, 983, 989, 991, 1094, 1095 of 2025



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WRIT PETITION NUMBER	ADVOCATE FOR THE PETITIONER	ADVOCATE FOR THE RESPONDENT
		Additional Government Pleader, for R3 to R6.
W.P(MD)No.625 of 2025	Mr. A. Satheesh Murugan	Ms. Amirtha Dinakaran, Government Advocate, for R1 & R2.
W.P(MD)No.1366 of 2025 W.P(MD)No. 1367/2025 W.P(MD)No. 1368/2025 W.P(MD)No. 1369/2025 W.P(MD)No. 1370/2025	Mr. Hari Radhakrishnan (In all WP's)	Mrs. K. Vasanthamala, Government Advocate. for R3 to R5 (In W.P(MD)No.1367 to 1370 of 2025) and for R2 to R4, (In W.P(MD)No.1366 of 2025)
W.P(MD)No.1517 of 2025	Mr. A. Satheesh Murugan	Mr.V. Prashanth Kiran, Government Advocate for R1 & R2.

COMMON ORDER

The present batch of writ petition is filed challenging validity of Notification Nos.9/2023 and 56/2023, on the premise that conditions precedent were non-existent for their issuance and mandatory procedural conditions (Recommendation of GST Council) for exercise of power under Section 168A of Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) was not complied.

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2. Overview of GST Act:

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2.1. It may be necessary to give a broad overview of the GST Act.

Article 246A of Constitution was introduced vide 101st Constitution amendment, whereby Parliament and State Legislatures were conferred with power to make laws with respect to Goods and Service Taxes. Pursuant to the power conferred under Article 246A of the Constitution, Parliament enacted CGST Act and Integrated Goods & Services Tax Act, while the States enacted their respective State Goods and Service Tax Acts, including the State of Tamil Nadu, which introduced Tamil Nadu Goods and Service Tax Act (hereinafter referred to as “TNGST Act”). The above enactments were introduced with effect from 01.07.2017. Goods and Services Tax (GST) represents a pivotal shift in indirect taxation, subsuming various indirect taxes levied by the Union and States with a unified system. This transformation under the GST regime was intended to streamline the tax process, alleviate the complexity and multiplicity of previous taxes.

2.2. Goods and Services Tax (GST) consolidated numerous Central and State taxes into a single tax system. The indirect taxes that were absorbed into GST:-



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Central Taxes Subsumed:

- (a) Central Excise Duty (CENVAT)
- (b) Additional Excise Duties
- (c) Duties of Exercise (Medicinal and Toilet Preparations)
- (d) Additional Duties of Exercise (Goods of Special Importance)
- (e) Additional Duties of Exercise (Textiles and Textile Products)
- (f) Additional Duties of Customs (Countervailing Duty, CVD)
- (g) Service Tax
- (h) Central Surcharge and Cess

State Taxes Subsumed:

- (a) State VAT (Value Added Tax)
- (b) Central Sales Tax
- (c) Luxury Tax
- (d) Entry Tax (All Forms)
- (e) Entertainment and Amusement Tax
- (f) Taxes on Advertisements
- (g) State Surcharge and Cess



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3. Circumstances leading to introduction of Section 168A of CGST Act and impugned notification:

3.1. I shall now deal with the background leading to introduction of Section 168A of CGST Act and impugned notifications.

3.2. During 2019-20, there was outbreak/onset of corona virus pandemic in the country inflicting considerable difficulties on the public at large. A year later, pandemic appeared to relent, only to deceptively re-emerge. A few months after country appeared to be returning to normalcy, there was a second wave resulting in another steep rise in Covid-19 virus cases engulfing the entire nation. The devastation caused by the 2nd wave of Covid was even worse than the 1st wave. The unprecedented crisis caused by Covid-19, necessitated Hon'ble Supreme Court taking suo muto cognizance of difficulties faced by litigants and other stakeholders across the nation. Hon'ble Apex Court passed a series of orders commencing with order dated 06.05.2020 and culminating in order dated 10.01.2022, whereby Hon'ble Apex Court excluded certain periods for the purposes of reckoning limitation and also extended period of limitation, where limitation had already expired during the period of such exclusion.



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3.3. In the meanwhile, an ordinance was promulgated by the

President of India titled “THE TAXATION AND OTHER LAWS (RELAXATION OF CERTAIN PROVISIONS) ORDINANCE, 2020”.

The above ordinance was intended to provide relaxation in relation to administering and enforcing provisions of certain Acts in view of spread of Covid-19 pandemic across the globe including India. It was found imperative to relax certain provisions, including extension of time limit in taxation and other laws. Since Parliament was not in session, the President being satisfied that circumstances warranted immediate action, promulgated the above ordinance in exercise of the power under Clause (1) of Article 123 of the Constitution. Chapter VII to said ordinance provided for amendment to CGST Act, 2017, whereby Section 168A was inserted.

3.4. Above ordinance became an Act of Parliament titled “THE TAXATION AND OTHER LAWS (RELAXATION OF CERTAIN PROVISIONS) ACT, 2020”. Section 168A to CGST Act, 2017, was inserted vide Chapter VI to said Act, whereby Government was conferred power under special circumstances to extend time limit specified in, or prescribed or notified under the CGST Act in respect of actions which



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cannot be completed or complied with due to force majeure.

2nd entitlement

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3.5. Impugned Notifications viz., Notification Nos.9/2023 and 56/2023 and G.O.(Ms).No.41 dated 05.04.2023 and G.O.(Ms).No.1 dated 02.01.2024 were issued by Central and State Government, in exercise of their power conferred under Section 168A of CGST Act. It is the validity of above notifications which are the subject matter of challenge in the present batch of writ petitions.

4. Provisions relating to limitation under GST Act:

4.1. Before proceeding further, it may be useful to have a broad overview of provisions relating to limitation under CGST Act, relating to determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised.

4.2. Section 73 of CGST Act deals with determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised, in cases not involving fraud, suppression of facts or wilful mis-statement. Sub-section (10) to Section 73 of CGST Act, provides that the proper officer shall issue an order under sub section (9) to Section 73 of CGST Act, determining the amount of tax, interest and



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penalty within three years from the due date for furnishing annual return for the relevant financial year. The said sub-section (10) of Section 73 of CGST Act, is reproduced below:

"73 (10). The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within three years from the date of erroneous refund."

4.3. Sub-section (2) of Section 73 of CGST Act mandates that a show cause notice shall be issued in this regard, at least three months prior to time limit for passing orders specified under sub-section (10). The said sub-section (2) of Section 73 of CGST Act, is reproduced below:

"73 (2) the proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order."

4.4. It would be clear that the period within which a show cause notice can be issued and an order determining tax liability can be passed by the proper officer are reckoned with reference to due date for filing annual returns. Section 73 of CGST Act, enables authorities to issue notice and pass orders under sub-section (2) and (10) to Section 73 of CGST Act, within a period of two years and nine months and three years



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respectively, from the due date of filing annual return.

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4.5. Section 44 of CGST Act, deals with filing of annual returns.

Sub-section (1) of Section 44 of CGST Act, stood as below, prior to amendment:

"44(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 persons, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty first day of December following the end of such financial year.

Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein."

(emphasis supplied)

4.6. Sub-section (1) of Section 44 of CGST Act, stood amended as below, with effect from 01.08.2021:

"44(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 persons, 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."

4.7. Simultaneously, Rule 80 of CGST Rules, 2017, had been amended, wherein the due date for filing annual return for a financial



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year is prescribed as, on or before 31st day of December following the end of such financial year. It may be relevant to note that the due date for filing annual return came to be prescribed through rules, with effect from 01.08.2021. Prior thereto, Section 44(1) of the CGST Act, required every registered person to furnish annual return for every financial year on or before 31st December following the end of such financial year.

4.8. It is relevant to note that due dates for filing annual returns provided under Section 44 of CGST and TNGST Act, were extended from time to time, for a variety of reasons *inter alia* including the fact that GST levy and compliance being new and frequent technical glitches in GST portal, etc. Extensions so granted are Tabulated below. The extensions set out in the Table below were granted in exercise of powers conferred under Section 44 of CGST Act:

S.No.	Year	Original Due date for filing Annual return	Extended due date for filing annual return	Remarks
1	2017-18	31.12.2018	05.02.2020 (for certain States) and 07.02.2020 (for other States)	Notification 6/2020 Central Tax Dt. 03.02.2020
2	2018-19	31.12.2019	30.06.2020	Notification 15/2020 Central Tax Dt. 23.03.2020



S.No.	Year	Original Due date for filing Annual return	Extended due date for filing annual return	Remarks
			30.09.2020	Notification 41/2020 Central Tax Dt. 05.05.2020
			30.10.2020	Notification 69/2020 Central Tax Dt. 30.09.2020
			31.12.2020	Notification 80/2020 Central Tax Dt. 28.10.2020
3	2019- 20	31.12.2020	28.02.2021	Notification 95/2020 Central Tax Dt. 30.12.2020
			31.03.2021	Notification 4/2021 Central Tax Dt. 28.02.2021

5. As the ground of challenge to the notification issued by the Central and State Government are one and the same to avoid duplicity, I propose to deal with the challenge to Central Notifications, for the decision/conclusion in relation thereof would govern the Notifications/Government orders issued by the State Government.

6. Case of Petitioners:

6.1. On behalf of the petitioners submissions were advanced by learned counsels for the petitioners viz., Mr.Vijay Narayan, Dr.Muralidhar, Mr.Sujit Ghosh, Mr.Abdul Hameed, Senior Advocates, Mr.N.Sri Prakash, Mr.N.Sri Prasad, Mr.Raghavan Ramabadran,



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Mr.G.Natarajan, Mr.V.Srikanth. The contentions of petitioners can be broadly divided into three parts viz.,

- A) Common submission relating to challenge to Notification Nos.9 and 56 of 2023;
- B) Additional submissions relating to Notification No.56 of 2023;
- C) Impact of Supreme Court order under Article 142 of the Constitution, vis-a-vis on the impugned notification.

A. Common Submissions with regard to challenge to Notification Nos.9/2023 and 56/2023:

a) (i) Section 168A of CGST Act enables exercise of power, which is in the nature of delegated legislation and not conditional legislation. (*Hamdard Dawakhana vs. Union of India reported in AIR 1960 SC 554*).

Impugned Notifications must be understood and tested as a delegated legislation.

(ii) Section 168A(1) of CGST Act empowers/delegates to Central/State Government, to exercise discretionary legislative powers. Therefore, impugned Notification Nos.9 and 56 of 2023 are a piece of delegated legislation issued under said provisions and open to be tested



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on all grounds available for a challenge of an administrative act¹.

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(b) Section 73(10) of CGST and TNGST Acts reflects legislative policy with regard to limitation for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized. Section 168A of CGST Act, confers power on Government to issue notifications extending time limit specified in, or prescribed or notified under CGST Act, in respect of actions which cannot be completed or complied with due to force majeure. Above power to issue notifications extending time limits conferred under Section 168A of CGST Act, *inter alia* in respect of time limit prescribed under Section 73 of CGST Act, is an exception to the legislative policy reflected in Section 73 of CGST Act. Being an exception to legislative policy it ought to be strictly construed.

(c) Condition precedent for exercise of power under Section 168A of CGST Act *inter alia* includes the following viz.,

(i) There must be a force majeure event affecting implementation of any of the provisions of the CGST Act within the meaning of Explanation to Section 168A of the CGST Act.

1. Indian Express Newspapers (Bombay) Pvt. Ltd vs. Union of India, AIR 1986 SC 515



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(ii) Actions for which time limit is specified in or prescribed or notified under the CGST Act “cannot be” completed or complied with.

(iii) Such actions cannot be completed or complied with “due to” force majeure.

The above ingredients are jurisdictional facts or conditions precedent for exercise of power by the Central Government/State Government under Section 168A(1) of the Acts.

(d) Expression "due to", employed under Section 168A of CGST Act, is with reference to and qualifies “force majeure”. Expression "due to", ought to be understood as referring to "causa causans" and not "causa sine qua non". In other words, power under Section 168A of CGST Act, to extend time limit specified in, or prescribed or notified under, the Act in respect of actions which cannot be completed or complied with under Section 168A of CGST Act, is premised on Government arriving at a satisfaction taking into account relevant factors, which would show that there was force majeure that such force majeure was the proximate cause behind the inability of authorities under the Act, to complete actions within the time limit specified, prescribed or notified under the Act.



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(e) Expression "cannot" employed in Section 168A of CGST Act, conveys "an impossibility" and not mere difficulty or something which prevented actions being completed or complied within prescribed period.

(f) That GST Council while recommending exercise of power under Section 168A of CGST Act, and issuance of notifications thereof failed to take into account relevant materials thereby vitiating the notification which *inter alia* includes the following:

(i) Office Memorandum of the Ministry of Personnel, Public Grievances and Pension, Government of India dated 06.02.2022.

(ii) D.O.No.40-3/2020-DM-1(A) of the Home Secretary, Government of India, dated 22.03.2022 addressed to all Chief Secretaries of all States.

(iii) CAG Report No.5 of 2022 for the period 01.04.2020 to 31.03.2021 dated 31.03.2022.

(iv) Report of CAG for the period 2021-22 bearing No.7 of 2024 dated 21.06.2024.



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6.2. That on a collective consideration of relevant materials placed before this Court, it would be clear that inability on the part of revenue to issue notices, complete adjudication within time limit stipulated under Section 73 of the CGST Act, was not in view of any extraneous factor much less force majeure but attributable wholly to inaction and delay on the part of revenue in setting up suitable system/infrastructure for effectively carrying out scrutiny and audit proceedings. Difficulty, if any, in complying with time limit for action under Section 73 of the CGST Act is self imposed and not attributable to any external factor much less “force majeure”, thereby vitiating exercise of power under Section 168A of CGST Act rendering it invalid.

6.3. It is contended that materials relevant to decide the need for exercise of power under Section 168A of CGST Act, were not placed before GST Council, thus recommendation of GST Council itself is rendered vulnerable to challenge for failing to take into account relevant factors.

B. Additional submissions regarding challenge to Notification No.56 of 2023 :

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6.4. In addition to the submissions set out above, which is common to the challenge to Notification Nos.9 and 56 of 2023, following additional submissions were made with reference to challenge to Notification No.56 of 2023 dated 28.12.2023:

a) Recommendation of GST Council is a pre-condition for issuance of notification in terms of Section 168A of the CGST Act. That impugned Notification No.56 of 2023, was issued even before any recommendation was made by GST Council. Absent such recommendation, the impugned notification would be rendered void for non compliance with the above pre-requisite for exercise of power under Section 168A of CGST Act.

b) The impugned notification was issued on the basis of decision of GST Implementation Committee (hereinafter referred to as "GIC"). That in terms of Section 168A of CGST Act, notification ought to be issued by the Government on the recommendation of GST Council. The GST Council is a constitutional body. Recommendation by GIC cannot be a substitute for one by GST Council for the purpose of Section 168A of CGST Act.

c) That a ratification by the GST Council of the recommendation



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made by GIC post issuance of impugned notification would not validate issuance of a notification. This is in view of the reason that what is contemplated is issuance of notification “on” the recommendation of the GST Council. It is trite law that where a statute requires a particular act to be done in a particular manner that act has to be done in that manner and no other. The impugned notification is contrary to the above settled principle.

d) The impugned notification suffers from the vice of abdication of authority by the GST Council and usurping of power vested with GST Council by GIC, which vitiates and renders the impugned notification a nullity.

e) That the impugned notification is contrary to the maxim “*delegatus non potest delegare*” i.e., a delegate cannot delegate.

f) That the recital in the impugned notification that “*the Government, on the recommendation of the Council, hereby, extends the time limit specified under sub section 10 of section 73 for issuance of order*” is wholly false inasmuch as admittedly the impugned notification has been issued not on the basis of the recommendation of the GST Council instead on the basis of recommendation of GIC. The



impugned notification thus suffers from malice in law.

C. Submissions relating to the effect of Order of the Hon'ble Supreme Court under Article 142 of Constitution of India extending the limitation and excluding certain period for the purpose of limitation in respect of judicial/quasi judicial proceedings vis-a-vis impugned notifications:

6.5. That power under Article 142 of the Constitution, cannot be used to supplant substantive law applicable to the case or cause under consideration.² Power under Article 142 of the Constitution, cannot be exercised in a manner where it would be in direct conflict with what has been expressly provided for in a statute expressly dealing with the subject. Ordinarily the Apex Court even while exercising its jurisdiction under Article 142 of the Constitution cannot disregard a statutory provision governing a subject. The directions under Article 142 of the Constitution would govern, and be binding only until the legislature/executive steps in to substitute vacuum filled by the judicial order. Order under Article 142 of the Constitution has a shelf life only

2. Supreme Court Bar Association vs. Union of India and another reported in (1998) 4 SCC 409



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until a specific enactment/executive order is put in place.³

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6.6. That the orders under Article 142 of the Constitution including the order dated 10.01.2022, whereby the Hon'ble Apex Court excluded the period from 15.03.2020 till 28.02.2022, would cease to have effect with the introduction of Section 168A to the CGST Act with effect from 31.03.2020, and in any view with effect from 05.07.2022 with the issuance of Notification No.13 of 2022 dated 05.07.2022.

7. Case of the Respondents:

7.1. The submission of the respondents can be divided into three parts viz.,

A) Common submission relating to validity of Notification No.9 and 56/2023;

B) Submission relating to validity of Notification No.56/2023;

C) Impact of order of Apex Court under Article 142 of the Constitution vis a vis impugned notifications;

A) Common submission relating to validity of Notification No.9 and 56/2023:

3. Vineet Narain and Others vs. Union of India and another reported in (1998) 1 SCC 226, Kalyan Chandra Sarkar vs. Rajesh Ranjan and another reported in (2005) 3 SCC 284



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a) That Notification No.13 of 2022 dated 05.07.2022 was issued

under Section 168A of CGST Act, on recommendation of the Council in partial modification of Notification No.35 of 2020 dated 30.04.2020 and Notification No.15 of 2021 (Central Tax) dated 01.05.2021. Notification No.13/2022-Central Tax dated 05.07.2022 shall be deemed to have come into force with effect from the 1st day of March, 2020 whereby the Government,

i) Extends the time limit specified under sub-section (10) of Section 73 of CGST Act for issuance of order under sub-section(9) of Section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized in respect of a tax period for the financial year 2017-18, upto the 30th day of September 2023;

ii) Excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation under sub section (10) of Section 73 of the said Act for issuance of order under sub section (9) of Section 73 of the CGST Act, for recovery of erroneous refund; and

iii) Excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing



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refund application under Section 54 or Section 55 of the CGST Act.

b) Notification No.9 of 2023 extended the time limit specified under sub-section (10) of section 73 for issuance of order under sub-section (9) of Section 73 of the CGST Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised, relating to the period as specified below, namely:

- (i) for the FY 2017-18, up to the 31st day of December, 2023;
- (ii) for the FY 2018-19, up to the 31st day of March, 2024;
- (iii) for the FY 2019-20, up to the 30th day of June, 2024.

c) That Notification No.9/2023 ought to be read in conjunction with the principal Notification Nos.35/2020-CT, 14/2021-CT and 13/2022-CT inasmuch as Notification No.9 of 2023, is issued in partial modification of Notification Nos.35 of 2020, 14 of 2021 and 13 of 2022 dated 03.04.2020, 01.05.2021 and 05.07.2022.

d) That Notification No.9 of 2023 was issued pursuant to the 49th meeting of GST Council after taking into account difficulties faced by Government Department during Covid period due to reduced staff, staggered timing and exemption to certain categories of employees from

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attending offices resulted in delay in scrutiny and audit. Law Committee also proposed that in view of restrictions and difficulties faced due to Covid-19 pandemic, the need for extending the time limit for passing orders under Section 73(10) of CGST Act, by a further period of 3 months for the years 2017-18, 2018-19 and 2019-20. That the extension was in view of the difficulty faced in getting requisite data/information to carry out scrutiny, assessment or audit within the limitation prescribed.

e) On the recommendation of GST Council that action, notices, orders under Section 73 of the CGST Act, cannot be completed within the time limit specified under Section 73 of CGST Act, due to force majeure time limit for taking action under Section 73 of CGST Act, stood extended vide impugned notification No.9/2023.

f) That Covid-19 pandemic would constitute force majeure for the purposes of Section 168A of CGST Act. The impugned notification No.9/2023 was validly issued in compliance with the mandate contained in Section 168A of CGST Act.

g) That Covid Pandemic not only affected the implementation/administration of GST Act, in terms of issuing notices to passing orders during pandemic, but covid pandemic resulted in huge



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backlog with regard to audit/scrutiny, assessment and adjudication which was a direct and proximate effect of pandemic (even after covid-19 cases had declined). The submissions of the petitioners that impugned notification No.9/2023 issued under Section 168A of CGST Act, was not warranted as it could not be said that CGST Act, could not have been implemented due to force majeure, is devoid of merits. Reliance was placed on the following judgments:

(i) *M/s.Brunda Infra Pvt. Limited and Others vs. Additional Commissioner of Central Tax, Hyderabad and Others (Telangana High Court) reported in 2025 SCC OnLine TS 145*

(ii) *M/s.Graziano Transmissoini vs. Goods and Services Tax and Others (Allahabad High Court) reported in 2024 SCC OnLine All 3012*

h) That examination of availability or non-availability of materials and adequacy thereof for the Council, to make its recommendation under Section 168A of CGST Act, in view of force majeure is beyond the scope of judicial review. Reliance was placed on the judgments of Telengana and Allahabad High Court judgments referred to supra in support thereof.



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B) Submission relating to validity of Notification No.56/2023:

Shall determine its procedures → may be to delegate

a) That Article 279A(8) of Constitution vests the Council with power to decide and adopt procedures to discharge its function. That GST Council had approved constitution of GST implementation Committee and other Standing Committees in its 14th GST Council Meeting. Importantly, in 17th GST Council Meeting it was resolved that GST Council may delegate power to GST Implementation Committee to decide on urgent matters and also prescribe the procedure for obtaining views/comments and approval of Council. During Covid Pandemic in view of difficulties in convening meetings as and when required at short notices, GIC was required to suggest recommendation which was thereafter circulated to the Members of Council and approved by the Chairperson. It was submitted that contention of petitioners that impugned notifications were not made on the recommendation of GST Council instead on recommendation of GIC is without merit.

b) That procedure adopted in framing recommendation by Council, is in any view protected by Article 279A (10) of the Constitution. Importantly, recommendation for issuance of impugned notification No.

56 of 2023 was circulated to the Members of the Council and also

279A(10): No proceeding of the GST Council shall be invalid merely because of any procedural irregularity and affecting the merits of the case.

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approved by the Chairperson. Recommendation was tabled in 53rd GST

Council Meeting under the head "For information/Ratification", which is

in consonance with procedure adopted by Council in 17th GST Council

Meeting. Submission of petitioners that there was delegation by GST

Council of its function to make recommendation under Section 168A of

CGST Act lacks merit.

C) Impact of order of Apex Court under Article 142 of the Constitution.

on the impugned notification:

a) The Suo motu orders of the Hon'ble Supreme Court extending the time period for limitation, would in any view save the validity of notices/orders of adjudication from limitation. That power of the Hon'ble Supreme Court under Article 142 of the Constitution is to do complete justice and cannot be limited or restricted by provisions of statute.⁴

b) That orders under Article 142 of the Constitution do not lose its effect with the issuance of notifications under Section 168A of the CGST Act viz., Notification No.13/2022 dated 05.07.2022. Reliance was placed on the decisions of the Hon'ble Apex Court in *V.S.Palanivel vs. Sri*

4. *Delhi Judicial Services Association Tiz Hazari Court, Delhi vs. State of Gujarat and Others reported in (1991) 4 SCC 406.*



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Lakshmi Hotels (P). Ltd., reported in 2025 1 SCC 559 and *GPR Power*

Solutions Pvt. Ltd., vs. *Supriyo Chaudhuri* reported in 2021 17 SCC 312

in support of the above contentions.

8. Questions for consideration:

A) Whether notifications issued by the Government in exercise of its power under Section 168A of CGST Act is a piece of conditional or delegated legislation.

B) Whether Section 168A read with impugned notifications is an exception to the legislative policy under the GST Act with regard to limitation for issuing notices/passing orders under Section 73 of CGST Act and thus ought to be construed strictly.

C) Whether a delegated legislation ^{GIC} can be challenged on the ground of failing to take into account relevant factors and if so, whether factors relevant for determining existence of circumstances warranting recommendation for exercise of power under Section 168A of CGST Act, ^{Spoil, weaken} were left out by the Council, thereby vitiating the recommendation and impugned notifications issued thereon such recommendation.

D) Whether recommendation by GST Council for issuance of



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notifications under Section 168A of CGST Act, is mandatory and non compliance would render the legislative exercise by the delegate a nullity.

E) Whether ratification of recommendation by GIC by the GST Council post issuance of Notification No. 56 of 2023, would constitute sufficient compliance with the mandate on recommendation contained in Section 168A of CGST Act or there was any abdication of authority by GST Council or arrogation/usurping of powers vested with the Council by GIC.

F) Whether the suo muto orders of the Hon'ble Supreme Court under Article 142 of the Constitution, would continue to remain binding even after introduction of Section 168A of CGST Act and issuance of notifications by the Government in exercise of its power thereon.

in a series, one after another

9. I shall proceed to answer above questions in seriatim:

A) Whether notifications issued by the Government in exercise of its power under Section 168A of CGST Act is a piece of conditional or delegated legislation.

9.1. To answer the above question it is necessary to bear in mind

Conditional legislation

Essential and ancillary

*Executing conditions
Delegated*

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legislative functions
Essential
ancillary
This is delegated
I+ can be challenged



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that a distinction exists between what is called conditional legislation and delegated legislation proper⁵. In case of conditional legislation, the legislation is complete in itself but its operation is made to depend on fulfilment of certain conditions and what is delegated to an outside authority, is the power to determine according to its own judgment whether or not those conditions are fulfilled. In case of delegated legislation proper, some portion of the legislative power of the legislature is delegated to the outside authority in that, the legislature, though competent to perform both the essential and ancillary legislative functions, performs only the former and parts with the latter, i.e., the ancillary function of laying down details in favour of another for executing the policy of the statute enacted. The distinction between the two exists in this that whereas conditional legislation contains no element of delegation of legislative power and is therefore not open to attack on the ground of excessive delegation, delegated legislation proper does confer some legislative power on some outside authority and is therefore open to attack on the ground of excessive delegation.

9.2. It may also be relevant to refer to the judgment of the Hon'ble

Supreme Court in *Hamdard Dawakhana v. Union of India* reported in

5. Delhi Laws Act, 1912 In re, AIR 1951 SC 332, pp.398 to 400 (paras 236 to 242): 1951 SCR 747; *Hamdard Dawakhana vs. Union of India*, AIR 1960 SC 554, pp.566, 567.



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1959 SCC OnLine SC 38, wherein the distinction between conditional and delegated legislation was explained as under:

"...28.This means that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend; (Queen v. Burah [(1878) 3 App Cas 889] ; Russell v. Queen [(1882) 7 App Cas 829, 835] ; King-Emperor v. Benoarilal Sarma [(1944) LR 72 IA 57] ; Sardar Indar Singh v. State of Rajasthan [(1957) SCR 604]) Thus when the delegate is given the power of making rules and regulations in order to fill in the details to carry out and subserve the purposes of the legislation the manner in which the requirements of the statute are to be met and the rights therein created to be enjoyed it is an exercise of delegated legislation. But when the legislation is complete in itself and the legislature has itself made the law and the only function left to the delegate is to apply the law to an area or to determine the time and manner of carrying it into effect, it is conditional legislation..."

29. In an Australian case relied upon by the learned Solicitor-General the prohibition by proclamation of goods under Section 52 of the Customs Act, 1901 was held to be conditional legislation : Baxter v. Ah Way [8 Com LR 626, 634, 637, 638] According to that case the legislature has to project its mind into the future and provide as far as possible for all contingencies likely to arise in the application of the law, but as it is not possible to provide for all contingencies specifically for all cases, the legislature resorts to conditional legislation leaving it to some specified authority to determine in what circumstances the law should become operative or to what its operation should be extended, or the particular class of persons or goods to which it should be applied : Baxter case [(1957) SCR 604] at pp. 637 & 638.



30. Broadly speaking these are the distinguishing features of the two forms of delegation and these are their characteristics. The question is in which compartment does the power given in the Act fall. "

9.3. Having set out the distinction between conditional and delegated legislation, I shall now examine Section 168A of CGST Act and the impugned notifications issued thereunder. Section 168A of CGST Act reads as under:

"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 or 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."

9.4. Legislature as a matter of policy provided for limitation for completion or compliance of actions under the CGST Act. However, legislature introduced Section 168 A of CGST Act, as it was of the view that there may be circumstances which would warrant departing from the



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limitation prescribed by extending the time limit for completing or complying actions under the Act. It must be borne in mind that limitation is founded on public policy and its prescription primarily legislative in character.

9.5. Keeping the distinction between a conditional and delegated legislation and applying the above principle to Section 168A of the CGST Act, it appears that after laying down the policy, legislature has left to the discretion of the delegate i.e., the Government to extend time limit in special circumstances in terms of Section 168A of CGST Act, viz., where actions cannot be complied or completed within the time limit specified or prescribed or notified due to force majeure.

9.6. It would appear that the discretion conferred under Section 168A of CGST Act, to issue a notification to extend time limit in special circumstances is more in the nature of a delegated legislation than conditional legislation, inasmuch as it results in modifying the limitation provided under the Act. The above conclusion stands fortified if one bears in mind as observed supra that limitation is founded on public policy and its prescription is primarily legislative in nature.



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B) Whether Section 168A read with impugned notifications is an

exception to the legislative policy under the GST Act with regard to limitation for issuing notices/passing orders under Section 73 of CGST Act and thus ought to be construed strictly.

9.7. To answer the above question, it may be necessary to refer to sub sections (2) and (10) to Section 73 of CGST Act, which reads as under:

"73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(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."

9.8. It is necessary to bear in mind that limitations stipulated/provided under an Act, is with a view to ensure finality and certainty and part of public policy. Limitation is essential for public order to ensure that there is no insecurity and uncertainty. Lack of clarity



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with regard to limitation would result in creating insecurity and uncertainty. In this regard it may be relevant to refer to judgment in

Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project reported in (2008) 17 SCC 448:

“26. Basically, the laws of limitation are founded on public policy. In Halsbury's Laws of England, 4th Edn., Vol. 28, p. 266, Para 605, the policy of the Limitation Acts is laid down as follows:

“605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove the stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.”

27. Statutes of limitation are sometimes described as “statutes of peace”. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. This Court in Rajender Singh v. Santa Singh [(1973) 2 SCC 705] has observed: (SCC p. 712, para 18)

“18. The object of law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches.”

.....

29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”

9.9. The above view stands reiterated on more than one occasion



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including in the case of *Prahlad Raut vs. All India Institute of Medical Sciences* reported in (2021) 14 SCC 472

9.10. Limitation prescribed under sub sections (2) and (10) to Section 73 of CGST Act, for issuance of notice and passing of orders reflects the legislative will/policy on the aspect of limitation for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts. Section 168A of CGST Act, confers power on the Government *inter alia* to extend the time limit stipulated under Section 73 of CGST Act for issuing notices /passing orders under sub-section (2) and (10) of Section 73 of CGST Act. Section 168A of CGST Act read with the impugned notifications is in the nature of an exception to Section 73 of CGST Act, which as observed supra reflects the legislature's will/policy as regards limitation under CGST Act. It is trite law that exception ought to be strictly construed. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in *Project Officer, IRDP and Others v. P.D. Chacko* reported in (2010) 6 SCC 637 wherein it was held as under:

"14. An exception clause is normally part of the enacting

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section, unlike a proviso which follows an enacting part. Crawford's Interpretation of Laws (1989), p. 128, speaks of exception as follows:

“91. Exceptions and provisos.—... The exception, however, operates to affirm the operation of the statute to all cases not excepted and excludes all other exceptions; that is, it exempts something which would otherwise fall within the general words of the statute.”

15. It is trite law that an exception clause has to be strictly interpreted and cannot be assumed but be proved. An exception clause is always subject to the rule of construction and in case of doubt, it must befriend the general provision and disfavour the exception.”

9.11. It may therefore be necessary to construe Section 168A of CGST Act and impugned notification issued thereunder which purports to extend limitation fixed by Parliament/State legislature strictly.

C. Whether a delegated legislation can be challenged on the ground of failing to take into account relevant factors and if so, whether factors relevant for determining existence of circumstances warranting recommendation for exercise of power under Section 168A of CGST Act, were left out by the Council, thereby vitiating the recommendation and impugned notifications issued thereon such recommendation.

9.12. One of the primary ground of challenge to impugned



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notification Nos.9 and 56 of 2023, issued by the Government in exercise of its power under Section 168A of the CGST Act, is that impugned notifications were issued without finding existence of condition precedent and taking into account relevant factors for issuance of notifications under Section 168A of CGST Act.

9.13. To appreciate the above submission, it may be necessary to examine the condition precedent for exercise of power under Section 168A of CGST Act and materials relevant to determine the existence of such condition precedent contended as having been left out while examining the existence or otherwise of such condition precedents before recommendations made by the GST Council and issuance of impugned notifications.

9.14. Before proceeding further it is necessary to note that it is trite that a delegated/subordinate legislation can be challenged on the ground that it has failed to take into account relevant/vital facts in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* reported in (1985) 1 SCC 641 is extracted as under:

"78. That subordinate legislation cannot be questioned on the ground of violation of principles of natural justice on which administrative action may be questioned has been held by this Court in Tulsipur Sugar Co. Ltd. v. Notified Area Committee, Tulsipur [(1980) 2 SCC 295 : AIR 1980 SC 882 : (1980) 2 SCR



1111] , Rameshchandra Kachardas Porwal v. State of Maharashtra [(1981) 2 SCC 722 : AIR 1981 SC 1127 : (1981) 2 SCR 866] and in Bates v. Lord Hailsham of St. Marylebone [(1972) 1 WLR 1373 : (1972) 1 All ER 1019 (Ch D)] . A distinction must be made between delegation of a legislative function in the case of which the question of reasonableness cannot be enquired into and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which administrative action may be questioned, such as, non-application of mind, taking irrelevant matters into consideration, failure to take relevant matters into consideration, etc, etc. On the facts and circumstances of a case, a subordinate legislation may be struck down a arbitrary or contrary to statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution. This can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19(1)(a) of the Constitution. It cannot, no doubt, be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant. "

9.15. It is thus clear that a delegated legislation can be challenged on the ground of failing to take into account relevant factors. Keeping the above principle in mind and on a reading of Section 168A of CGST Act, it would appear that condition precedent for exercise of power under Section 168A of CGST Act *inter alia* includes the following viz.,

(i) There must be a force majeure event affecting the implementation of any of the provisions of the Acts within the meaning of the Explanation to Section 168A of the CGST Act.



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(ii) Actions for which time limit is specified in or prescribed or notified under the Acts “*cannot be*” completed or complied with.

(iii) Such actions cannot be completed or complied with “*due to*” “*force majeure*”.

9.16. The above ingredients are jurisdictional facts or condition precedent for exercise of power by the Central Government/State Government under Section 168A(1) of the Acts.

9.17. It is beyond any doubt that occurrence of a force majeure event in terms of explanation to Section 168A of CGST Act, is a sine qua non/condition precedent. Force majeure is defined to mean events mentioned in the Explanation to Section 168A of CGST Act, which includes epidemic. It is not in dispute that Covid-19 would constitute a "force majeure" for the purposes of Section 168A of CGST Act.

9.18. Secondly, Section 168A of CGST Act, would require that actions under the GST Act cannot be completed or complied with due to “force majeure”. It may therefore be necessary to examine the scope of the expression "due to" and "cannot" employed in Section 168A of CGST Act.



"Due to: Expressions "sustained by", "caused by", "due to", "resulting from", "sustained by means of", "sustained in consequence of", and "sustained through" have been held to be synonymous.⁶

Cannot: Denotes that one is not able (to do some act). But the term is often equivalent to "shall not".⁷

Cannot: "Cannot" includes a legal inability, as well as a physical impossibility (The Newbattle, 10 P.D.33).

Vesting Order "where a trustee cannot be found" (Trustee Act 1893 (c.53) s.35(1)(ii)(c) – see Trustee Act 1925 (c.19) s.51(1)(ii)(c)); see Re General Accident Insurance [1904] 1 Ch.147, not followed by Buckley J., Re Taylor's Agreement Trusts [1904] 2 Ch. 737; Re Dutton's Patent, 67 S.J. 403; but followed in Re 9 Bomore Road [1906] 1 Ch. 359; a company which has been dissolved "cannot be found" (Re Mills [1905] W.N.36, following Re General Accident Assurance, above)

"Cannot safely be done" (Building (Safety, Health and Welfare) Regulations 1948 (SI 1948/1145) reg.5) envisages the question whether an accident is foreseeable in all circumstances likely to occur, having regard to past experience (Connolly v McGee [1961] 1 W.L.R. 811).

"Cannot be obtained" (National Conditions of Sale (20th edn) condition

6. Black's Law Dictionary-6th Edition

7. Black's Law Dictionary-6th Edition



11(5)). These words mean "cannot ever be obtained", and would not cover a case where the landlord's consent to the assignment of a lease is not yet forthcoming but might be obtained in the future (29 Equities v Bank Leumi (UK) [1987] 11 All E.R.108)⁸."

9.18.1. From a reading of the above extracts of the meaning "due to" and "cannot", it leaves no room for any doubt that "force majeure", must be the cause for the authorities being unable to complete or comply with action to be taken under the Act, within the time limit specified in or prescribed under the Act. Applying the same to the present batch of case, it is but necessary to show that authorities under GST Act were unable to issue notices or pass orders within the limitation provided under Section 73(2) and Section 73(10) of CGST Act, due to Covid pandemic.

9.19. The expression "due to" would reveal that inability to complete or comply with actions to be taken under the Act within the time limit specified in a prescribed or notified must be closely/proximately connected to "force majeure". In other words, force majeure must be shown to be the most proximate cause for the inability

8. Source: Stroud's Judicial Dictionary of words and phrases by Daniel Greenberg, Eighth Edition.



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to complete or comply with actions within the time limit prescribed or notified under the Act. A mere casual connection between force majeure and inability to complete or comply with actions within the limitation provided under the Act, may not be adequate for exercise of power under Section 168A of CGST Act.

9.20. It appears to be a case of cause and effect. Cause being force majeure i.e., Covid pandemic, effect being the inability to issue notice/pass order within the time limit provided under Section 73(2) and (10) of CGST Act.

9.21. The expression “cannot” employed in the Explanation to Section 168A of CGST Act, I would think connote if not impossibility, impracticalities (or) statutory mandate unachievable and not mere inconvenience or an element of disadvantage.

9.22. It may therefore be necessary to examine if covid was the sole or proximate cause for authorities under CGST Act, not being able to complete or comply with actions within the time limit stipulated under Section 73 of the CGST Act.

9.23. With this background, I shall now proceed to examine the material relied upon by the petitioner as being relevant, but left out of



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consideration by the GST Council, while making recommendation to the Government for issuance of impugned notifications under Section 168A of CGST Act.

9.24. It was contended by the learned counsel for the petitioners that materials which would show the impact of Covid-19, or rather lack of it on the inability of the authorities under the GST Act, to issue notice/pass orders within the time limit provided under sub-section (2) and (10) to Section 73 of the CGST Act, was not placed for consideration before GST Council nor in any view considered by the GST Council, *inter alia* included the following viz.,

a) Office Memorandum of the Ministry of Personnel, Public

Grievances and Pension, Government of India, dated 06.02.2022.

"F.No.11013/9/2014-Estt.A-III

.....
The undersigned is directed to refer to this Department's OMs of even no. dated 03.01.2022 and 31.01.2022 on the above mentioned subject and to state that, in view of decline in the number of COVID cases and positivity rate, it has been decided that employees at all levels, without any exemption, shall attend office on regular basis with effect from 7th February, 2022. Heads of Department shall also ensure that employees wear masks at all times and continue to follow covid-appropriate behaviors strictly."

b) D.O.No.40-3/2020-DM-I(A) of the Home Secretary,



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Government of India, dated 22.03.2022 addressed to all Chief Secretaries

of all States. The relevant portion of the letter is extracted hereunder:

“2. Over the last 24 months, significant capacities have been developed for various aspects of management of the pandemic, such as diagnostics, surveillance, contact tracing, treatment and vaccination, hospital infrastructure and the general public has much higher level of awareness on the COVID appropriate behaviour. States and UTs have also developed their own capacities and systems and implemented their detailed State/UT specific plans for managing the pandemic. Over the last seven weeks or so there has been a steep decline in the number of cases. The total caseload in the country stands at 23,913 only and daily positivity rate has declined to 0.28%. It is also worth mentioning that with the combined efforts, a total of 181.56 Cr vaccine doses have been administered.

3. After taking into consideration the overall improvement in the situation and preparedness of the Government to deal with the pandemic, NDMA has taken a decision that there may not be any further need to invoke the provisions of the DM Act for COVID containment measures. Accordingly, after the expiry of the existing MHA Order No. 40-3/2020-DM-I (A) dated 25th February, 2022, ?? further Order may be issued by MHA. However, Ministry of Health & Family Welfare (MoHFW) advisories on COVID containment measures, including on the use of face masks and hand hygiene, will continue to guide the overall national response to the pandemic.

.....

5. I would, therefore, advise all the States/UTs to consider appropriately discontinuing issue of orders and guidelines under the DM Act, 2005 for COVID containment measures. The States/UTs may continue to follow the SoPs/advisories that have been or are being issued by the MoHFW from time to time for COVID containment measures, vaccination and other related aspects, including observing COVID Appropriate



Behaviour.”

c) The Systemic problems admitted by Ministry and captured in CAG Report No.5 of 2022, for the period 01.04.2020 to 31.03.2021 dated 31.03.2022. The relevant portion is extracted hereunder:

“3.2 Scrutiny of Returns under GST

.....

In the Audit Report No. 1 of 2021 on Goods and Services Tax, Audit had observed that CBIC was yet to put in place an effective system of scrutiny of returns based on detailed instructions/standard operating procedure/manual for the tax officers. Therefore, an important compliance function of the department, as mandated by law, was yet to be effectively rolled out even after three years of GST implementation.

Ministry informed (August 2021) that the report of the Committee, constituted to suggest guidelines for scrutiny of GST returns, was under examination. However, the department had been using data analytics and information technology system-based tools to identify deviant behaviour. Inconsistencies between various returns of the taxpayers are being analysed and red flag reports are being generated by GSTN as well as the Directorate General of Analysis and Risk Management (DGARM) in respect of defaulting taxpayers. These reports are being shared with the tax officers for verification.

Ministry further informed that efforts were being made to put in place a risk-based standardised system of return scrutiny within the next six months.

It may be pertinent to mention that section 73 of CGST Act, 2017 provides that where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed



or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder. The proper officer shall issue the order within three years 43 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.

The due dates for filing of annual returns for FY 18, FY 19 and FY 20 were 5/7 February 2020, 31 December 2020 and 31 March 2021, respectively. Almost two years have passed (January 2022) since filing of annual returns for FY 18 and more than one year since filing of annual return for FY 19. As a result, the time available for issuance of notice and recovery of revenue in cases of non/short payment of tax has already shrunk to that extent. In view of the above, Audit agrees with the Ministry's response and recommends that an effective risk based standardised system of returns' scrutiny (with detailed instructions/standard operating procedure) should be implemented at the earliest and certainly within the period of six months indicated by the Ministry so that the Department has sufficient time to take action against non-compliant taxpayers before time-barring of cases as per law. Such a scrutiny should involve risk-based selection of returns for scrutiny, and the results of the scrutiny (similar to scrutiny assessment in respect of income tax) should also be captured in real-time through the CBIC-GST System to ensure transparency and minimize arbitrariness.

When Audit pointed this out (December 2021), Ministry, while accepting the audit recommendation, stated (February 2022) that scrutiny of returns based on detailed instructions/standard operating procedure is under active



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consideration and the proposed scrutiny process is envisaged to have risk-based selection of returns and is proposed to include a robust monitoring system to ensure transparency and fairness.”

.....

When pointed out (January 2022), Ministry stated (March 2022) that due to the extension of due date of filing of annual returns, less number of taxpayers were available for audit during 2019-20 and 2020-21. Ministry further stated that there was shortage of officers in the Audit Commissionerates, especially in the grade of inspectors whose working strength was less than 50 per cent of the sanctioned strength in most of the Audit Commissionerates. Non-cooperation by the taxpayers in providing documents and Covid-19 pandemic were also cited by the Ministry as the reasons for low coverage of units in internal audit. As regards low recovery in internal audit, Ministry stated that many taxpayers, especially large units, legally contested the internal audit findings through appeal/litigation resulting in low recovery..... Ministry further stated that due to Covid-19 pandemic, many business units faced liquidity crunch, resulting in lack or shortage of funds for tax compliance during internal audit. In the era of self-assessed tax regime, internal audit is one of the main tools for ensuring compliance by the taxpayers. Further, departmental action against non-compliant taxpayers is a time bound activity under section 73 of CGST Act, 2017. Audit, therefore, recommends that suitable administrative measures should be taken to address the shortage of staff in Audit Commissionerates. Till the time man-power shortage is addressed, the Department may take into account the available staff strength for planning the number of units for internal audit with focus on high risk taxpayers”

d. Report of CAG for the period 2021-22 bearing No.7 of 2024

dated 21.06.2024. The relevant portion is extracted hereunder:

“

3.2.2 Standard Operating Procedure (SOP) for Scrutiny of Returns



The Board had issued a Standard Operating procedure (SOP) for scrutiny of returns for FY17 and FY18 in March 2022. Audit observed that the aforesaid SOP was issued as an interim measure as the Scrutiny Module for online scrutiny of returns has not been made available on the Department's back-end IT application i.e. CBIC-GST application.

Ministry informed (December 2022) that the functionality viz. 'Risk-based Selectivity system' for enabling scrutiny of returns was under development in the CBIC back end application.

Audit recommends that the risk-based Scrutiny Module, with periodic review of risk parameters based on inputs received from Directorate General of Analytics and Risk Management (DGARM) reports and audit findings in earlier Audit Reports, may be implemented at the earliest to ensure full transparency and for robust oversight and monitoring of the scrutiny function of the Department.

When pointed out (February 2023), Ministry stated (June 2023) that the Part-I of the Risk based Selectivity System (RSS), which provides for Risk factor Creation, Risk Rule Creation and Risk based selection of Returns for scrutiny is under process and would be deployed to production shortly. The Part-II of the RSS, which provides for a Dashboard and Workflow for the field officers to perform scrutiny of returns by interacting with the taxpayers, i.e. Issuance of notice to the taxpayers in ASMT-10, receipt of taxpayer's reply in ASMT-11 and order of acceptance of reply in ASMT-12, had been deployed.

Therefore, risk-based Scrutiny Module was yet to be implemented fully as the important functionality related to Risk factor Creation, Risk Rule Creation and Risk based selection of Returns for scrutiny was yet to be implemented (June 2023).

.....

3.3.1.2. The total recovery effected was 20 per cent and 21 per cent of the detected short levy in FY 20 and FY 21, respectively. However, during FY22, the total recovery effected declined to 17 per cent from 21 per cent in FY 21. Ministry, during 2021-22, had attributed the short coverage of units during internal audit to the shortage of officers in the Audit



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Commissionerates, especially in the grade of inspectors whose working strength was less than 50 per cent of the sanctioned strength in most of the Audit Commissionerates.

Reply of the Ministry was awaited (January 2024).

In view of persistent short coverage of internal audit units due to shortage of officers in the Audit Commissionerates, Audit recommends that the Ministry may enhance the availability of human resources in the Audit Commissionerates and ensure optimal utilisation of resources for internal audit."

e. Agenda Item 3 (xiv) – Paragraph 7.53 of the Minutes of the 47th

Meeting of the GST Council held on 28th and 29th June, 2022 relevant portion is extracted hereunder:

“Agenda Item 3 (xiv): Note for extension of limitation under Section 168A of the CGST Act, 2017

7.53 The Principal Commissioner, GST Policy Wing mentioned that requests were made to extend the period of limitation under Sections 73/74 and Sections 54/55 on account of problems being faced by the taxpayers as well as tax administration in respect of demands and refunds getting time barred due to long period of lockdown/restrictions. He informed that the issue was deliberated by the Law Committee in its meeting held on 11.04.2022 and 07.05.2022. The Law Committee observed that Centre as well as State governments were working with reduced staff, along with staggered timings and exemption to certain categories of employees from attending offices, from time to time during COVID period. Further, it was a conscious policy decision not to do enforcement actions in the initial period of implementation of GST Law, thereby no action for scrutiny, audit etc. could be undertaken during initial period of GST implementation. Since the due date of filing Annual return for FY 2017-18 was 5th/7th February, 2020, based on which limitations for demand under the Act are linked, and since the onset of COVID happened immediately after that, thereby, audit and



scrutiny for FY 2017-18 were impeded due to various restrictions during COVID period. The Law Committee, accordingly, recommended that limitation under section 73 for FY 2017-18 for issuance of order in respect of demand linked with due date of annual return, may be extended till 30th September, 2023 under the powers available under section 168A of CGST Act. Law Committee further took a view that no such extension is required for timelines under section 74 of the Act, as the Act provides for sufficient limitation time of 5 years in respect of such cases, i.e. much beyond the period affected by COVID-19.”

f. Agenda Item 4(vii): Extension of time limit under sub-section (10) of

Section 73 of CGST Act for FY 2017-18, 2018-19 and 2019-20.

“.....

3. Representations have been received from some tax administration to further extend the timelines under section 73 of the CGST Act for FY 2017-18, 2018-19 and 2019-20 to 31.12.2024 or to extend the timelines were faced by government departments during the COVID period due to reduced staff; with staggered timings and exemption to certain categories of employees from attending offices during COVID period. This led to delay in process of scrutiny and audit which could be started properly only after COVID restrictions were uplifted. It has also been represented that though the time period for issuance of show cause notice and demand orders for FY 2017-18 has been extended vide Notification No.13/2022- Central Tax dated 05.07.2022 based on recommendations of the Council made in 47th meeting, however, the same is not sufficient considering the delay in scrutiny and audit process due to COVID.

4.1. The issue was deliberated by the Law committee in its meeting held on 08.02.2023. The Law Committee took the view that it may not be desirable to extend the timelines in such a manner so that it may lead to bunching of last date of issuance of SCN/order under section 73 and section 74 for a number of financial years. Accordingly, LC did not agree with the proposal to extend timelines under section 73(10) of CGST Act to the timelines under section 74 of CGST Act for any financial year.



Further, LC did not agree with the proposal to extend the timelines for the FY 2017-18, 2018-19 and 2019-20 to 31.12.2024. However, LC felt that considering the delay in scrutiny, audit and assessment process for the FY 2017-18, 2018-19 and 2019-20 due to restrictions and difficulties faced in COVID-19 period, there may be a need to provide some additional time under section 73(10) of CGST Act for the said financial years in such a manner so that there is no bunching of last dates for issuance of SCN/order under section 73 for these financial years as well as for the subsequent financial years.

4.2. LC, accordingly, recommended that the time limit under section 73(10) of CGST Act for the FY 2017-18, 2018-19 and 2019-20 may be extended as below by issuance of a notification under section 168A of CGST Act:

i.For FY 2017-18, the time limit under section 73(10) may be extended from the present 30th September 2023 to 31st December 2023;

ii.For FY 2018-19, the time limit under section 73(10) may be extended from the present 31st December 2023 to 31st March 2024;

iii.For FY 2019-20, the time limit under section 73(10) may be extended from the present 31st March 2024 to 30th June 2024.”

9.25. From the above material, the following position appears to emerge:

a) All employees of the Central Government at all levels without any exemption were required to attend office on regular basis with effect from 07.02.2022 itself.

b) States/Union Territories were advised to discontinue the issue of



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Orders and Guidelines under the Disaster Management Act, 2005, because of the decline in the total case load in the country, standing at 23,913 cases with daily positivity rate of 0.28%.

c) Proceeding of the Home Secretary dated 22.03.2022 clearly proves that impact of COVID-19 had declined to a level that there was no requirement for issue of any orders or guidelines under the Disaster Management Act, 2005. All of this had taken place by March, 2022.

d) Admission of the Ministry regarding absence of a Risk-based Selectivity System i.e., an operational CBIC back-end application (inherent systemic deficiencies) for effectively carrying out scrutiny of returns under the CGST Act. That there was shortage of Officers in the Audit Commissionerate, especially in the grade of Inspectors, whose working strength was less than 50% of the sanctioned strength in most of the Audit Commissionerates.

e) It also appears that materials considered in the 47th Meeting of GST Council, while making recommendation to the Government to issue notification in exercise of its power under Section 168A of CGST Act, for extending time limit, on the basis of which notification No.13 of 2022 was issued, and the materials considered in the 49th GST Council



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Meeting while recommending issuance of notification No.9 of 2023 for

extending time limit were the very same materials/reasons. The recommendations based on very same materials/reasons despite a gap of nearly 8 months between the 47th Meeting of the GST Council and the 49th GST Council Meeting, may by itself vitiate the recommendation.

9.26. It thus appears that the reason for notices and orders under sub-section (2) and (10) to Section 73 of CGST Act, not being issued or orders passed, within the time limit provided under Section 73 of the CGST Act is not due to COVID-19 Pandemic, rather the authority were unable to issue notices/pass orders more in view of inherent systemic deficiencies and shortage of officers. Not because of COVID-19. At the highest COVID -19 was only stated as one of the reasons and not the proximate/primary cause. In other words *causa causans* / proximate cause, for not being able to effectively carry on with scrutiny/audit (*which forms the basis for action under Section 73 of CGST Act primarily*) was thus even according to the Ministry not due to force majeure as contemplated by the Explanation to Section 168A of CGST Act. It thus appears the reasons for the authorities under the CGST Act not being able to complete or comply with issuance of notice or pass



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orders under Section 73(2) or 73(10) of CGST Act, appears to be more in view of systemic deficiencies and failure to recruit/appoint adequate officers which are causes that are self inflicted/created. Given the above, GST Council could not have recommended the issue of a further Notification/G.O. extending time under Section 73 of the Acts.

9.27. Ministry of Personnel, Public Grievances and Pension, Government of India and the communication by the Home Secretary, Government of India would show normalcy had returned even as early as February, 2022. It is trite that different ministries/department of the Government must speak in one voice⁹, there cannot be conflicting stands more importantly on factual aspects by two different ministries. Moreover, in this case if one keeps in view admission by the concerned Ministry before CAG that the difficulty in carrying out scrutiny and audit which as stated supra primarily forms the basis for issuance of notices/passing of orders under Section 73 of the CGST Act was in view of systemic deficiencies and lack of adequate resources/personnel, the inability to take action within the time limit specified under Section 73 of CGST Act, cannot be attributed to covid-19 the inability rather was self inflicted by the department. It thus seems that the Government was not

9. (2016) 1 SCC 560



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justified in invoking power under Section 168A of CGST Act.

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9.28. Importantly, the genuineness/correctness of the above material remains uncontroverted by the Revenue. *not disputed / challenged / denied* Instead Revenue in response would submit that Explanation to Section 168A of CGST Act, which defines “force majeure” is very wide and would submit the expression “otherwise”, employed in the said Explanation would cover any event including systematic inefficiency/deficiency, lack of adequate personnel which affects implementation of the provisions of the Act.

9.29. To appreciate the above contention, it may be useful to refer to the Explanation to Section 168A of the CGST Act which reads as under:

“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.”

A reading of above Explanation would show that “force majeure”, would mean the following viz.,

- i) war
- ii) epidemic
- iii) flood
- iv) drought



- v) fire
- vi) cyclone
- vii) earthquake or
- viii) any other calamity caused by nature or otherwise

9.30. It is submitted by the revenue that the expression "otherwise", employed in Section 168A of CGST Act, must be understood as taking within its fold any event which causes difficulty/inability thereby affecting implementation of the provisions of the Act, though not covered by the events of force majeure preceding the expression "otherwise" in the said Explanation. On the other hand, it is the case of the petitioner that the expression "otherwise", in the Explanation to Section 168A of CGST Act, is used as an alternate to "nature" being the cause of force majeure. The expression "otherwise" would be controlled by preceding events defined as "force majeure" mentioned in the Explanation. The expression "otherwise" cannot be isolated from the remaining part of the Explanation. It does not have independent existence. It appears to me that there is merit in the submission of the petitioner inasmuch as on a reading of Explanation under Section 168A of the CGST Act as a whole, it appears that the



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expression “otherwise” is used as an alternate to the cause of force majeure i.e., force majeure may be caused by nature or force majeure caused otherwise than by nature. Even assuming “otherwise”, employed in Section 168A of CGST Act, qualifies any other calamity, by no conceivable process of reasoning it would cover self inflicted inefficiencies.

9.31. I would also think that the expression “otherwise”, employed in Explanation to Section 168A of CGST Act may have to be understood keeping in view the rule of ejusdem generis i.e., when particular words pertaining to a class, category or genus are followed by general words, the general words must be construed as limited to things of the same kind as those specified¹⁰. This is in view of the fact that the expression “otherwise” is preceded by various events of force majeure followed by the expression “nature”, which qualifies the cause of force majeure covered under the said Explanation. Judgements relied upon by respondent for supporting the position that “otherwise” will have independent operation were based on the particular context in which they were found. Therefore, no reliance can be placed upon the same. Importantly reading the words “or otherwise” in Explanation to Section

10. Kavalappara Kottarathil Kochuni vs. State of Madras, AIR 1960 SC 1080, pg.1103



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168A of CGST Act, independent of what has preceded it by respondents will result in a non-force majeure event / condition becoming sufficient for exercise of power under Section 168A(1) of the Act. The above construction sought to be placed by respondents defeats the object as well as plain language of the said provision.

9.32. Yet another reason which would suggest that the expression "otherwise", cannot be a complete departure from the preceding expressions or wide enough to include any event/calamity which would affect implementation of any of the provision of the Act, is that it would

render the enumeration of various events such as war, flood etc.,

redundant. It is trite that any construction that imputes redundancy/

superfluity to legislation must be avoided. I would thus think that the

construction placed by the Revenue on the expression "otherwise"

employed in Section 168A of CGST Act, does not appear to reflect the

legislative intent and thus unacceptable.

9.33. It appears to me from the above discussion that the above materials referred to in Paragraph 9.24 (*supra*) is relevant and ought to have been considered by the GST Council, while making recommendation to the Government to issue notification extending time



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limit under Section 168A of CGST Act. Failure to take into the above relevant materials vitiates the recommendation. As a consequence the impugned notifications in the absence of a valid recommendation may also not comply with the mandate under Section 168A of CGST Act viz., notification must be issued on the recommendation of the GST Council.

9.34. Precedents on the issue:

The above controversy viz., legality of the impugned notifications has engaged attention of various High Courts across the country. I shall deal with the same very briefly.

a) *Faizal Traders Pvt. Ltd. vs. Deputy Commissioner*, reported in 2024 SCC OnLine Ker 4016: *Held Valid*

9.35. The High Court of Kerala upheld the validity of the impugned notifications primarily on the premise that once there is force majeure, the Government is conferred with the power to extend time limit for action provided under the Act. The extent of the extension of time was a matter of discretion falling within the domain of the executive.



"17. Thus, if there is force majeure as defined in Section 168A, the Government is empowered to extend the limitation period for taking actions which could not be completed or complied with due to force majeure. No one can deny that COVID-19 was a force majeure as it was a pandemic that caused large-scale human tragedy and suffering all over the world and paralyzed the world, including economic activities.

18. The notifications in Exts. P7 and P8 were issued by the Central Government on the recommendation of the GST Council based on a suo motu order passed by the Supreme Court in consideration of the COVID-19 pandemic. The GST Council, in its 47th meeting held on 28th and 29th June 2022 took note of the effect of the Covid-19 pandemic and agreed with the recommendation of the Law Committee. It was observed that the Central and the State Governments were working with reduced staff, along with staggered timings and exemption to certain categories of employees from attending offices, from time to time during the COVID period. A conscious policy decision was taken not to do enforcement actions in the initial period of implementation of the GST law. Therefore, no action for scrutiny, audit, etc., could be undertaken during the initial period of GST implementation. As the due date for filing the annual return for Financial Year 2017-18 was 07.02.2020 based on which limitations for demand under the Act are linked As Covid happened immediately after that, thereby the audit and scrutiny for the Financial Year 2017-18 were impeded due to the various restrictions during the Covid period Therefore, the decision was taken to extend the limitation under Section 73 for the Financial Year 2017-18 for issuance of the order in respect of demand linked with due date of annual return till 30.09.2023 under the powers available under Section 168A of the GST Act.

19. How much time could have been extended considering the pandemic is the discretion of the Executive,



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which has been taken based on the recommendation of the GST Council. I do not find that the notifications impugned in the writ petition in Exts. P7 and P8 are ultra vires the provisions of Section 168A of the CGST/SGST Act. The Government is well within the power to extend the limitation for completing the proceedings and taking action under Section 73 of the Act by issuing notification under Section 168A of the GST Act if there is force majeure. COVID-19 was a force majeure, and taking into account the various factors, the time limit has been extended. Therefore, I find no substance in the challenge to the said notifications, and the writ petition is dismissed to that extent."

b) *Graziano Transmission vs. Goods and Service Tax – Allahabad*

High Court reported in 2024 SCC OnLine All 3012: Held valid

9.36. The High Court proceeds on the basis that impugned notification is a conditional legislation. The High Court proceeded to place reliance on the proceedings of the GST Council and found that in the absence any other fact having been shown to exist as a result of which action cannot be completed or complied within the time limit specified or prescribed or notified under CGST Act, notification issued under Section 168A of CGST Act would be valid. The relevant portion is extracted hereunder:

"110. Once we have held that issuance of the time extension application was a legislative function and there existed material and due deliberation/ consideration over/of to that



material, before the legislative function was performed, the first condition of existence of circumstances for exercise of the said power described as conditional legislation, stood fulfilled. Therefore, the ratio of the decision of the Supreme Court in Mohit Minerals Private Limited (supra) is also of no avail. By way of principle it may not be doubted that the recommendations of the Council remained persuasive. The Central Government and the State Government were not duty bound to conform thereto. However, in absence of any fact shown to exist, the Central Government and the State Government have exercised their conditional legislative function in accordance with law. No palpable illegality or arbitrariness has been shown to exist as may warrant any deeper examination by the Court."

c) *Barhonia Enigcon Pvt. Ltd. vs. State of Bihar* reported in 2024

SCC OnLine Pat 8366:

red valid

9.37. The High Court looked to proceedings before GST Council and found application of mind to relevant facts and proceeded to observe that Covid-19, by itself was a compelling circumstance which disabled officers from taking action within the prescribed time. It also found that recommendation of the council is a sine qua non for exercise of power under Section 168A of CGST Act. However, due to pandemic a subsequent ratification would satisfy the mandate of recommendation by the GST Council contemplated under Section 168A of CGST Act. The Court also found in view of the orders of the Hon'ble Supreme Court



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under Article 142 of the Constitution, the impugned notifications is more by way of abundant caution. The relevant portion is extracted hereunder:

"32. In fact, the Hon'ble Supreme Court directions apply to all judicial and quasi-judicial proceedings under all laws and special laws and hence, the exclusion of the period from 15.03.2020 to 28.02.2022 applies equally to assesseees and the statutory authorities. The suspension of limitation was on account of disruption of every human activity, the incapacity visited on the community; equally affecting the assesseees and the governmental machinery, which machinery also functions through its officers, who were also disabled during the period. The recommendation made by the GST Council and the notification brought out by the Government, hence, were in abundant caution."

d) *Brunda Infra Pvt. Ltd., vs. Additional Commissioner, Central Tax reported in 2025 SCC OnLine TS 145:* *Held Vali &*

9.38. The High Court followed the judgment of the Allahabad High Court and relied upon deliberations in the GST Council Meeting and found revenue to face difficulties which was found to be adequate for the purposes of exercise power under Section 168A of the CGST Act in issuing the impugned notifications. The High Court also found that the magnitude of the difficulty based on quantifiable data could not be subject matter of litigation.

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9.39. On a reading of the above judgments this Court finds that the materials now placed before this Court which inter alia includes the following was not placed before the above Courts.

(i) Office Memorandum of the Ministry of Personnel, Public Grievances and Pension, Government of India dated 06.02.2022.

(ii) D.O.No.40-3/2020-DM-1(A) of the Home Secretary, Government of India, dated 22.03.2022 addressed to all Chief Secretaries of all States.

(iii) CAG Report No.5 of 2022 for the period 01.04.2020 to 31.03.2021 dated 31.03.2022.

(iv) Report of CAG for the period 2021-22 bearing No.7 of 2024 dated 21.06.2024.

9.40. This Court has already found supra that the above materials are relevant and ought to have been taken note of by the GST Council, while making the recommendation under Section 168A of CGST Act, but left out by the GST Council while making the recommendation thereby vitiating the same. In that view of the matter this Court is of the view



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that the impugned notifications suffers from the vice of not complying with the statutory mandate inasmuch as the recommendation itself is made without keeping in view relevant material. It is also found *supra* that a delegated legislation is open to challenge on the ground of failing to take into account relevant material. The impugned notification does not even contain a recital that actions under Section 73 of CGST Act viz., issuance of notice and passing of orders within the time limit provided under sub section (2) and (10) of Section 73 of CGST Act was only due to Covid (force majeure). In the circumstances this Court is of the view that the impugned notifications cannot be sustained.

D) Whether recommendation by GST Council for issuance of notifications under Section 168A of CGST Act, is mandatory and non compliance would render the legislative exercise by the delegate a nullity.

9.41. The requirement of recommendation by GST Council under Section 168A of CGST Act, is a mandate by Parliament. It is trite that when law requires a particular act to be done in a particular manner the act ought to be done in that manner and no other¹¹. The Revenue would

11. Competent Authority v. Barangore Jute Factory, (2005) 13 SCC 477



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submit that recommendation by GST Council is not mandatory and would place reliance on decision of the Hon'ble Supreme Court in the case of Union of India & Anr. v. M/s.Mohit Minerals Pvt. Ltd., reported in (2022) 10 SCC 700. It appears to me that the above submission is on the basis of a mis-reading of the judgment of the Hon'ble Supreme Court in Mohit Minerals by the Revenue, wherein a distinction is made as to the binding nature of recommendation of GST Council in relation to secondary legislation vis-a-vis primary legislation. While it was held that recommendation of GST Council may not be binding when a competent legislative body is exercising its legislative power however, it was made clear that the recommendation of GST Council would be binding on the Government when it exercises its power to notify secondary legislation. The relevant portion of Mohit Minerals is extracted hereunder:

"66. The provisions of the IGST Act and the CGST Act which provide that the Union Government is to act on the recommendations of the GST Council must be interpreted with reference to the purpose of the enactment, which is to create a uniform taxation system. The GST was introduced since different States could earlier provide different tax slabs and different exemptions. The recommendations of the GST Council are made binding on the Government when it exercises its power to notify secondary legislation to give effect to the uniform taxation system. The Council under Article 279-A has wide recommendatory powers on matters related to GST where it has



the power to make recommendations on subject-matters that fall outside the purview of the rule-making power under the provisions of the IGST and the CGST Act. Merely because a few of the recommendations of the GST Council are binding on the Government under the provisions of the CGST Act and the IGST Act, it cannot be argued that all of the GST Council's recommendations are binding. As a matter of first principle, the provisions of the Constitution, which is the grundnorm of the nation, cannot be interpreted based on the provisions of a primary legislation. It is only the provisions of a primary legislation that can be interpreted with reference to the Constitution. The legislature amends the Constitution by exercising its constituent power and legislates by exercising its legislative power. The constituent power of the legislature is of a higher constitutional order as compared to its legislative power. Even if it is Parliament that has enacted laws making the recommendations of the GST Council binding on the Central Government for the purpose of notifying secondary legislations, it would not mean that all the recommendations of the Council made by virtue of its power under Article 279-A have a binding force on the legislature."

Act 246 A
Recommendation
Article 279 A *not Binding*
S 168 A *Binding*

9.42. I would think reliance by the Revenue on the above decision to suggest that the recommendation by GST Council is not mandatory is wholly misplaced. It is important to note that *Mohit Minerals* was dealing with a recommendation under Article 279A of Constitution of India, on the other hand, we are dealing with a recommendation mandated under CGST Act as a pre-requisite/condition precedent for exercise of power under Section 168A of CGST Act. The recommendation of GST Council under Article 279A of the Constitution



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cannot obviously be mandatory when it comes to legislative action in view of the fact that the power to legislate on Goods and Service Tax flows from Article 246A of Constitution of India, any attempt to suggest that the above legislative power would be subject to recommendation of an executive body albeit constitutional body i.e., GST Council may well strike an imbalance rather offend the doctrine of separation of powers between the three organs viz., legislature, judiciary and executive. It is important to remind ourselves that separation of powers is part of basic structure of Constitution and thus ought to be preserved, any construction which offends/infracts, the above rule ought to be eschewed.

9.43. Now on the question as to whether the recommendation of GST Council is mandatory for the purpose of exercise of power under Section 168A of the CGST Act and whether such recommendation is binding or not. It appears that while the recommendation is mandatory it may still not be binding on the Central Government. For it is still open to the Central Government to either act or not to act on the recommendation. In this regard it may be relevant to refer to the judgment of the Gauhati High Court in WP(C)/3585/2024, the relevant

Recommendation → Notification →
↓ ↓
not Binding Binding

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portion of which is extracted hereunder:

"47. At this stage, let this Court take into account the submission of the learned counsel for the CGST to the effect that all recommendation of the GST Council are not binding and as such even without the recommendation, the Government could exercise the powers under Section 168A of the Central Act. The said submission is misconceived for the following reasons:

(A) (i) There is a fundamental difference between no recommendation made and the effectiveness of the recommendations. A perusal of Section 168A stipulates that the power may be exercised on the recommendation of the GST Council meaning thereby taking into account the analysis made in the previous paragraphs that there is a favourable report by the GST Council for the Government to exercise the power under Section 168A. The existence of the recommendation is a sine qua non for exercising the power under Section 168A to extend the timelines and without the recommendations, the exercise of the power would be legally not sustainable. On the other hand, the effectiveness of the recommendation has to be judged on the principles of whether such recommendation is binding on the Union or the State. For example, the GST Council may have made a recommendation to carry out a particular exercise by the Government under the Central Act or the State Act. The said recommendation may be binding upon the Government or may not be depending upon the purpose of the enactment. But the fact that it is not binding cannot be construed to mean that the Government can act without a recommendation of the GST Council if the Central Act or the State Act stipulates that the Government can exercise on the recommendation of the GST Council."

(emphasis supplied)

9.44. In the light of the above discussion, I am of the view that recommendation of GST Council for issuance of notification under Section 168A of CGST Act is mandatory but not binding on the



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government for the purposes of issuance of notifications under Section 168A of CGST Act.

E) Whether ratification of recommendation by GIC by the GST Council post issuance of Notification No. 56 of 2023, would constitute sufficient compliance with the mandate on recommendation contained in Section 168A of CGST Act or there was any abdication of authority by GST Council or arrogation/usurping of powers vested with the Council by GIC.

9.45. Admittedly, there was no recommendation by GST Council prior to issuance of impugned notification No.56 of 2023. Admittedly, Government issued the notification No.56/2023 in exercise of its power under Section 168A of CGST Act, even prior to any recommendation by the GST Council. There is no quarrel that GIC is not GST Council, instead it is a Committee constituted by the GST Council. GST Council is a Constitutional body. Article 279A of Constitution of India provides for its constitution under sub-clause (2) which reads as under:

"(2) The Goods and Service Tax Council shall consist of the following members, namely:-

- | | |
|---|---------------------------|
| <i>(a) the Union Finance Minister</i> | <i>----- Chairperson;</i> |
| <i>(b) the Union Minister of State in charge of</i> | |



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Revenue or Finance ----- *Member;*
(c) the Minister in charge of Finance or Taxation
or any other Minister nominated by each State
Government. ----- *Members."*

9.46. The Constitution of GIC is as under:

<i>GST Implementation Committee</i>			
Member-Centre	Members-States	Members-GST Council	Special Invitee from GST Council
1.Shri Mahender Singh, Member (GST) 2.Shri B.N.Sharma, Additional Secretary (Revenue) 3.Shri Vivek John Chief Commissioner 4.Shri P.K.Dash DG, NACEN	1.Shri C.Chandramouli ACS, TN. 2.Shri Sanjeev Kaushal ACS, Haryana 3.Shri P.D.Vaghela CCT, Gujarat 4.Ms.Smaraki Mahapatra CCT, West Bengal	1.Shri Arun Goyal, Additional Secretary (GSTC)	1.Shashank Priya, Commissioner

9.47. It is thus clear that GIC is not GST Council nor can it be a substitute for GST Council. The submission of revenue that the GST Council ratified the decision of GIC post issuance of impugned notification in Notification No.56/2023 and the same constitutes sufficient compliance with the requirement of Section 168A of CGST Act lacks merit. It is trite that power to be exercised on recommendation of named authority cannot be exercised without recommendation of such



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authority.¹²

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9.48. The above submission of the revenue would also be contrary to the maxim *delegatus non protest delegare* i.e., in the absence of express power of delegation the authority vested with the power to perform an act cannot sub delegate. In this regard it may be relevant to refer to the following judgments:

a) *Marathwada University v. Seshrao Balwant Rao Chavan*,
reported in (1989) 3 SCC 132 :

"20. It is a settled principle that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated. The law must also provide for such delegation. Halsbury's Laws of England (Vol. I, 4th End., para 32) summarises these principles as follows:

"32. Sub-delegation of powers.— In accordance with the maxim delegatus non potest delegare, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is authorised by express words or necessary implication. There is a strong presumption against construing a grant of legislative, judicial or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind."

9.49. Now, let us turn to the question of the impact of ratification by GST Council of recommendation of GIC post issuance of notification. The learned Additional Solicitor General would place reliance upon the

12. Competent Authority v. Barangore Jute Factory, (2005) 13 SCC 477



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judgment of the Hon'ble Supreme Court in the case of Vivek Narayan

Sharma (Demonetisation Case-5 J.) v. Union of India, reported in (2023)

3 SCC 1, wherein in the context of Notification issued under Section 26(2) of the RBI Act, 1934 for effecting demonetisation which required the Central Government to take a decision on demonetisation on the recommendation of the Central Board, it was found that a discussion/proposal was in fact initiated by the Central Government and it was advised / suggested to the Central Board by the Central Government to consider recommending demonetisation. The Central Board pursuant to the above advise/suggestion of the Central Government in turn recommended demonetization of certain currency notes in exercise of its power under Section 26 of the RBI Act. Pursuant to the above recommendation, the Central Government demonetized certain currency. It was submitted before the Apex Court that inasmuch as the Central Board itself made the recommendation only on the proposal initiated by the Central Government, thus mandate under sub section (2) to Section 26 of RBI Act was not complied with. Contention was rejected. Relevant portion of the judgment is extracted hereunder:

"243. As already discussed hereinabove, the record would reveal that the matter was under active consideration for a period of six months between RBI and the Central Government.

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*Recommendation and then
taking decisions*



As such, merely because the Central Government has advised the Central Board to consider recommending demonetisation and that the Central Board, on the advice of the Central Government, has considered the proposal for demonetisation and recommended it and, thereafter, the Central Government has taken a decision, in our view, cannot be a ground to hold that the procedure prescribed under Section 26 of the RBI Act was breached. The two requirements of sub-section (2) of Section 26 of the RBI Act are : (i) recommendation by the Central Board; and (ii) the decision by the Central Government. As already discussed hereinabove, both the Central Board while making recommendation and the Central Government while taking the decision, have taken into consideration all the relevant factors.

...
"245. The power to be exercised by the Central Government under sub-section (2) of Section 26 of the RBI Act is for effecting demonetisation. The said power has to be exercised on the recommendation of the Central Board. As already discussed hereinabove, RBI has a pivotal role in the matters of monetary policy and issuance of currency. The scheme mandates that before the Central Government takes a decision with regard to demonetisation, it would be required to consider the recommendation of the Central Board. We find that, in the context in which it is used, the word "recommendation" would mean a consultative process between the Central Board and the Central Government."

9.50. The above judgment may not have any applicability to the facts of the present case inasmuch as in terms of Section 168A of the CSGT Act in order to extend time limit in special circumstance, notification may be issued by the Central Government on the recommendation by the GST Council. The impugned Notification came to be issued without recommendation of the GST Council, thus the



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mandate contained in Section 168A of CGST Act was not complied with.

Recommendation by the GST Council was only by way of ratification of a decision of GIC and subsequent to the issuance of notification No.56 of 2023, this may not constitute compliance with the mandate of Section 168A of CGST Act. While in the demonetisation case relied by the Revenue, the Central Board which is the appropriate body to recommend in fact made a recommendation prior to the exercise of power by the Central Government under sub section (2) of Section 26 of RBI Act, 1934, though the Central Government may have possibly initiated the entire proposal. In the circumstance reliance on the judgment of the Supreme Court in the demonetization case appears to be wholly misplaced.

9.51. It may also be relevant to note the judgment of the Hon'ble Supreme Court in the case of *Marathwada University vs. Seshrao Balwant Rao Chavan* reported in (1989) 3 SCC 132, wherein while dealing with the effect of ratification with regard to exercise of statutory power it was held that the principle of ratification is alien to exercise of power under statutory provision. The relevant portion is extracted hereunder:

"24. This takes us to the second contention urged for the

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appellants. The contention relates to the legal effect of ratification done by the Executive Council in its meeting held on 26-12-1985/27-12-1985. The decision taken by the Executive Council is in the form of a resolution and it reads as follows:

“Considering the issues, the Executive Council resolved as follows:

1. The Executive Council at its meeting held on 22-3-1979, had by a resolution given full authority to the Vice-Chancellor for taking further proceedings and decision in both the cases of the defaulting officers.

2. In exercise of above authority, the Vice-Chancellor appointed an Inquiry Officer and as suggested by the Inquiry Officer issued show-cause notices, obtained replies from the officers and lastly issued orders for terminating their services;

9.52. After referring to Friedman's Law of Agency (5th Edition) and Bowstead on Agency (14th Edition), dealing with the principle of ratification held as under:

"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."

9.53. In view of the above discussion, this Court is of the view that the recommendation by GIC Council ratified by GST Council after issuance of impugned Notification No.56/2023, would not constitute compliance with the mandate contained on recommendation in Section 168A of CGST Act.

9.54. Importantly, at the time of issuance of notification



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No.56/2023 there was only recommendation/resolution of GIC which was later ratified by GST Council after issuance of notification No.56/2023, this is yet another reason as to why the impugned notification would be rendered bad inasmuch as it may well constitute abdication of authority by GST Council or arrogation/usurpation of power by GIC which is conferred on the GST Council under the CGST Act, which would vitiate the recommendation. In this regard it may be relevant to refer to the judgment of Hon'ble Supreme Court in the case of *State of U.P. v. Maharaja Dharmander Prasad Singh* reported in (1989) 2 SCC 505:

“55....The authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority “hands over its discretion to another body it acts ultra vires”. Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority. De Smith sums up the position thus:

“The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must



have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories; failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive."

Sudden unpredictable with out logic

F) Whether the suo muto orders of the Hon'ble Supreme Court under Article 142 of the Constitution, would continue to remain binding even after introduction of Section 168A of CGST Act and issuance of notifications by the Government in exercise of its power thereon.

9.55. The thrust of petitioners submission with regard to order of the Hon'ble Supreme Court under Article 142 of Constitution of India was that the power therein cannot be used to *replace/puoa aside* supplant substantive law. In other words, power under Article 142 of Constitution of India is not meant to nullify statutory provisions. Orders under Article 142 of Constitution of India are made to fill the vacuum until the legislature enacts substantive law.¹³ The orders under Article 142 of Constitution of

13. Supreme Court Bar Association. v. Union of India, (1998) 4 SCC 409; (2024) 4 SCC 761; Vineet Narain v. Union of India, (1998) 1 SCC 226; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 3 SCC 284



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India has a limited shelf life i.e., until legislature or executive steps in and occupies/covers the field. It is submitted that extension of limitation, if any, by virtue of orders under Article 142 of Constitution of India by the Apex Court would cease to have effect with the introduction of Section 168A of CGST Act and in any view with the issuance of Notification No.13 of 2022.

9.56. To the contrary it is submitted by learned counsel for the respondents by placing reliance on judgment of Telangana High Court that in view of order under Article 142 of Constitution of India by the Hon'ble Apex Court, the authorities under the Act would have the benefit of the exclusion granted by the Apex Court vide order dated 10.01.2022 while computing limitation under sub section (2) and (10) of Section 73 of CGST Act.

9.57. It appears to me that the submission by the petitioner that the orders of the Hon'ble Apex Court under Article 142 of the Constitution, in particular, the last order dated 10.01.2022, whereby the period between 15.03.2020 and 28.02.2022, stood excluded for the purposes of calculating limitation in respect of any judicial/quasi judicial proceedings would cease to have effect with the introduction of Section 168A to the



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CGST Act/SGST Act and in any view with the issuance of notification No.13 of 2022, do not appear to have merit for the following reasons.

9.58. Before I deal with the reasons, it may be relevant rather necessary to have a look at the orders of the Hon'ble Supreme Court and the notifications issued under Section 168A of CGST Act.

9.59. I shall set out briefly orders under Article 142 of Constitution of India, passed by the Hon'ble Supreme Court periodically and the Notifications issued in exercise of power under Section 168A of CGST Act.

9.60. Due to outbreak/onset of Covid-19 pandemic in the country, lawyers and litigants faced difficulties in filing application/ petition within the limitation stipulated under General and Special Laws. Apex Court took suo moto cognizance of the difficulties faced and passed a series of orders commencing with the order dated 23.03.2020 and culminating/ending with the order dated 10.01.2022 excluding limitation.

The following Table contains gist of the orders passed by the Hon'ble Supreme Court under Article 142 of the Constitution from time to time.

S.No.	Date	Orders of Extension by the Hon'ble Supreme Court U/Article 142 r/w.141 of the Constitution of India
1	March 23, 2020	Limitation Period in filing petitions/ Applications / suits/ Appeals / all other proceedings extended from

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S.No.	Date	Orders of Extension by the Hon'ble Supreme Court U/Article 142 r/w.141 of the Constitution of India
		15.03.2020 till further orders.
2	May 6, 2020	All periods of limitation prescribed under Section 138 of NI Act, 1881 & Arbitration and conciliation Act, 1996 extended w.e.f 15.03.2020 until further orders.
3	July 10, 2020	i) Limitation period extended by its earlier orders dt. 23.03.2020 & 06.05.2020 shall also apply for time period prescribed u/s 23(4) & 29-A of Arbitration and conciliation Act, 1996 and u/s 12-A of the Commercial Courts Act, 2015. ii) Directs that service of notice, summons and exchange of pleadings/ documents maybe effected by email, fax, commonly used instant messaging services, such as Whatsapp, Telegram, Signal, etc.
4	March 8, 2021	Excluded the period from 15.3.2020 to 14.3.2021 in computing limitation period for any suit, appeal, application, and also excluded the period prescribed u/s 23(4) & 29-A of Arbitration and conciliation Act, 1996 and u/s 12-A of the Commercial Courts Act, 2015 and u/s.138 NI Act, 1881.
5	April 27, 2021	i)Restored the earlier order dt. 23.03.2020 & 08.03.2021 and extended the limitation period as prescribed any general or special laws in respect of all Judicial or Quasi- Judicial Proceedings till further orders. ii)Period from 14.03.2021 till further orders shall also excluded in computing the period u/s 23(4), 12-A, 138.
6	September 23, 2021	Excluded the period from 15.3.2020 to 02.10.2021 in computing limitation period for any suit, appeal,

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S.No.	Date	Orders of Extension by the Hon'ble Supreme Court U/Article 142 r/w.141 of the Constitution of India
		application, and also excluded the period prescribed u/s 23(4) & 29-A of Arbitration and conciliation Act, 1996 and u/s 12-A of the Commercial Courts Act, 2015 and u/s.138 NI Act, 1881.
7	January 10, 2022	i) Restored the earlier order dt. 23.03.2020 in continuation with subsequent orders dated 08.03.2021, 27.4.2021 & 23.09.2021 ii) Excluded the period from 15.3.2020 till 28.02.2022 in computing limitation period general or special laws in respect of all Judicial or Quasi- Judicial Proceedings and also excluded the period prescribed u/s 23(4) & 29-A of Arbitration and conciliation Act, 1996 and u/s 12-A of the Commercial Courts Act, 2015 and u/s.138 NI Act, 1881.
8	August 30, 2022	SC dismissed multiple MAs in the limitation extension case as withdrawn - MA 469/2022 was withdrawn with liberty to pursue other legal remedies.

9.61. Order dated 10.01.2022, provided for exclusion of time from 15.03.2020 to 28.02.2022 for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. What may require consideration is the scope of the order dated 10.02.2022 under Article 142 of the Constitution and its impact on the limitation of issuing notices/ passing orders under



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Section 73 of CGST Act which requires to be considered. It may be relevant to refer to the following portions of the said order and the same is extracted hereunder:

"Cognizance for Extension of Limitation, In re, (2022) 3 SCC

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“5.1. The order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] is restored and in continuation of the subsequent orders dated 8-3-2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 : (2021) 3 SCC (Civ) 40 : (2021) 2 SCC (Cri) 615 : (2021) 2 SCC (L&S) 50] , 27-4-2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 : 2021 SCC OnLine SC 373] and 23-9-2021 [Cognizance for Extension of Limitation, In re, 2021 SCC OnLine SC 947] , it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.

5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.

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5.4. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A 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."

9.62. A reading of the above order of the Hon'ble Supreme Court dated 10.01.2022 would show that the Hon'ble Supreme Court provided for exclusion of time from 15.03.2020 till 28.02.2022 for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Having examined the order of the Apex Court, it may be necessary to take a look at the notifications issued under Section 168A of CGST Act in particular impugned notifications. The relevant portion of impugned notifications reads as under:

(i) Notification No.9 of 2023:

"NOTIFICATION

No.09/2023-Central Tax

New Delhi, dated the 31st March, 2023

S.O1564(E).– In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017



(13 of 2017), and section 21 of the Union territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India, Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021 and No. 13/2022-Central Tax, dated the 5th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 516(E), dated the 5th July, 2022, the Government, on the recommendations of the Council, hereby, extends the time limit specified under sub- section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised, relating to the period as specified below, namely:—

- (i) for the financial year 2017-18, upto the 31st day of December, 2023;
- (ii) for the financial year 2018-19, upto the 31st day of March, 2024;
- (iii) for the financial year 2019-20, upto the 30th day of June, 2024."

(ii) Notification No.56 of 2023:

"NOTIFICATION

No.56/2023-Central Tax

New Delhi, dated the 28th December, 2023

S.O.....(E).— In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India, Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E),



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dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021 and No. 13/2022-Central Tax, dated the 5th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 516(E), dated the 5th July, 2022, and No. 09/2023-Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number G.S.R. 1564(E) dated the 31st March, 2023, the Government, on the recommendations of the Council, hereby, extends the time limit specified under sub- section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, relating to the period as specified below, namely:—

(i) for the financial year 2018-19, up to the 30th day of April, 2024;

(ii) for the financial year 2019-20, up to the 31st day of August, 2024."

9.63. Let us contrast the order's of the Hon'ble Supreme Court, with the impugned notifications issued under Section 168A of CGST Act, it would be clear that the orders of the Hon'ble Supreme Court made under Article 142 of the Constitution, in particular, order dated 10.01.2022 provides for exclusion of the period between 15.03.2020 and 28.02.2022 while reckoning limitation with regard to any judicial/quasi judicial proceedings. On the other hand, impugned notification viz., Notification No.09/2023 and 56/2023 issued under Section 168A of CGST Act provided for extension of time for issuance of notice/order



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under sub-sections (2) and (10) to Section 73 of the CGST Act, for recovery of tax not paid or short paid or input tax credit wrongly availed or utilized as under:

- a) for the financial year 2017-18, the time limit for passing orders under sub section (10) to Section 73 was extended upto 31.12.2023
- b) for the financial year 2018-19, the time limit for passing orders under sub section (10) to Section 73 was extended upto 30.04.2024
- c) for the financial year 2019-20, the time limit for passing orders under sub section (10) to Section 73 was extended upto 31.08.2024.

9.64. Having set out the nature of the order under Article 142 of the Constitution by the Hon'ble Apex Court and impugned notifications issued under Section 168A of CGST Act, I shall now deal with the reason as to why the submissions of the petitioner that the order under Article 142 of the Constitution would cease to have effect with the introduction of Section 168A of CGST Act or in any view with issuance of impugned notifications under Section 168A of CGST Act may lack merit.

a) *Dichotomy between extension and exclusion of limitation:-*

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9.65. It is trite that there is a distinction between "period of

limitation" and "computation of limitation". The extension of limitation vide impugned notifications under Section 168A of CGST Act, would fall within the realm of "*period of limitation*". To the contrary, exclusion of period for the purposes of limitation provided vide order dated 10.01.2022 of the Hon'ble Apex Court under Article 142 of the Constitution, falls within the realm of "*computation of limitation*". In this regard, it may be relevant to refer to the following judgments wherein the dichotomy between "*period of limitation*" and "*computation of limitation*" has been explained. In this regard, it may be relevant to refer to the following judgements:

(i) *Ajay G. Podar v. Official Liquidator of J.S. & W.M.*, reported in (2008) 14 SCC 17 :

"10. On reading the provisions of Section 458-A and Section 543(2) of the Companies Act, we find that there is a clear dichotomy between the concept of the "period of limitation" on one hand, and the concept of "computation of that period".

.....

14. In our view, there is no merit in the contention advanced on behalf of the appellant that by virtue of Section 458-A the period of limitation is extended by one year. Part III of the Limitation Act excludes certain circumstances mentioned in Sections 12 to 24 for computation of the period of limitation. Similarly, Section 458-A provides for an additional circumstance which is not there in the Limitation Act which is required to be taken into account as an item of exclusion in the matter of computation of the period of limitation of five years prescribed by



Section 543(2). That circumstance is a period spent between the date of commencement of winding up of the company and the date on which the winding-up order is passed plus one year therefrom. If this period of limitation is to stand excluded it is only by virtue of Section 458-A which circumstance is not contemplated by Sections 12 to 24 of the Limitation Act."

ii) *Consolidated Engg. Enterprises v. Irrigation Deptt.*, reported in (2008) 7 SCC 169, wherein while dealing with limitation prescribed under Section 34(3) of Arbitration and Conciliation Act, for an application to set aside an award, which was 3 months with the proviso providing for extension of such period not exceeding one month, and while considering the applicability of Section 14 of Limitation Act which provides for exclusion of time spent before a wrong Court, the distinction between extension and exclusion of limitation was explained as under:

“Re: Question (ii)

46. The learned counsel for the appellant next contended that even if the Limitation Act applied, Section 14 is excluded by reason of the proviso to Section 34(3) and at best, prosecution before a wrong forum can be considered as a sufficient cause for explaining the delay, in which event condonation cannot be for a period in excess of 30 days. He submitted that sub-section (3) of Section 34 prescribes the period of limitation for an application to set aside an award as three months, and the proviso thereto provides for extension of such period of limitation, by a period not exceeding one month. He pointed out that the object of the AC Act is to expedite arbitration proceedings with minimal judicial intervention as is evident from Section 5 of that Act.



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.....

53. Sub-section (3) of Section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the court discretion to extend the period of limitation by a further period not exceeding thirty days if the court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words “but not thereafter” in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be beyond thirty days. The purpose of proviso to Section 34(3) of the AC Act is similar to that of Section 5 of the Limitation Act which also relates to extension of the period of limitation prescribed for any application or appeal. It vests a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the court that he had sufficient cause for not making the application within the prescribed period. Section 5 of the Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to sub-section (3) of Section 34 of the AC Act places a limit on the period of extension of the period of limitation. Thus the proviso to Section 34(3) of the AC Act is also a provision relating to extension of period of limitation, but differs from Section 5 of the Limitation Act, in regard to period of extension, and has the effect of excluding Section 5 alone of the Limitation Act.

54. On the other hand, Section 14 contained in Part III of the Limitation Act does not relate to extension of the period of limitation, but relates to exclusion of certain period while computing the period of limitation. Neither sub-section (3) of Section 34 of the AC Act nor any other provision of the AC Act exclude the applicability of Section 14 of the Limitation Act to applications under Section 34(1) of the AC Act. Nor will the



proviso to Section 34(3) exclude the application of Section 14, as Section 14 is not a provision for extension of period of limitation, but for exclusion of certain period while computing the period of limitation. Having regard to Section 29(2) of the Limitation Act, Section 14 of that Act will be applicable to an application under Section 34(1) of the AC Act. Even when there is cause to apply Section 14, the limitation period continues to be three months and not more, but in computing the limitation period of three months for the application under Section 34(1) of the AC Act, the time during which the applicant was prosecuting such application before the wrong court is excluded, provided the proceeding in the wrong court was prosecuted bona fide, with due diligence. Western Builders [(2006) 6 SCC 239] therefore lays down the correct legal position.”

iii) *Ketan V. Parekh v. Enforcement Directorate*, reported in, (2011) 15

SCC 30:

"28. In his concurring judgment, Raveendran, J. referred to the judgment in *State of Goa v. Western Builders* [(2006) 6 SCC 239] and observed: (*Consolidated Engg. Enterprises case* [*Consolidated Engg. Enterprises v. Irrigation Deptt.*, (2008) 7 SCC 169] , SCC pp. 192-93, para 54)

“54. On the other hand, Section 14 contained in Part III of the Limitation Act does not relate to extension of the period of limitation, but relates to exclusion of certain period while computing the period of limitation. Neither sub-section (3) of Section 34 of the AC Act nor any other provision of the AC Act exclude the applicability of Section 14 of the Limitation Act to applications under Section 34(1) of the AC Act. Nor will the proviso to Section 34(3) exclude the application of Section 14, as Section 14 is not a provision for extension of period of limitation,



but for exclusion of certain period while computing the period of limitation. Having regard to Section 29(2) of the Limitation Act, Section 14 of that Act will be applicable to an application under Section 34(1) of the AC Act. Even when there is cause to apply Section 14, the limitation period continues to be three months and not more, but in computing the limitation period of three months for the application under Section 34(1) of the AC Act, the time during which the applicant was prosecuting such application before the wrong court is excluded, provided the proceeding in the wrong court was prosecuted bona fide, with due diligence. Western Builders [(2006) 6 SCC 239] therefore lays down the correct legal position.”

(emphasis supplied)

iv) *Kalpraj Dharamshi v. Kotak Investment Advisors Ltd.* reported in (2021) 10 SCC 401, wherein it was held that exclusion of period would require the days excluded to be added to what is prescribed as a period of limitation as could be seen from the following extracts:

"67. Perusal of the aforesaid would therefore reveal, that the Court has clearly rejected the objection raised by the Revenue in M.P. Steel Corpn. [M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510] which was raised relying on the judgment of this Court in Parson Tools & Plants [CST v. Parson Tools & Plants, (1975) 4 SCC 22 : 1975 SCC (Tax) 185] . This Court observed, that the time during which the applicant was prosecuting such application before the wrong court can be excluded, provided the proceeding in the wrong court was prosecuted bona fide, with due diligence. This Court distinguished the judgment in Parson Tools & Plants [CST v. Parson Tools & Plants, (1975) 4 SCC 22 : 1975 SCC (Tax) 185] on the ground, that the period provided for filing



a revision under the U.P. Sales Tax Act was sufficiently long period of 18 months, beyond which it was the policy of the legislature not to extend limitation any further. Relying on the Consolidated Engg. Enterprises [Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169] , it has been observed, that there is a vital distinction between extending time and condoning delay. It was further observed, that like Section 34 of the Arbitration Act, the period provided in Section 128 of the Customs Act did not lay down a long period for preferring an appeal. As such, it would be unduly harsh to exclude the principles contained in Section 14 of the Limitation Act. Relying on Consolidated Engg. Enterprises [Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169] it was observed, that there is a difference between exclusion of a certain period altogether under principles of Section 14 and condoning the delay. It has been observed, that when a certain period is excluded by applying the principles contained in Section 14, there is no delay to be attributed to the appellant and the limitation period provided by the statute concerned, continues to be the stated period and not more than the stated period. It was therefore held, that the principle of Section 14, which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and pursued with due diligence but which end without a decision on the merits of the case.

84. This Court clearly held, that the decision in Popular Construction Co. [Union of India v. Popular Construction Co., (2001) 8 SCC 470] cannot be construed to mean as a ruling, that provisions of Section 14 of the Limitation Act are also not applicable to an application challenging an award under Section 34 of the Act. It has been held, that in the Arbitration Act, there is no express provision excluding application of the provisions of Section 14 of the Limitation Act to an application filed under



Section 34 of the Arbitration Act on 5 of the Limitation Act and exclusion of the time provided in Section 14 of the said Act. It was held, that the power to excuse delay and grant an extension of time under Section 5 is discretionary, whereas under Section 14, exclusion of time is mandatory, if the requisite conditions are satisfied. It held, that the effect of Section 14 is that in order to ascertain what is the date of expiration of the “prescribed period”, the days excluded from operating by way of limitation, have to be added to what is primarily the period of limitation prescribed.”

9.66. From a reading of the above judgments, it would be clear that "period of limitation" and "computation of limitation" are distinct aspects. While the orders under Article 142 of the Constitution dealt with "exclusion of limitation" and thus "computation of limitation", the notification under Section 168A of CGST Act provided for "extension of time" thus "period of limitation". In other words, the former dealt with computation of limitation, while latter with period of limitation. They deal with different aspects thus question of supplanting or overlap may not arise. The submission of the petitioner that orders under Article 142 of the Constitution would cease to have effect with the introduction of Section 168A of the CGST Act, fails to bear in mind the above distinction in law.

9.67. This Court finds that the order of the Hon'ble Supreme Court



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dated 10.01.2022 would continue to govern the limitation inasmuch as it provides for exclusion of time from 15.03.2020 to 28.02.2022 for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, while the impugned notification under Section 168A of CGST Act purports to extend the time limit. Thus, they deal with two different aspects of limitation viz., one relating to computation other relating to period of limitation and there is no overlap.

9.68. Yet another reason to find that even the Government recognized rather maintained the distinction between extension of time limit and exclusion of period, one would only need to look at Notification No.13 of 2022, wherein while exercising the power under Section 168A of CGST Act, it provided for extension and exclusion of time limit for passing order under Section 73(10) of CGST Act. The relevant portion of Notification No.13 of 2022 is extracted hereunder:

“NOTIFICATION No.13/2022-Central Tax

New Delhi, the 5th July 2022

.....

(i) extends the time limit specified under sub-section (10) of section 73 for issuance of order under sub- section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect



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of a tax period for the financial year 2017-18, up to the 30th day of September, 2023;

(ii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation under sub-section (10) of section 73 of the said Act for issuance of order under sub- section (9) of section 73 of the said Act, for recovery of erroneous refund”

9.68.1. From a reading of the above notification it would be evident that the Government extended the time limit under sub section (10) of Section 73 for issuance of order under sub-section (9) of Section 73 of the CGST Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period of the financial year 2017-18 up to the 30th day of September, 2023 and excluded the period from 01.03.2020 to 28.02.2022 for computation of period of limitation under sub section (10) of Section 73 of the CGST Act for issuance of order under sub-section (9) of Section 73 of the CGST Act, for recovery of erroneous refund. When it came for exclusion of certain period the Notification provided that the same would be taken into account for computation of period of limitation thus the distinction referred *supra* between extension of limitation and exclusion of limitation appears to be legislatively recognized under the CGST Act. The use of the expressions “*extension*” and “*exclusion*” in Notification



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No.13 of 2022 would also indicate that the Government which is the notifying authority under Section 168A of CGST Act, was also conscious of the distinction between the two. It is trite law that when in relation to the same subject-matter, different words are used in the same statute, there is a presumption that they are not used in the same sense:

(i) CIT v. East West Import & Export (P). Ltd., Jaipur, reported in AIR 1989 SC 836.

(ii) Shri Ishal Alloy Steels Ltd. v. Jayaswalas Neco Ltd., reported in AIR 2001 SC 1161.

(iii) Kailash Nath Agarwal v. Pradeshiya Indust and Inv. Corp of U.P. Reported in (2003) 4 SCC 305.

b) *Effect of legislation founded on a mistaken or erroneous assumption of law – Impugned notifications issued on mistaken or erroneous assumption of the scope of the orders under Article 142 of the Constitution.*

9.69. Importantly, the period that would be available on applying the exclusion of the period from 15.03.2020 to 28.02.2022 in terms of the order of the Hon'ble Supreme Court dated 10.01.2022 and extension of



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time in terms of Notification No.9 of 2023 and 56 of 2023 would be as

under:

S.N o.	Financial Year	Actual/Ori ginal due date for filing Annual return u/s 44(1)	Due date extended in exercise of power u/s 44 of CGST Act through Notifications	Period of limitation u/s 73(10) of CGST Act	Extended time limit u/s 73(10) for issuance of order u/s.73(10) for issuance of order u/s.73(9) in exercise of power u/s.168A of CGST Act (upto)	Limitation u/s 73(10) after exclusion of period 15.3.2020 to 28.2.2022 as per order dated 10.1.2022 of SC
1.	2017-18	31.12.2018	05.02.2020 07.02.2020 (Notification 06/2020)	05.02.2023	31.12.2023	13.12.2024 ADDING 716 DAYS
2.	2018-19	31.12.2019	31.12.2020 (Not.80/2020)	31.12.2023	30.04.2024 (Not.56/2023)	28.02.2025 ADDING 424 DAYS
3.	2019-20	31.12.2020	31.03.2021 (Not.04/2021)	31.03.2024	31.08.2024 (Not.56/2023)	28.02.2025 ADDING 334 DAYS

9.70. From the above Table, it would be clear that by excluding the period between 15.03.2020 to 28.02.2022, in terms of the orders of the Hon'ble Apex Court dated 10.01.2022, the limitation that would be available to the authorities for issuing notices and passing orders under sub-section (10) to Section 73 of CGST Act would be larger than the



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limitation available in view of the extension under the impugned notifications.

9.71. Notification under Section 168A of CGST Act can be issued only to extend the time limit and not diminish limitation. It appears to me that the impugned notifications is made without taking into account the effect of the order of the Hon'ble Supreme Court dated 10.01.2022. The notifications appears to have been founded on a mistaken or erroneous assumption on limitation available under Section 73 of CGST Act, while exercising the power under Section 168A of the CGST Act. I say so, inasmuch as it is evident from the above Table, the limitation available for making orders under sub-section (10) to Section 73 of CGST Act, on applying the exclusion of the period from 15.03.2020 to 28.02.2022, in terms of the order of the Hon'ble Apex Court dated 10.01.2022, is much larger than the limitation made available by extending the limitation vide impugned notification issued under Section 168A of CGST Act. Power under Section 168A of CGST Act, being to extend limitation, the impugned notifications diminishing the limitation may not be sustainable. The impugned notifications is based on an erroneous assumption of state of law relating to limitation applicable to



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Section 73(10) of the CGST Act and the impact of the orders of the Hon'ble Supreme Court on the limitation under sub section (2) and (10) of Section 73 of CGST Act. It is trite that legislation based on mistaken or erroneous assumption has not the effect of making that the law which the legislature had erroneously assumed to be so. In this regard, it may be relevant to refer to the following judgments :

(i) *Peddinti Venkata Murali Ranganatha Desika Iyengar v. Govt. of A.P.* reported in (1996) 3 SCC 75:

“13. The question, in that scenario, which emerges is whether Section 76 is a valid piece of legislation, indirectly repealing the Inams Abolition Act or the judgments of that High Court referred to hereinbefore. It is settled law that repeal of an Act divesting vested rights is always disfavoured. Presumption is against repeal by implication and the reason is based on the theory that the legislation, while enacting a law, has complete knowledge of the pre-existing law on the same subject-matter. In the Principles of Statutory Interpretation by Justice G.P. Singh, (5th Edn. 1992 at pp. 186-87) under the caption “Reference to other statutes” in Chapter IV (External Aids to Construction) it has been stated that “a legislation proceeding upon an erroneous assumption of the existing law without directly amending or declaring the law is ineffective to change the law”. “The beliefs or assumptions of those who frame Acts of Parliament cannot make the law” and a mere erroneous assumption exhibited in a statute as to the state of the existing law is ineffective to express an ‘intention’ to change the law; if, by such a statute, the idea is to change the law, it will be said that “the legislature has plainly misfired”. The “legislation founded on a mistaken or erroneous assumption has not the effect of making the law which the



legislature had erroneously assumed to be so”. The court will disregard such a belief or assumption and also the provision inserted in that belief or assumption. A later statute, therefore, is normally not used as an aid to construction of an earlier one.”
(emphasis supplied)

(ii) Hariprasad Shivshanker Shukla v. A.D.Divelkar reported in 1956
SCC OnLine SC 21:

“...19. That history shows indubitably the aim and purpose of the enactment of Section 25-FF. As Lord Atkinson pointed out in his speech in Ormond Investment Co. Limited v. Betts [(1928) AC 143, 164] “an Act of Parliament does not alter the law by merely betraying an erroneous opinion of it”. Legislation founded on a mistaken or erroneous assumption has not the effect of making that the law which the legislature had erroneously assumed to be so...”
(emphasis supplied)

(3) Dharangadhra Chemical Works v. Dharangadhra Municipality
reported in (1985) 4 SCC 92:

“...12. If the insertion of Rule 3 or Bye-law 3 was because of a wrong belief or assumption made in the matter of the legal position the Court has to disregard such belief or assumption, for, it is well settled that “the beliefs or assumptions of those who frame Acts of Parliament cannot make the law”

c) *Diminishing/Curtailing a larger limitation would render the*



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legislation/ subordinate legislation vulnerable to challenge on the ground of arbitrariness under Article 14 of Constitution of India, cannot extinguish vested right to take action under the larger period available to the authorities.

9.72. Yet another reason, I would think that the submission of the petitioners must fail, is in view of the fact that by virtue of the order of the Hon'ble Supreme Court under Article 142 of the Constitution, whereby the authorities had a larger period of limitation for issuance of notices and passing orders if found/held to be supplanted/overridden by the impugned notifications whereby the limitation stands diminished/curtailed, it may well affect the vested right of the authorities to take action in terms of the order of the Hon'ble Supreme Court under Article 142 of Constitution of India, which provided for a larger period. It is trite that law of limitation is procedural and would normally have retrospective effect and would govern pending proceedings. There are two exception to the above rule viz.,

a) A new law of limitation providing a longer period cannot revive or dead claim.

b) A shorter period of limitation cannot extinguish vested right of



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action.

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In this regard, it may be refer to the following judgments:

(i) *B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates*

reported in (2019) 11 SCC 633:

“22.(i)55. In answering a question which arose under Section 110-A of the Motor Vehicles Act, this Court held: (Shanti Misra case [New India Insurance Co. Ltd. v. Shanti Misra, (1975) 2 SCC 840] , SCC p. 846, para 7)

‘7. ... (1) Time for the purpose of filing the application under Section 110-A did not start running before the constitution of the tribunal. Time had started running for the filing of the suit but before it had expired the forum was changed. And for the purpose of the changed forum, time could not be deemed to have started running before a remedy of going to the new forum is made available.

(2) Even though by and large the law of limitation has been held to be a procedural law, there are exceptions to this principle. Generally the law of limitation which is in vogue on the date of the commencement of the action governs it. But there are certain exceptions to this principle. The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish vested right of action by providing for a shorter period of limitation.”

(ii) *Vinod Gurudas Raikar v. National Insurance Co. Ltd.* reported in (1991) 4 SCC 333:

“7. So far the period of limitation was concerned, it was observed that a new law of limitation providing for a shorter period cannot certainly extinguish a vested right of action....”



(iii) *Union of India v. Uttam Steel Ltd.*, reported in (2015) 13 SCC 209:

“10.3... ‘(2) ... The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish vested right of action by providing for a shorter period of limitation.’”

10.4. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right.”

9.73. The impugned notifications which has the effect of diminishing the limitation which may otherwise be available for authorities for issuing notices and passing order under Section 73 of the CGST Act, if one takes into account the exclusion of period between 15.03.2020 to 28.02.2022 as provided by the Apex Court vide its order dated 10.01.2022, results in extinguishing the vested right of action of the authorities by providing for a shorter limitation which cannot be



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sustained in terms of decision referred supra and may well suffer from the vice of arbitrariness thereby offending Article 14 of the Constitution.

d) *Diminishing/Curtailing Limitation otherwise available - By issuance of notification – not traceable to Section 168A of CGST Act:*

9.74. From a reading of Section 168A of CGST Act, it would be clear that power is conferred on the Government to extend time limit in special circumstances. If notification under Section 168A of CGST Act, were to diminish/curtail the limitation otherwise available to the

authorities to take action it would fall foul of the object and purpose of Section 168A of CGST Act. The exercise of power which diminishes limitation available under the CGST Act would not be in conformity with Section 168A of CGST Act and thus invalid. It is trite law that the delegate ought to act in conformity with the object and purpose of the Act. In this regard, it may be relevant to refer to the following judgment:

(i) *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* reported in (1985) 1 SCC 641:



“75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say “Parliament never intended authority to make such rules. They are unreasonable and ultra vires”.

(ii) State of U.P. v. Renusagar Power Co., (1988) 4 SCC 59

The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated.

9.75. The impugned notification diminishes the limitation available to the authorities to issue notices/pass orders under sub section (2) to Section 73 of CGST Act, by virtue of the order of the Supreme Court dated 10.01.2022 a consequence which is antithetical to the very purpose and object of Section 168A of CGST Act, thus unsustainable.



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10. Conclusion:

i) The authorities under the CGST Act shall have the benefit of exclusion of the period 15.03.2020 to 28.02.2022, while reckoning limitation under sub section (2) and (10) to Section 73 of CGST Act, in terms of the of the Supreme Court dated 10.01.2022 passed under Article 142 of the Constitution.

ii) Notification Nos.9 and 56 of 2023 stands vitiated and illegal for the following reasons:

a) It results in diminishing / curtailing the limitation which was otherwise available in view of the order of the Hon'ble Supreme Court under Article 142 of Constitution, and thus contrary to the object of Section 168A of CGST Act.

b) It proceeds on an erroneous assumption of the limitation available and a misconception as to the scope and effect of the order of Hon'ble Supreme Court under Article 142 of Constitution. The impugned notification made on an erroneous assumption of the position in law is unsustainable on the ground of being arbitrary.



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c) The impugned notification results in extinguishing vested right of action with the authorities under CGST Act by diminishing the limitation thus suffers from the vice of arbitrariness.

d) The impugned notification is issued on the basis of recommendation made without examining relevant materials discussed supra and thus stands vitiated.

e) In addition to the above reasons, impugned notification No.56/2023 is made even prior to the recommendations of the GST Council, failure to comply with the statutory mandate renders the notification illegal.

f) The impugned notification no.56/2023 is issued on the basis of the recommendations of GIC which cannot be a substitute for GST Council and thus stands vitiated.

11. There are issues relating to violation of principles of natural justice, lack of jurisdiction, errors apparent on the face of record etc. These are questions which will have to be re examined by the assessing authority inasmuch as the thrust of the petitioner's submissions before this Court as well as before the authorities has been primarily on the



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jurisdiction in view of the challenge to the validity of the notification.

12. In light of the present order, this Court is inclined to remand all the matters back to the assessing authority for passing orders afresh:

i. In case challenge is to the order of assessment/adjudication, petitioners shall treat the impugned orders as show cause notice and submit their objections within a period of 8 weeks from the date of uploading of the Web Copy of this order and the authorities shall proceed to pass orders afresh after affording the petitioners an opportunity of hearing.

ii. In case the challenge is to the notice it is open to the petitioner to submit their objections within a period of 8 weeks from the date of uploading of the Web Copy of this order and the authorities shall proceed to pass orders afresh after affording the petitioners an opportunity of hearing.

13. Accordingly, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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12.06.2025

Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

spp/mka/kmm

399/413



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To :

1. Union of India

Through its Secretary,
Ministry of Finance,
North Block, New Delhi -110 001.

2.State of Tamil Nadu,

Commercial Taxes Department,
through its Secretary to Government, Fort St. George,
Chennai,
Tamil Nadu-600 009

3.Commissioner of GST & Central Excise,

Chennai South Commissionerate,
MHU Complex, No. 692, 5th Floor,
Anna Salai, Nandanam, Chennai,
Tamil Nadu - 600 035

4.Additional Commissioner,

Office of the Additional Commissioner of GST and
Central Excise,
Chennai South Commissionerate,
MHU Complex, No. 692, 5th Floor,
Anna Salai, Nandanam, Chennai,
Tamil Nadu - 600 035

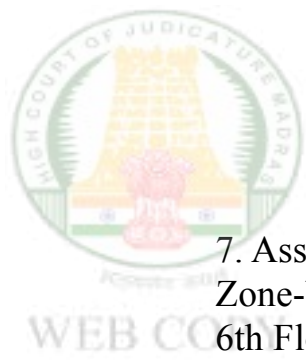
5.Central Board of Indirect Taxes and Customs,

Through its Secretary,
Department of Revenue,
Ministry of Finance North Block,
New Delhi-110001

6. State of Tamil Nadu

Represented by its Secretary, Secretariat, Fort St.
George,
Chennai - 600 009.

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7. Assistant Commissioner (ST), Vallvarkottam,
Zone-VI, M.B.M, M. Phil, Station No. 1,
6th Floor, P.A.P.J.M. Annex Building,
Greens Road, Chennai-600006.

8. The Deputy State Tax Officer – I,
Valluvarkottam Assessment Circle,
Station: No.10, Palaniappa Maligai,
4th Floor, Greens Road, Chennai – 600006.

9. Assistant Commissioner (ST)
Kilpauk Circle
F-50, 1st Avenue, 3rd Floor,
Anna Nagar East, Chennai - 600102

10. The State Tax Officer,
Office of Sales Tax Officer,
Perundurai Circle, Perundurai,
No.299, Bhavani Road,
Perundurai -638 052.

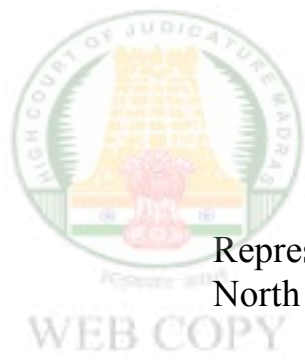
11. The Bank Manager,
Kotak Mahindra Bank Limited,
Erode

12. Deputy State Tax Officer – II,
Arumbakkam Assessment Circle.

13. The Superintendent of CGST and Central Excise
Egmore Range - II, Egmore Division of GST and
Central Excise, Chennai North Commissionerate,
First Floor, Newry Towers, Plot No.2054, I Block,
II Avenue, 12th Main Road, Anna Nagar,
Chennai - 600 040.

14. The Central Board of Indirect Taxes and Customs
Department of Revenue, Ministry of Finance,

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Represented by its Chairman
North Block, New Delhi - 110 001.

15. Deputy State Tax Officer – 1,
Anuppapalayam Assessment Circle, Tiruppur – 1,
No.16, Emperor Building, Ground Floor,
Indira Nagar 1st Street, Avinashi Road,
Tiruppur - 641 603, Tamilnadu.

16. The State Tax Officer,
O/o The Commercial Tax Officer, Tindivanam Assessment Circle,
Villupuram Zone, Cuddalore Division, Cuddalore, Tamil Nadu.

17. The State Tax Officer,
O/o. The Commercial Tax Officer, Kumarapalayam Circle,
Namakkal, Salem,
Tamilnadu.

18. The Branch Manager,
State Bank of India,
226, Salem Main Road,
Kumarapalayam - 638 183

19. The Deputy State Tax Officer - I (ST),
Office of the Deputy Commercial Tax Officer,
Thindal Assessment Circle,
D.No.161, Brough Road,
Erode - 638 003.

20. Assistant Commissioner (ST) (FAC)
Tambaram Assessment Circle,
Integrated Commercial Taxes Department Building
3rd Floor, Room No.336, Nandanam,
Chennai- 600 035.

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21. Superintendent of CGST & Central Excise,
Pallipalayam Range,
81, Bharathi Nagar, Soolai, Erode – 638004.

22. The Assistant Commissioner (ST)(FAC),
Kancheepuram Rural Assessment Circle,
CT Building, 1st Floor, Collectorate Campus,
Kancheepuram – 631 501.

23. The Assistant Commissioner (ST) (FAC),
Group -XIV, Intelligence-I,
PAPJM Building No.1, Greams Road,
2nd Floor, Chennai-600 006.

24. The Assistant Commissioner (ST) (FAC),
Group – XIV, Intelligence - I,
PAPJM Building, No.1, Greams Road,
2nd Floor, Chennai-600 006.

25. The Additional Commissioner
Office of the Commissioner of CGST and Central Excise,
Chennai North Commissionerate, No. 26/1, Mahatma Gandhi Road,
Chennai – 600034.

26. The Joint Commissioner
Office of the Commissioner of Central Tax and Central Excise, Audit-I,
Commissionerate,
No.1775, Jawaharlal Nehru
Inner Ring Road,
Anna Nagar West Extension, Chennai-600101.

27. Union of India
Through Secretary,
Ministry of Finance,
Department of Revenue,

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Udyog Bhawan,
New Delhi - 110001.

28. Central Board of Indirect Taxes
Ministry of Finance,
Department of Revenue,
Udyog Bhawan,
New Delhi - 110 001.

29. Assistant Commissioner (ST)
Arumbakkam Assessment Circle,
4th Floor, PAPJM Annexe Building,
Greaves Road, Chennai - 600 006.

30. The Assistant Commissioner of GST & Central Excise,
Ponneri Division,
Office of the Chennai outer Commissionerate,
Room 40, A1, 100 feet road, Mogappair, Chennai - 600037.

31. The Superintendent of GST and Central Excise,
Madhavaram Outer Range,
Room No.40, A1, 100,
TNHB Complex,
Mogappair,
Chennai – 600037.

32. Asst Commissioner (ST)(FAC)
Intelligence - I, Room No.133,
1st Floor, PAPJM Building,
No.1, Greaves Road,
Chennai – 600 006.

33. The State Tax Officer,
Ayanavaram Assessment Circle, No. 1, Greaves road, Chennai-6.

34. The Assistant Commissioner (ST)(FAC),
Intelligence-I, Room No.241,

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W.P.Nos.17184 of 2024 etc., batch



2nd Floor, No.1, PAPJM Buildings,
Greams Road, Chennai - 600 006.

35.The State Tax Officer (ST),
Group-X, Intelligence I,
Office of the Joint Commissioner (ST),
Intelligence-I, No.1, 4th Floor,
PAPJM Buildings, Greams Road,
Thousand Lights, Chennai-600 006.

36.The Assistant Commissioner (ST),
Amaindakarai Assessment Circle,
3rd Floor, PAPJM Building,
Greams Road, Chennai 600 006.

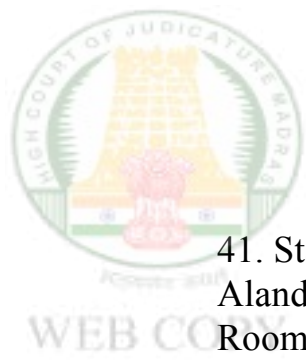
37.The Branch Manager,
Federal Bank, C-18, TNHB Complex,
2nd Avenue, Anna Nagar, Chennai - 600040.

38. Deputy State Tax Officer (Intelligence),
Adjudication & Legal Wing,
3/47, Sapthagiri Complex,
Thorapalli Agraharam Village,
Adjacent to Ashok Leyland Unit -II,
Gandhi Nagar, Hosur Tk,
Krishnagiri Dt., Tamil Nadu - 635 109.

39.Union of India
(Rep. by the Ministry of Finance),
Raj Path Marg, "E" Block,
Central Secretariat,
New Delhi - 110 011.

40. State of Tamil Nadu,
(Rep. by its Secretary),
Commercial Taxes Department,
Fort St. George,
Chennai - 600 009.

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41. State Tax Officer,
Alandur Assessment Circle,
Room No.352, 3rd Floor,
Integrated Building for Commercial Taxes
& Registration Departments (South Tower), Nandanam,
Chennai - 035.

42.State Tax Officer,
Avadi Assessment Circle
Survey No.1275/3, Integrated Commercial
Taxes Building, (Tiruvallur Division),
1st Floor, Room No. 122, Elephant gate Bridge Road, Vepery, Chennai -
600 003.

43. The Assistant Commissioner (ST) (FAC),
Intelligence I,
Room No.241, 2nd Floor, No.1, PAPJM Building, Greams Road,
Chennai -600 006.

44.The State of Tamil Nadu,
Represented by Secretary to Government
Commercial Taxes and Registration (B1) Department Fort St. George,
Chennai 600 009.

45. Assistant Commissioner (State Tax) (FAC)
Peelamedu South Circle
Coimbatore III
TamilNadu – 641004.

46.Assistant Commissioner (State Tax) (FAC)
Avinashi Road Circle,
C.T. Buildings, Dr. Balasundaram Road, Coimbatore
Tamil Nadu- 641018

47. The Assistant Commissioner (ST),
Adyar Assessment Circle,

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W.P.Nos.17184 of 2024 etc., batch



2nd Floor, Room No.215,
The Integrated Building for Commercial Taxes
& Registration Department, (South Tower), Nandanam, Chennai- 035.

48. The Assistant Commissioner (S.T),
Villivakkam Assessment Circle,
PAPJM Annexue Building, 2nd Floor,
No.1, Greams Road,
Chennai- 600 006.

49.The Commercial Tax Officer,
Villivakkam Assessment Circle,
PAPJM Annexure Building, 2nd Floor,
No.1, Greams Road, Chennai-600 006.

50. The Deputy Commissioner (Appeal), GST Appeal,
Integrated Building for Commercial Taxes
and Registration Department, (South Tower),
Nandanam, Chennai – 35.

51.The State Tax Officer,
Alandur Assessment Circle, Commercial Taxes Department,
Room No.352, 3rd Floor,
Integrated Building for Commercial Taxes
and Registration Department, (South Tower),
Nandanam, Chennai-35

52. M/s. Axis Bank,
T. Nagar Branch,
Mr. Krishna Dass,
113, GN Chetty Road,
T. Nagar, Chennai- 600 017.

53. Assistant Commissioner (ST)
Ponneri Assessment Circle,
Integrated Commercial Taxes Building (North) Division,
First Floor, Room No. 106, No 32, Elephant Gae Bridge Road, Vepery,

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54. The Assistant Commissioner (ST)(FAC),
Hosur (South -I),
Krishnagiri.

55. Commercial Tax Officer
Kundrathur Assessment Circle
Station: No. 4/109, 1st Floor, Bangalore Chennai Highway,
Varadarajapuram, Nazarathpet,
Chennai - 600 123.

56. Assistant Commissioner,
Kilpauk, Central II,
Chennai Central.

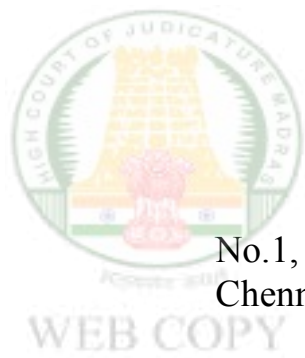
57. The State Tax Officer,
Office of the Commercial Tax Officer, Gudalur Assessment Circle,
The Nilgiris Coimbatore,
Tamil Nadu.

58. The Assistant Commissioner (ST),
Krishnagiri- I Circle,
Krishnagiri.

59. The Assistant Commissioner, (ST) (FAC)
Thiruvottiyur Assessment Circle,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road, Vepery,
Chennai - 600003.

60. Deputy Commissioner (GST Appeal), Chennai- I,
Room No.230, Second Floor,
Commercial Tax Office Campus Main Building,

408/413



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No.1, Greams Road, Thousand Lights,
Chennai 600 006..

61. The Deputy State Tax Officer - 1,
Ekkatuthangal Assessment Circle,
571, Integrated Commercial Taxes
and Registration Department (South Tower), Room No.306, 3rd Floor,
Nandanam
Chennai - 600 035.

62. The State Tax Officer
Office of the Commercial Tax Officer, Sathyamangalam,
Erode, Tamilnadu.

63. The Assistant Commissioner,
Thiruverkadu Assessment Circle,
Poonamallee, Kancheepuram,
Tamil Nadu.

64. Deputy Commissioner (ST), GST Office,
Thiruverkadu Assessment Circle,
Poonamallee Zone, Varadharajapuram,
Chennai 600123.

65. The Assistant Commissioner
(ST)(FAC)
Peelamedu South Circle,
Coimbatore.

66. The Commissioner of State Tax,
Tamil Nadu Having his office at
Ezhilagam,
Chepauk, Chennai-600005

67. The Assistant Commissioner
(ST),
Pondy Bazaar Assessment Circle

409/413



W.P.Nos.17184 of 2024 etc., batch



Having his office at No. 46,
Mylapore Taluk Office Building,
2nd Floor, Green Ways Road,
R A Puram, Chennai,
Tamil Nadu- 600028

68.The State Tax Officer (ST)
Group-XII/ Inspection,
Intelligence-I, Chennai-6
Having his office at No. 1,
PAPJM Buildings, Greams Road,
Thousand Lights, Chennai,
Tamil Nadu- 600006

69. The Union of India
Represented by the Secretary, Department
of Revenue,
Ministry of Finance,
No.137, North Block,
New Delhi -110 001.

70.The Goods & Services Tax Council
GST Council Secretariat
Represented by its Chairman
5th Floor Tower II Jeevan Bharti Building
Janpath Road, Connaught Palace
New Delhi - 110 001.

71.Central Board of Indirect Taxes &
Customs
Represented by its Director
(CBIC) North Block, New Delhi - 110 001.

72.The State of Tamil Nadu
Represented by its Secretary to Government
Commercial Taxes and Registration B1
Department
Secretariat, Fort St George,

410/413



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Chennai - 600 009.

73. Principal Secretary/
Commissioner of Commercial Taxes
Commercial Taxes Department
Ezhiligam, Chepauk, Chennai - 600 005.

74. The Assistant Commissioner (ST),
Thirukazhukundram Assessment Circle,
No.42, Wahab Nagar,
Thirukazhukundram - 603 109.

75. The Assistant Commissioner (ST),
Thirukazhukundram Assessment Circle,
No.42, Wahab Nagar,
Thirukazhukundram - 603 109.

76. The Deputy State Tax Officer – 1,
Trichy Road Circle,
Coimbatore 18.

77. The Union of India,
Represented by the Secretary, Department of
Revenue,
Ministry of Finance,
No.137, North Block,
New Delhi - 110 001.

78. The Goods & Services Tax Council,
Represented by its Secretary,
GST Council Secretariat, 5th Floor, Tower - II
Jeevan Bharti Building, Janpath Road, Connaught
palace, New Delhi - 110001.

79. Central Board of Indirect Taxes and Customs,
Represented by its Chairman,

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W.P.Nos.17184 of 2024 etc., batch



North Block, New Delhi - 110001.

80. The State of Tamil Nadu
Represented by its Secretary to Government
Commercial Taxes and Registration Department
Secretariat, Fort St. George, Chennai - 600 009.

81. The Deputy Commissioner (ST)- II,
Large Tax Payer's Unit, South Tower,
Integrated Commercial Tax Building,
Nandanam, Chennai- 600035.

82. The Assistant Commissioner (ST),
Thirukazhukundram Assessment Circle,
No.42, Wahab Nagar,
Thirukazhukundram - 603 109.



W.P.Nos.17184 of 2024 etc., batch

MOHAMMED SHAFFIQ, J.



spp/mka/kmm

W.P. No.17184 of 2024 etc., batch

12.06.2025