

M/S Graziano Trasmissioni vs Goods And Services Tax And 5 Others on 31 May, 2024

Author: Saumitra Dayal Singh

Bench: Saumitra Dayal Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

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A.F.R.

Neutral Citation No. - 2024:AHC:100568-DB

Court No. - 39

Case :- WRIT TAX No. - 1256 of 2023

Petitioner :- M/S Graziano Trasmissioni

Respondent :- Goods And Services Tax And 5 Others

Counsel for Petitioner :- Vinayak Mithal

Counsel for Respondent :- A.S.G.I.,C.S.C.,Gaurav Mahajan,Naveen Chandra Gupta

With

Case :- WRIT TAX No. - 132 of 2024

Petitioner :- Ms M J Corporation

Respondent :- Goods And Service Tax Council And 4 Others

Counsel for Petitioner :- Arjit Gupta,Manish Gupta

Counsel for Respondent :- A.S.G.I.,Amit Mahajan,C.S.C.,Gopal Verma

M/S Graziano Trasmissioni vs Goods And Services Tax And 5 Others on 31 May, 2024

With

Case :- WRIT TAX No. - 134 of 2024

Petitioner :- Ms Rki India Limited And Another

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Anurag Mishra,Pragya Pandey

Counsel for Respondent :- A.S.G.I.,Krishna Agarawal,S.S.C.

With

Case :- WRIT TAX No. - 1393 of 2023

Petitioner :- U.P. Ceramics Potteries Pvt Ltd

Respondent :- Goods And Service Tax And 5 Others

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- Amit Mahajan,C.S.C.,Gopal Verma

With

Case :- WRIT TAX No. - 1450 of 2023

Petitioner :- M/S Savi Interiors And Another

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Anurag Mishra,Pragya Pandey

Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan,Naveen Chandra Gupta

With

Case :- WRIT TAX No. - 177 of 2024

Petitioner :- Devendra Pratap Singh

Respondent :- Goods And Service Tax And 4 Others

Counsel for Petitioner :- Nitin Kumar Kesarwani,Suyash Agarwal

Counsel for Respondent :- A.S.G.I.,C.S.C.,Gaurav Mahajan,Gopal Verma

With

Case :- WRIT TAX No. - 224 of 2024

Petitioner :- Atul Tyre House

Respondent :- Goods And Service Tax Council And 4 Others

Counsel for Petitioner :- Nitin Kumar Kesarwani, Suyash Agarwal

Counsel for Respondent :- A.S.G.I., C.S.C., Gaurav Mahajan, Naveen Chandra Gupta

With

Case :- WRIT TAX No. - 375 of 2024

Petitioner :- M/D New Manish Surgical K 61/115 Sapsagar

Respondent :- Goods And Service Tax Council Through The Secretary Gst Council And 4 Othe

Counsel for Petitioner :- Arjit Gupta, Manish Gupta

Counsel for Respondent :- A.S.G.I., C.S.C., Gaurav Mahajan

With

Case :- WRIT TAX No. - 456 of 2024

Petitioner :- M/S Haji Nabi Bakash Mohd Saleem

Respondent :- Goods And Service Tax Council And 4 Others

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- A.S.G.I., Amit Mahajan, C.S.C., Naveen Chandra Gupta

With

Case :- WRIT TAX No. - 46 of 2024

Petitioner :- Civil Lines E. K. Road Meerut, Meerut Uttar Pradesh 250001 Through Its Fin

Respondent :- Goods And Service Tax Council And 4 Others

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- A.S.G.I., Gaurav Mahajan, Gopal Verma

With

Case :- WRIT TAX No. - 460 of 2024

Petitioner :- M/S Vinod Kumar Rai

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Aditya Pandey

M/S Graziano Trasmissioni vs Goods And Services Tax And 5 Others on 31 May, 2024

Counsel for Respondent :- A.S.G.I.,C.S.C.,Krishna Ji Shukla

With

Case :- WRIT TAX No. - 80 of 2024

Petitioner :- Ms Lg Electronic India Pvt Ltd

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Atul Gupta

Counsel for Respondent :- C.S.C.,Gopal Verma

With

Case :- WRIT TAX No. - 825 of 2024

Petitioner :- M/S Yuvaan Enterprises

Respondent :- Goods And Service Tax Council And 4 Others

Counsel for Petitioner :- Rishi Raj Kapoor

Counsel for Respondent :- A.S.G.I.,C.S.C.,Gaurav Mahajan,Gopal Verma

With

Case :- WRIT TAX No. - 522 of 2024

Petitioner :- M/S Tara Products And Services Private Limited

Respondent :- Goods And Service Tax Council And 4 Others

Counsel for Petitioner :- Rishi Raj Kapoor

Counsel for Respondent :- A.S.G.I.,Amit Mahajan,C.S.C.,Gopal Verma

With

Case :- WRIT TAX No. - 548 of 2024

Petitioner :- M/S Vds Contractor

Respondent :- Goods And Service Tax Council And 5 Others

Counsel for Petitioner :- Manoj Kumar Sinha,Rajneesh Tripathi,Sr. Advocate

Counsel for Respondent :- A.S.G.I.,C.S.C.,Dhananjay Awasthi,Gopal Verma

With

Case :- WRIT TAX No. - 597 of 2024

Petitioner :- M/S Mani Electricals

Respondent :- Goods And Service Tax Council And 4 Others

Counsel for Petitioner :- Arjit Gupta, Manish Gupta

Counsel for Respondent :- A.S.G.I., C.S.C., Parv Agarwal

with

Case :- WRIT TAX No. - 841 of 2024

Petitioner :- M/S Neptune Suppliers Private Limited

Respondent :- Goods And Service Tax Council And 4 Others

Counsel for Petitioner :- Punit Kumar Upadhyay

Counsel for Respondent :- A.S.G.I., Amit Mahajan, C.S.C., Gopal Verma

With

Case :- WRIT TAX No. - 897 of 2024

Petitioner :- M/S Subhash Infraengineers Pvt.Ltd.

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Indra Deo Mishra, Pankaj Kumar Tiwari

Counsel for Respondent :- A.S.G.I., C.S.C., Gopal Verma

With

Case :- WRIT TAX No. - 902 of 2024

Petitioner :- M/S Subhash Infraengineers Pvtltd

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Indra Deo Mishra, Pankaj Kumar Tiwari

Counsel for Respondent :- A.S.G.I., C.S.C., Gopal Verma

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. Heard Sri Rakesh Ranjan Agarwal learned Senior Counsel assisted by Sri Suyash Agarwal, Sri Divyanshu Agarwal and Sri Vinayak Mittal, Sri Shambhu Chopra learned Senior Counsel assisted by

Sri Rajnish Tripathi, Sri Praveen Kumar, Sri Nishant Mishra, Sri Atul Gupta, Sri Abhinav Mehrotra, Sri Venkat Prasad Pasupaleti (through video conferencing) and Sri Ayush Mishra, learned counsel for the petitioner, Sri S.P. Singh, learned ASGI assisted by Sri N.C. Gupta and Sri Gopal Verma, Sri Anant Tiwari, Sri O.P. Mishra, Sri K.J. Shukla, Sri Chandra Prakash Yadav and Sri Arvind Kumar Goswami learned counsel for the Union of India and Goods & Service Tax Council, Sri Gaurav Mahajan learned Senior Standing Counsel, Sri Amit Mahajan learned Senior Standing Counsel, Sri Krishna Agarwal learned Senior Standing Counsel and Sri Parv Agarwal learned Senior Standing Counsel for the Central Board of Indirect Taxes and Customs, Sri Nimai Das, learned Additional Chief Standing Counsel and Sri Ankur Agarwal learned Standing Counsel for the State-GST authorities.

2. Challenge has arisen to Notification No. 09/2023-Central Tax (CGST) dated 31.3.2023 issued by the Government of India and Notification No. 515/XI-2-23-9 (47)/17-T.C.215-U.P.Act-1-2017-Order-(273)-2023 dated 24.4.2023 issued by the State Government under Section 168A of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'the Central Act') and the U.P. Goods and Service Tax Act, 2017 (hereinafter referred to as 'the State Act') respectively, insofar those Notifications seek to extend the time granted to the Adjudicating Authorities to pass adjudication orders with reference to proceedings for the F.Y. 2017-18. That challenge is involved in the following writ petitions:

Sl. No. Writ Tax Number Party Name Financial Year

1. 132 of 2024 Ms MJ Corporation Vs. Goods And Service Tax Council And 4 Others 2017-18
2. 134 of 2024 Ms Rki India Limited And Another Vs. Union Of India And 3 Others 2017-18
3. 1393 of 2023 U.P. Ceramics Potteries Pvt Ltd Vs. Good and Service Tax and 5 Others 2017-18
4. 1450 of 2023 M/s Savi Interiors and Another Vs. Union of India and 2 Others 2017-18
5. 177 of 2024 Devendra Pratap Singh Vs. Goods And Service Tax And 4 Others 2017-18
6. 224 of 2024 Atul Tyre House Vs. Goods And Service Tax Council And 4 Others 2017-18
7. 375 of 2024 M/D New Manish Surgical K 61/115 Sapsagar Vs. Goods And Service Tax Council Through The Secretary Gst Council And 4 Others 2017-18
8. 456 of 2024 M/S Haji Nabi Bakash Mohd Saleem Vs. Goods And Service Tax Council And 4 Others 2017-18
9. 46 of 2024 Civil Lines E. K. Road Meerut, Meerut Uttar Pradesh 250001 Through Its Finance Controller Mr Ramesh Chandra Vs. Goods And Service Tax Council And 4 Others 2017-18

10. 460 of 2024 M/S Vinod Kumar Rai Vs. State Of Up And 2 Others 2017-18
11. 80 of 2024 Ms Lg Electronic India Pvt Ltd Vs. State Of Up And 2 Others 2017-18
12. 825 of 2024 M/S Yuvaan Enterprises Vs. Goods And Service Tax Council And 4 Others 2017-18
13. 522 of 2024 M/S Tara Products And Services Private Limited Vs. Goods And Service Tax Council And 4 Others 2017-18
14. 548 of 2024 M/S Vds Contractor Vs. Goods And Service Tax Council And 5 Others 2017-18
15. 597 of 2024 M/S Mani Electricals Vs. Goods And Service Tax Council And 4 Others 2017-18
16. 841 of 2024 M/S Neptune Suppliers Private Limited Vs. Goods And Service Tax Council And 4 Others 2017-18
17. 897 of 2024 M/S Subhash Infraengineers Pvt. Ltd. Vs. Union Of India And 4 Others 2017-18
18. 902 of 2024 M/S Subhash Infraengineers Pvt Ltd. Vs. Union Of India And 4 Others 2017-18

3. By earlier order, we had consolidated the above described and other petitions raising same and/or similar challenge. Since, only legal issues are involved, Counter Affidavits were required to be filed by the respondents in the lead case i.e. Writ Tax No. 1256 of 2023 (M/S Graziano Trasmissioni India Pvt. Ltd. Vs. Goods And Services Tax And 5 Others). Copy of those Counter Affidavits were directed to be circulated to all counsel for the petitioners, in individual petitions. Also, permission was granted to individual counsel for the petitioners-to serve their Rejoinder Affidavits, treating the Counter Affidavit circulated in the lead case to be the Counter Affidavit filed in their individual cases. Thus, pleadings have been exchanged between the parties, on deemed basis.

4. During the course of hearing, it was pointed out that other challenges are also involved in some of the other petitions. Thus reference has been made to challenge raised to adjudication proceedings/orders for F.Y. 2017-18, on other grounds including ground as to adjudication order exceeding the show cause notice; principles of natural justice having been violated; rectification/correction of GSTR-3B etc. Yet other petitions have laid challenge to similar Notifications issued for the F.Y. 2018-19. In those cases, legal grounds of challenge have been described to be different. Another petition has been filed involving challenge to the validity of Section 168A of the Central Act.

5. In view of the varied challenge raised in some individual petitions, at the suggestion of the bar, we have confined the hearing (at present), to writ petitions involving challenge to Notification No. 09 of 2023 dated 31.03.2023 issued by the Central Government and Notification No. 515 issued by the State Government on 24.04.2023 (hereinafter collectively described as the time extension Notifications) issued for the F.Y. 2017-18. Petition raising challenge to validity of Section 168A has been segregated. Those may be heard later. Also, petitions involving challenge to the time extension

Notifications relevant to the F.Y. 2018-19, may be heard separately.

6. Insofar as present batch of petitions is concerned, earlier Section 44 (of the Central Act and the State Act) prescribed that the Annual Return may be filed by 31st day of December following the end of the relevant Financial Year. Thus, for the F.Y. 2017-18 the Annual Return could be filed till 31 December 2018. By virtue of Section 73(10) of the Central Act and the State Act, the Proper Officer could issue an order of adjudication under sub-Section (9) of that Section, within three years from the due date of furnishing of Annual Return. For F.Y. 2017-18 such order order could be passed upto 31 December 2021. Also, under Section 73(3) of the Central Act and the State Act, the mandatory notice preceding an adjudication order [contemplated under Section 73(10) of the Act], could be issued not later than three months prior to the last date on which the Adjudication Order may be passed. Therefore, for the F.Y. 2017-18 such notice could be issued not later than 30 September 2021.

7. It is a fact, F.Y. 2017-18 (July, 2017 to March, 2018) was the first year under the GST regime. It is a matter of common knowledge that the revenue authorities and the tax payers alike, faced numerous difficulties in complying the new law. Therefore, the time for making compliances was extended and relaxations were granted by the Government, from time to time. It is on record - vide Notification dated 03.2.2020 issued under Section 44 (as it then existed) read with Rule 80 of the Rules framed under the Central Act, the last date for filing Annual Return for the F.Y. 2017-18 was extended - for the State of Uttar Pradesh, till 07 February 2020. Similar Notification No. 509 dated 05.02.2020 was issued by the State Government under the State Act. Correspondingly by operation of law, the time limitation contemplated under Section 73(10) of the Central Act and the State Act stood extended upto 06 February 2023. Also, correspondingly the time period for issuance of notice, by the Proper Officer (for that F.Y.), stood extended upto 08 November 2022. It is also a fact, just after the expiry of the last date for filing return for F.Y. 2017-18 expired on 07.2.2020, the country was hit by the first wave of the pandemic COVID-19, resulting in complete lockdown being declared, from 25 March 2020.

8. While the Parliament was not in session, the President promulgated Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (hereinafter referred to as 'TOLO'). It was published in the Gazette of India on 31.03.2020. In the first place, by virtue of Section 3 of TOLO, the time limits specified, prescribed or notified under specified Acts (under that Section) were relaxed. However, the Central Act and the State Act were not included therein. Then, by Section 8 of TOLO, a new Section 168A was introduced to the Central Act, granting powers to the Central to issue appropriate notification, on the recommendations of the Goods and Service Tax Council (hereinafter referred to as 'the Council'), to extend the time limit specified, prescribed nor notified under the Central Act (as the case may be) in respect to 'actions' that 'cannot' be 'completed' or 'complied', 'due to force majeure' circumstance. The Explanation to the new section explained the meaning of 'force majeure'. It is also a fact that TOLO was replaced with Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (hereinafter referred to as 'the TOLA'), enforced with effect from 31 March 2020. It contained provisions similar to TOLO. For our purpose, in material parts, TOLA is the mirror image of TOLO. Similar amendments were made to the State Act.

9. Acting under Section 168A of the Central Act, first, Notification No. 35/2020 was issued by the Central Board of Indirect Taxes and Customs (hereinafter referred to as 'the CBIC'), dated 03 April 2020. In short, it provided, amongst others, extension of time upto 31.08.2020 with respect to actions for which the time limit for completion or compliance by any authority fell during the period 20 March 2020 - 30 August 2020. A similar Notification was issued by the State Government being Notification No. 445 dated 11.05.2020. Later, another Notification No. 14/2021-Central Tax, dated 01 May 2021 was issued under Section 168A of the Central Act providing for similar extension of time, to perform acts that were required to be performed during 15 April 2021-29 June 2021 upto 30 June 2021. It was complemented by similar Notification No. 496 dated 28.06.2021, issued by the State Government, under the State Act.

10. Later, vide Notification No. 13/2022-Central Tax dated 05 July 2022, issued by the Government of India, (acting through the CBIC) under Section 168A of the Central Act, extended the time limit specified under Section 73(10) of the Central Act for F.Y. 2017-18, upto 30 September 2023. Parallel notification was issued by the State Government being Notification No. 596, dated 21.7.2022 providing for similar extension of time. These notifications have not been challenged.

11. Last, vide Notification No. 9/2023 dated 31.03.2023 issued by the Government of India through the CBIC, the time limitation prescribed under Section 73(10) of the Central Act for F.Y. 2017-18, was extended upto 31.12.2023. A parallel notification came to be issued by the State Government Notification No. 515 of 2023 dated 24.04.2023, granting similar extension of time under the State Act. These notifications have also arisen under Section 168A of the Central Act and the State Act. Challenge has been laid only to this last set of Notifications dated 21.03.2023 (issued by the Central Government) and 24.04.2023 (issued by the State Government).

12. In the context of the above, Sri Rakesh Ranjan Agarwal, learned Senior Advocate has first pointed out that all petitioners had filed their Annual Returns before the last extended date for filing annual returns for F.Y. 2017-18 i.e. 07.02.2020. The marginal note appended to Section 168-A of the Act reads: "Power of Government to extend time limit in special circumstances." Thus, it has been pointed out that blanket extension of time was not contemplated to be granted. The legislature did not intend to grant blanket power to the Government to extend the limitation of time. Contrasting the newly added provision with Section 172 of the Central Act and the State Act, it has been submitted, the general power to grant such extension conferred in Section 172 is subject to the direct check of the legislature, inasmuch as the Government seeking to exercise that power would have to lay and thus seek approval of its 'general order' by the respective legislative body. Thus, it was neither contemplated by the legislatures nor it could be construed that there was any extension of time contemplated or permitted to be granted to file either the Annual Return for F.Y. 2017-18 beyond the date 07.02.2020, or to pass an adjudication order beyond 06.02.2023.

13. Second, it has been pointed out, Notification No. 14 of 2021 dated 01.05.2021 did not cause any effect on the limitation to pass the adjudication order for F.Y. 2017-18, inasmuch as the period of limitation that was extended upto 30.06.2021 was only with respect to acts that could not be completed or complied during the period 15.03.2020 to 20.08.2020. Even the requirement of filing of e-way bill was not relaxed. Benefits were contemplated and granted with respect to completion of

other proceedings (by the revenue authorities) and filing of appeals (by the assesseees).

14. Third, it has been pointed out that Notification No. 13 of 2022 and 596 of 2022 have not been challenged as despite that extension of time granted under Section 168-A of the Central Act and the State Act qua adjudication proceedings for F.Y. 2017-18, no action was initiated against the petitioners, during that extended period of limitation.

15. Coming to the challenge raised to Notification No. 9 of 2023 (issued by the Central Government) and Notification No. 515 of 2023 (issued by the State Government) hereinafter collectively referred to as the impugned notifications, it has been submitted, first, the time extension notifications have not arisen on an independent exercise but only by way of partial modification of the first time extension granted.

16. Second, it has been asserted that on 31.03.2023, there did not exist any COVID-19 circumstance at the time of issuance of the impugned notifications. The staff attendance at government and non-government offices stood regularised. Pre-existing office working restrictions were done away. Referring to the impugned time extension clause in Section 168-A of the Central Act and the State Act, it has been submitted that there did not exist any 'force majeure' circumstance. Referring to the order of the Supreme Court passed in Re: Cognizance for Extension of Limitation (Miscellaneous Application No. 408 of 2022 and connected matter), the Supreme Court itself granted exemption/relaxation of limitation for a limited period 15.03.2020 to 28.02.2022 only. Thus, according to him, in absence of any 'force majeure' circumstance existing on 31.03.2023, the exercise of power by the Central Government and the State Government to extend the limitation to frame the adjudication order for F.Y. 2017-18 upto 31.12.2023, did not exist. The exercise of power is patently ultra vires the Act.

17. Here, he has also referred to Clause 5 of Circular dated 20.07.2021 to submit that the CBIC itself was cognizant of the order passed by the Supreme Court dated 27.04.2021. Therefore, it was the shared understanding of the executive authorities that the COVID-19 circumstance had come to an end on 28.02.2022. Referring to S. Kasi Vs. State through Inspector of Police, Samaynallur Police Station, Madurai District; (2021) 12 SCC 1, it has been asserted, the Supreme Court itself clarified its order to imply that - the order dated 23.03.2020 cannot be read to mean that it ever intended to extend the period of filing Charge-Sheet by police authorities as contemplated under Section 167(2) Cr.P.C.

18. To elaborate his submission that no general extension of time had been granted to State authorities by the Supreme Court, he has also referred to a decision of the Jharkhand High Court in M/s Rungta Mines Ltd. Vs. State of Jharkhand, (2023)VIL-525-JHR wherein that Court had the occasion to consider whether under the suo motu extension of limitation orders passed by Supreme Court, the limitation to initiate re-assessment proceedings also stood extended. Referring to the Circular dated 20 July 2021 that reflects the own understanding of the revenue authorities, it was noted that the actions of scrutiny of returns, issuance of summons, search, enquiry or investigations and even consequential arrests (under the GST law), were not covered by the order of the Supreme Court. It was taken note that in the meeting of the Goods and Service Tax Council (hereinafter

referred to as the 'Council') itself, that apex body under the scheme of the Central Act and the State Act, was cognizant that the order of the Supreme Court would apply to other quasi judicial and judicial proceedings but not to adjudication proceedings. Applying that principle, it has been emphasised that the process of scrutiny of returns, audit etc., was not covered. The fact that the revenue authorities failed to perform those functions may not be now protected by seeking extension of limitation to pass adjudication order.

19. Third, it has been submitted, no compliance has been made to the statutory requirements of Section 168A of the Act. Since the ingredients of 'force majeure' circumstance did not exist on the relevant date i.e. issuance of the impugned notifications, they are wholly ultra vires. By way of another limb of this submission, it has been further asserted that the Central Government and the State Government should have acted independent of the opinion or advise of the Council. Power to issue the time extension notifications being delegated to the Government, no blind or mute compliance may have been offered by the delegate to the opinion of the Council. Reference has been made to the impugned notifications and also to the resolution of the Law Committee considered by the Council, to submit that both are silent to the existence of 'force majeure' circumstance relevant to the impugned notifications.

20. To clarify, he would submit, unless such circumstance was shown to exist on the date of issuance of time extension notifications and unless due application of mind had been made by the Central Government to that effect, inconceivable situation may arise where the Council may continue to resolve to extend the limitation of time to frame adjudication orders, indefinitely. The Central Government and the State Government may continue to offer blind compliance to such opinions and resolutions of the Council as may remain wholly contrary to the spirit of the Central and the State Act. Reliance has been placed on another decision of the Supreme Court in *Union of India and Another Vs. Mohit Minerals Private Limited (2022) 10 SCC 700* to submit that the recommendations of the Council are of persuasive value and that they do not create the law. In any case, the in context of delegated legislation arising under Section 168A of the Act, the Central Government and the State Government had to offer independent application of mind to the existence of 'force majeure' circumstance. In the present case, contrary to that, both the Central Government and the State Government have offered mechanical compliance to the recommendation of the Council.

21. Further, it has been submitted, in face of the plain language of Section 168A of the Central Act and the State Act, the burden to establish the existence of 'force majeure' circumstance remained undischarged on the Central Government and the State Government. Neither in the impugned notifications nor in the recommendation of the Council nor in the report of the Law Committee nor through the Counter Affidavit filed in these petitions, any fact has been shown to exist as may have allowed the delegated legislative body to act under Section 168A of the Central Act or the State Act. Mere, difficulties or existence of onerous conditions would never survive the test of Section 168A of the Act. The legislature, in its own wisdom contemplated absolute impossibility in performance of certain actions as the only permissible reason to exercise the power delegated under Section 168A of the Central Act and the State Act. Referring to the *Energy Watchdog Vs. Central Electricity Regulatory Commission & Ors., (2017) 14 SCC 80*, it has been asserted, for any event to describe as a

'force majeure', it must have wholly or partly caused an unavoidable delay on the affected party on the performance of its obligations. Referring to the circumstances that existed viz-a-viz the challenge brought before us and referring to the documents and pleadings, it has been shown, inspections (on 25.2.2022); audit (on 3.2.2022); audit notice (on 14.10.2022); audit order (on 13.12.2022) and various other actions were performed. In such circumstances, it has been submitted, there were no 'force majeure' circumstance as may have prevented the revenue authorities from initiating adjudication proceedings before the cut-off date 30.6.2023. Merely because there may have existed certain difficulties, those may not have been cited as an impossibility. Thus, it has been contended, the issuance of the impugned notifications falls foul with the power vested with the Central Government and the State Government under Section 168A of the Central Act and the State Act.

22. Next, it has been submitted, limitation is a substantive right. It impacts the right of the tax-payers. Referring to the marginal note to TOLA, emphasis has been laid to the words "special circumstance" appearing in the marginal note. Thus, it has been emphasized, the power vested under Section 168A of the Act is not a general power to be exercised for completion of certain actions but an exceptional power vested in the delegate to be exercised, in special circumstances.

23. Referring to *Eastern Coalfields Limited Vs. Sanjay Transport Agency & Anr.*, (2009) 7 SCC 345 and *Satyendra Kumar Mehra alias Satendera Kumar Mehra Vs. State of Jharkhand*, (2018) 15 SCC 139, it has been submitted, any doubt or ambiguity in the interpretation of the legislative clause may always be cleared by looking at the marginal note. Thus, it has been submitted, the impugned notifications are invalid as the power under Section 168A of the Act may only be exercised in special circumstances i.e. during the continuance of the spread of the pandemic COVID-19. That special circumstance having passed, the exercise of power with reference to COVID-19 is thereafter, wholly ultra vires the Act.

24. Next, Shri Shambhu Chopra, learned Senior Counsel has offered a slightly different perspective to the dispute brought before the Court. In his submission, the impugned notifications are ultra vires to Section 168A of the Central Act and the State Act. Yet, first, according to him also, a valid notification under Section 168A of the Act may have been issued, if necessary, due to 'force majeure' circumstance existing. In its absence, no such notification may have been issued. It is a matter of common knowledge that the 'force majeure' circumstance i.e. COVID-19 did not exist on the date of issuance of the impugned notifications i.e. 30.3.2023 and 24.4.2023. Therefore, the exercise of the power is perverse.

25. Second, uniquely he would submit, the impugned notifications issued subsequent to the pandemic are prejudicial to the rights and interests of the tax-payers because they exposed the tax-payers to the consequences of show-cause notices, adjudication orders, recoveries and prosecutions etc. wholly outside the period of limitation prescribed by the principal legislature. Relying on *State of Uttar Pradesh Vs. Sudhir Kumar Singh & Anr.*, AIR (2020) SC 5215, he would submit, the issuance of the impugned notifications has caused prejudice to the petitioners and that procedural or substantive protection granted by the principal legislature by incorporating strict conditions under Section 168A has been diluted and thus abused.

26. Third, it has been submitted, the impugned notifications are discriminatory to the extent they partially modified the earlier Notifications dated 1.5.2021 and 28.6.2021 issued by the Central Government, and State Government respectively. That part of the earlier notifications which were in favour of the petitioner, has been done away. At the same time, the revenue has taken undue benefit by seeking extension of limitation to initiate adjudication proceedings.

27. Fourth, it has been submitted, the impugned notifications are not peripheral but substantive. Time prescription is essential for the purpose of issuance of proceedings in the nature of reassessment and/or adjudication. Wherever extension of time is required, the primary legislation provides for the same. In the present case, that function has been circumscribed by the conditions enumerated under Section 168A of the Act. Therefore, unless the 'force majeure' circumstance (of continuance of COVID-19) was a fact in existence, the primary legislative function cannot be seen to be validly exercised by the delegate - either the Central Government or the State Government. Reliance has been placed on Independent Schools' Association, Chandigarh (Regd.) & Ors. Vs. Union of India & Ors., (2022) 14 SCC 387 to submit that a notification requiring substantive change to be made may neither be described as peripheral nor that power may be lightly exercised by the delegate. In the present case, the delegate having acted outside the scope of the delegation made, the impugned notifications are acts of excess. Essential legislative function was not and could not be delegated to the Central Government, or the State Government.

28. Referring to Lachmi Narain & Ors. Vs. Union of India & Ors., (1976) 2 SCC 953, it has been elaborated, the express inbuilt legislative policy contained in a legislative act cannot be violated by the delegate by abrogating to itself plenary legislative function. While the Parliament and the State legislature had plenary powers to legislate, yet, the delegate may only offer strict compliance to the limited power vested on it. Unless the pre-condition for exercise of that power is shown to exist, the action taken by the delegate would remain an act of excess and therefore ultra vires of the principal enactments.

29. Again uniquely, Sri Shambhu Chopra has also invoked principle of violation of doctrine of public trust/public interest. Referring to Tata Housing Development Company Ltd. Vs. Aalok Jagga & Ors., (2020) 15 SCC 784, he would submit, though the traditional scope to apply the doctrine of public trust was confined environmental issues, at the same time the doctrine now stands extended to other spheres as well. In a society governed by rule of law, the betrayal of public trust by the Central Government and the State Government may remain amenable to judicial review.

30. Further, it has been submitted, Section 168-A of the Central Act and the State Act do not bind the Central Government and the State Government to offer mute compliance to the recommendation made by the GST Council. On the contrary it remains with the Central Government and the State Government to accept or to not accept any recommendation made by Council. Though the Central Government and the State Government may not act independent of the recommendation made by the Council, at the same time, it would be wrong to say that the Central Government and the State Government are bound to comply the recommendation made by the Council.

31. Referring to Article 279-A(4)(h), it has been described as residuary clause or the default clause. In absence of any power vested in the Council to make such recommendation, merely because under Article 279-A(6), the Council may determine its procedure in the performance of its functions, may not give rise to any other power or sphere for exercise of such power to make any recommendation. Thus, it has been suggested, the provision of Section 168-A of the Central Act and the State Act, are not wholly inconsistent to Article 279-A. Any recommendation made by the Council to the Central Government and the State Government that is not in consonance with the Constitutional and/or statutory law, would remain unenforceable.

32. Next, Sri Praveen Kumar offered a clarification at the very beginning. He would submit, Section 168-A is a piece of conditional legislation. The conditions on which delegate may act are specifically prescribed therein. There can be no doubt or imagination as to that. Thus, only when an 'action' for which time limit may have been prescribed, specified or notified, cannot be completed or complied within that time, only then, the Central Government and/or the State Government may act, to provide for time extension. Having laid that premise, he would proceed to submit, therefore, the recommendation of the Council must be seen to have considered and identified actions that were not complied or which could not be complied within the pre-existing prescription of time, that too for 'force majeure' circumstance existing. In the present facts, according to him, that consideration is completely lacking rather, it is absent.

33. Relying on the Hamdard Dawakhana (Wakf) Lal Kuan, Delhi & Anr. Vs. Union of India & Ors., AIR 1960 SC 554, he would submit, there can be no doubt that Section 168-A of the Central Act and the State Act are pieces of conditional legislation. Thus, the occasion for the delegate to act is not only hinged to the recommendation of the Council but that such recommendation may not arise and in any case, may not be acted upon unless the exact circumstance contemplated for its exercise, pre-exist. Referring to State of Tamil Nadu Vs. K. Sabanayagam & Anr., (1998) 1 SCC 318, he would submit, in the context of conditional legislation, it is a valid ground to challenge that the mandatory conditions required to be fulfilled before the delegated legislation may arise, did not exist.

34. Applying that principle, Sri Praveen Kumar would further submit, the impugned notifications only enumerate difficulties and challenges that may have been faced by the revenue authorities, in completing the adjudication proceedings for F.Y. 2017-18. It has not been shown that action of framing adjudication orders within prescribed time limit could not be completed or complied. As a fact, he would submit, to begin with, by virtue of Section 73(10) of the Central Act and the State Act, the revenue authorities had three year limitation from the last date of submission of annual return for F.Y. 2017-18. Vide Notification No. 5 of 2020, that date was extended to 07.02.2020.

35. Consequently, by virtue of Section 73(10) of the Central Act and the State Act, the limitation to frame the adjudication order for F.Y. 2017-18 stood extended upto 06.02.2023. Then, with respect to first exercise of power under Section 168-A of the Central Act and the State Act, it has been submitted, Notification Nos. 13 of 2022 dated 05.07.2022 and 5 of 1996 dated 21.07.2022, extended the period of limitation to frame the adjudication order upto 30.09.2023. Those notifications were issued, even though six months' time was available from before to complete or comply with the timelines to perform specified actions. Since those notifications were never assailed, more than

enough time was made available to the revenue authorities to initiate and complete action that had yet not been initiated. In that regard, he would submit, the words "cannot be completed or complied" refer to an impossibility in fact and/or in law. In absence of notices issued to initiate any adjudication proceeding, the stage was not set to record any satisfaction that the action to pass adjudication orders could not be completed or complied.

36. Referring to P. Ramanatha Aiyar's, *The Law Lexicon*, Second Edition 1997, he would elaborate that word 'cannot' includes a legal inability, as well as a physical impossibility. (*The Newbattle*, 54 LJPD & A 16). Further, referring to the said law lexicon, he would elaborate that the word 'complete' may only mean to finish; accomplish that which one starts out to do. (*Black's Law Dictionary*). He has also referred to and relied on Article 356 (1) of the Constitution of India and the decision of the Supreme Court in *S.R. Bommai v. Union of India*, AIR 1994 SC 1918, to submit that strict meaning of the word 'cannot' must arise to the words used by the legislature in Section 168A of the Central and the State Act. Thus, it has thus been stressed that the period of actual national lockdown - from 25.3.2020 to 31.5.2020, alone offered a circumstance when no action may have been completed or complied. Even then, it is a fact that during that period as well, notices came to be issued; proceedings were conducted and completed. Since, no action had been initiated at the relevant time, the legal basis to invoke the conditional legislation under Section 168A of the Central Act and the State Act - to obtain extension of limitation, did not exist. Unless a proceeding was first initiated, there may never arise a circumstance for its completion or compliance. In short, it has been submitted, the extension of limitation has been invoked not to complete or comply any action that was already underway, but to initiate fresh actions. Therefore, the exercise of power by the delegate falls foul with the delegation made.

37. Referring to the agenda of the 47th and 49th meeting of the GST Council, it has been submitted, wholly vague terms have been used to recommend the issuance of notification for time extension. Thus, without referring to any specific 'force majeure' circumstance existing or period for which it may have operated or any factual or legal impossibility that it may have generated, the minutes disclose a loose discussion of 'COVID period', 'initial period' etc. Further reference to the difficulties faced during the initial period of GST regime are described to be extraneous to the issue. 'Force majeure' circumstance having been described by the Explanation under Section 168A of the Central and the State Act, those difficulties would remain irrelevant to the issue. Further, scrutiny of returns is not an enforcement action. Therefore, on the own showing of the respondents that processing of returns had never been stayed by any authority or law. Reference to the same as a circumstance to justify the extension is extraneous to the exercise of conditional legislation. In the context of the first extension of time granted and much time having survived before that extended period of limitation may have come to an end, the second extension of time granted is described to have been obtained only for the sake of convenience of the revenue authorities.

38. Referring to the words 'due to force majeure' used under Section 168A of the Act, he would submit, the legislature clearly intended, conditional legislation may arise only as direct consequence of a 'force majeure' circumstance existing for which reason, any action may remain from being completed or complied. Insofar as it cannot be disputed that the COVID-19 circumstance came to an end in the year 2021 itself, and in any case did not extend beyond January and February, 2022,

exercise of that conditional legislation after expiry of the 'force majeure' circumstance, is ultra vires the Central Act and the State Act.

39. Shri Atul Gupta has offered another hue to the submissions advanced in these proceedings. He would submit, the impugned notifications are discriminatory. By virtue of the language used in Section 73 and Section 74 of the Central and the State Act, a clear demarcation exists between a registered person from whom tax may have remained to be collected, for reasons other than the fraud and those from whom due tax may remain to be collected for reason of fraud. Legislative wisdom remains, to treat the two categories of persons differently, inasmuch as lesser period of limitation of three years (from the last date of filing of return) exists for the first category of persons and a longer period of limitation of five years exists for persons who may be alleged to have committed fraud. By seeking to enlarge the limitation for the first category of persons without valid reasons, that legislative distinction has been destroyed. To that extent, the impugned notifications are wholly discriminatory, besides being in violation of the statutory scheme. Also for the same reason, he would contend that the impugned notifications are wholly arbitrary as there exists no valid or justifiable reason to destroy the pre-existing limitation that distinguishes a person who may have committed fraud and registered person such as the petitioners who are not alleged to have committed any fraud. Though the principal legislature may have prescribed a larger as period of limitation for persons not involved in any fraud, yet, through arbitrary action of the Central and the State Governments, cannot achieve that end.

40. Third, he would submit, evidence exists in the shape of initial notifications issued at the time of the spread of COVID-19 - to only grant short extensions of time. Therefore, the power vested under Section 168A of the Act must also be read to grant short extensions of limitation only, for a limited period during which 'force majeure' circumstance may exist. On the contrary, the impugned notifications seek to indefinitely enlarge the limitation of time, contrary to the inherent statutory scheme to conclude the adjudication proceedings in limited timeframe.

41. Fourth, it has been submitted, the impugned notifications do not refer to any circumstance of 'force majeure', prevailing. On the contrary, on the date of issuance of the impugned notifications the 'force majeure' circumstance did not exist. Therefore, there was no legal basis to exercise delegated legislative power to grant extension of time, at that stage.

42. Last, he would submit that scrutiny and audit are linked to adjudication proceedings. The revenue authorities should have completed those actions irrespective of extension of time granted under Section 168A of the Act. Since the revenue authorities failed to perform those acts, they cannot seek any extension of time, for that reason and purpose. In short, it is his submission, the entire action of issuance of the impugned notifications is wholly discriminatory and arbitrary. Therefore, it falls foul of Article 14 of the Constitution of India. He has referred to and relied on *Shayara Bano v. Union of India*, (2017) 9 SCC, to submit, even a principal legislation is not immune to the test of manifest arbitrariness. Here, the challenge is to delegated legislation. In absence of any justifiable 'force majeure' circumstance shown to exist as may have allowed for such delegated power to arise or to be exercised, the unjust and arbitrary result growing from it, clearly establishes its invalidity.

43. Shri Nishant Mishra would first submit, repeated extensions granted in a routine way are contrary to the legislative intent and object expressed in the language of Section 168A of the Central Act and the State Act. That provision contemplates a limited intervention to be made by the Central or the State Government for reason of 'force majeure' circumstance having obstructed any action that was required to be completed or complied during the existence of continuance of 'force majeure' circumstance. Referring to UP Goods and Services Tax (Second Amendment) Act, 2020 and the statement on objections and reasons thereto, it has been submitted, Section 168-A of the State Act was incorporated only to overcome the difficulties faced by the tax-payers arising from lockdown declared due to COVID-19. Thus, the provision of Section 168-A may have been utilised only for that special circumstance, arising from that eventuality.

44. The non obstante clause appearing by way the opening words used in Section 168-A of the Central Act and the State Act must therefore be read strictly, to confine it to the object for which the said provision was enacted. Relying on *Geeta Vs. State of U.P. & Ors.*, (2010) 13 SCC 678, it has been asserted, the non obstante clause attached to the Section 168-A of the Central Act and the State Act may not be read to enable general power to grant extensions of time to initiate and conclude the adjudication proceedings. The extreme circumstance permitting exercise of that power existed only during the complete lockdown enforced by the Central Government, under the Disaster Management Act.

45. As to the 'force majeure' circumstance, he has referred to *Dhanrajamal Gobindram Vs. Shamji Kalidas & Co.*, AIR 1961 SC 1285, to convey the legislative intent - to save the performing party from the consequences of anything over which it may have no control. Inasmuch as filing of Annual Return was complete before the issuance of the impugned notifications and since there was no lockdown during that period or immediately preceding the issuance of those notifications, there is no basis to accept that the performing party i.e. revenue authorities were prevented from performing any act, for reasons beyond their control.

46. He would further submit, the power vested under Section 168-A has to remain distinct and different in scope and ambit from the general power of time extension vested under Section 172 of the Central Act and the State Act. While that power may be exercised to ease the difficulties that may be faced in giving effect proceedings of the Central Act and/or State Act. Power under Section 168-A of the Central Act and the State Act may be exercised only during the currency of 'force majeure' circumstance, only.

47. Also, the general power to grant extension of time created under Section 172 of the Central Act and the State Act remains subject to direct legislative check inasmuch as any order thereunder must be approved by the respective principal legislative body, in contrast, under Section 168-A of the Central Act and the State Act, power may be exercised within the confines of the self limitations of that section. The general power was exercised by the Central Government and the State Government whereby the date of filing of Annual Return for the period 01.07.2017 to 01.07.2018 had been extended to 31.12.2019 and again to 31.01.2020, respectively.

48. Second, the reason given in the minutes of the 49th meeting of the GST Council only establish difficulty. They do not refer to existence or continuance of a 'force majeure' circumstance. To that extent, those recommendations are contrary to the express provisions of Section 168A of the Central Act and the State Act. Further, it has been submitted, the consideration of reasons in the 49th Meeting of the Council do not constitute or give rise to appreciation of any 'force majeure' circumstance. At best, the Council discussed the difficulties faced by some of the "tax administrations".

49. Even in the agenda considered by the Council, the discussion exists only with respect to delays observed in issuance of show cause notice for F.Ys. 2017-18, 2018-19 and 2019-20, for reason of COVID-19 pandemic. It has been further noted, the Law Committee considered the delay in scrutiny and audit due to COVID-19 restrictions and had thus recommended extension of time. Merely because the revenue authorities may have faced certain difficulties in performing certain actions preceding issuance of adjudication notices, may never be described as an impossibility to complete and comply any action.

50. By way of another limb of the submission, Sri Mishra would submit, scrutiny and audit are independent activities. Adjudication proceedings do not hinge on and are not dependent on the same. Referring to Section 73(1) of the Central Act and the State Act, it has been submitted, the Proper Officer may issue a show cause notice where "it appears" that tax has not been paid or short paid etc. That legislative satisfaction of the Proper Officer has not been made dependent on the prior scrutiny or audit of the Annual Return etc.

51. Under Section 61(1) of the Act, the Proper Officer may scrutinise the Annual Return and again under Section 61(3) of the Act, if not satisfied the Proper Officer may proceed against the registered person under Section 65 or 66 or 67 or 73 or 74 of the Central Act and/or State Act. Thus, the consequences for scrutiny are provided elsewhere. Therefore, the Proper Officer is not bound to scrutinise the Annual Returns and thereafter proceed on issuance of adjudication notice.

52. Third, it has been submitted, no government may act in exercise of powers vested under Section 168A of the Central Act and the State Act, except upon prior recommendation made by the Council. Recommendation was made by the Council in its 49th meeting to the Central Government but not to the State Government. Therefore, besides the general challenge raised to the impugned notifications issued under the Central Act and the State Act, it has been submitted, the same is wholly without jurisdiction. In absence of recommendation made by the State Government, such notification may never arise.

53. Fourth, as to the fact justification, reference has been made to paragraph 7, 9 and 10 of the Counter Affidavit filed in these proceedings to submit that no effort has been made by the respondents to justify their action.

54. Sri Abhinav Mehrotra has submitted that the impugned notifications must satisfy twin conditions of 'force majeure' circumstance existing and also the impossibilities (both legal and factual), in the completion of actions. Unless the twin conditions are specifically satisfied, the action

taken to issue the impugned notifications may not be valid. According to him, issuance of the impugned notifications which is an executive action is based on mixed reasons. He has relied on *Dwarika Prasad Sahu Vs. State of Bihar & Ors.*, AIR 1975 SC 134 and *State of Mysore Vs. P.R. Kulkarni & Ors.*, AIR 1972 SC 2170 to submit, it is not possible to cull out with any certainty, which reason prevailed with the Council and which part of the recommendation made by the Council prevailed with the Central Government or the State Government, especially because the reasons contained in the minutes of 48th Meeting of the Council refer to extraneous circumstance i.e. facts and measures falling outside twin test of 'force majeure' circumstance existing and impossibility to perform due action, for that reason.

55. In his submission, by lapse of time especially after the second/Delta Wave of the pandemic COVID-19 got over, no 'force majeure' circumstance existed as may have prompted or persuaded the Central or the State Government to act on such recommendations. To the extent, the action to issue the impugned notifications is based on extraneous considerations, those would fall within the scope of judicial review.

56. Relying on *D.C. Wadhwa & others v. State of Bihar & others*, (1987) 1 SCC 378, he would submit that power exercised by the executive was a colourable exercise to achieve a different object than that contemplated by Section 168A of the Central Act and the State Act. He has also placed reliance on *Krishna Kumar Singh & another v. State of Bihar & others*, (2017) 3 SCC 1, *Collector (District Magistrate), Allahabad v. Raja Ram Jaiswal*, AIR 1985 SC 1622, *State of Punjab v. Gurdial Singh & others*, (1980) 2 SCC 471 and *Kalabharati Advertising v. Hemant Vimalnath Narichania & others*, AIR 2010 SC 3745.

57. By way of another limb of his submission, Shri Mehrotra would submit, Section 168A of the Central Act and the State Act is a provision to overcome a temporary circumstance that may arise for reasons beyond the control of the parties. Only to overcome the immediate and direct hardship caused by such exceptional circumstance, the legislature has given the discretion to the executive to take appropriate measures to deal with it. Once that temporary circumstance had passed inasmuch as COVID-19 pandemic and the lockdown arising therefrom were over, the power vested by the legislature under Section 168A of the Central Act and the State Act, could not be exercised.

58. Mr. Venkat Prasad Pasupaleti (through video conferencing) appearing along with Shri Shubham Agarwal, learned counsel for the petitioner in Writ-Tax No. 330 of 2024 (*M/S Tata Projects Limited v. Union of India and 3 others*) has made reference to different actions of scrutiny, issuance of DRC-01, filing of replies, submission of replies and issuance of show cause notices and replies thereto, all before the issuance of the impugned notifications. Thus, it has been submitted, reply had been furnished to the Show Cause Notice dated 23.06.2023 on 28.06.2023. Limitation of time existed up to 30.09.2023. Only because the Proper Officer may have failed to complete the proceedings within time, it can never be claimed that there existed a 'force majeure' circumstance in the present case, as may justify the issuance of the impugned notification.

59. Also, it has been asserted that the power vested on the Central and the State Government, is not a general power. It has been used most casually, multiple times. Referring to Circular No. 157 of

2021, dated 20.7.2021, it has been submitted that on the own understanding of the revenue, the order passed by the Supreme Court in Re: Cognizance for Extension of Limitation (supra) did not apply to adjudication proceeding. In any case the present is not a case where no proceeding may have been initiated. However, admittedly the order dated 8.12.2023 passed in this case travels beyond the issue raised in the Show Cause Notice. To that extent, the order is wholly unsustainable.

60. Next, Shri Ayush Mishra, learned counsel appearing for the petitioner in Writ-Tax No. 437 of 2023 has also adopted the submissions advanced by the other counsel of the petitioner. In addition, he has laid emphasis on the letter written by the Secretary to Chief Secretaries of all the States dated 22.03.2022 wherein it was informed, considering the overall improvement in the situation and preparedness of the government in dealing with the pandemic, the National Disaster Management Authority had decided that there was no need to invoke the provisions of the Disaster Management Act (to contain COVID-19), any further. Accordingly, it was provided, after expiry of the then existing order dated 25.2.2022, no further order may be issued by the Ministry of Home.

61. Second, referring to another letter written by the Union Home Secretary dated 25.2.2022, he has emphasised that by virtue of contents of paragraph-6(i), (vi), (vii) and (viii) thereof, all restrictions that had been created during the spread of pandemic COVID-19, stood withdrawn. Thus, public transport, inter-State movement and working of at all offices, (private and government), was restored without capacity restrictions. That step having been taken almost a year before issuance of the impugned notifications, there existed no justification or fact circumstance that may be remotely described on the 'force majeure' circumstance as may have informed the Council to make a recommendation or as may have enabled the Central and or the State Government to issue the impugned time extension notifications under Section 168A of the Central Act and the State Act.

62. Shri Gaurav Mahajan appearing for the CBIC would submit, in none (except one) challenge has been raised to the validity of Section 168A of the Act. Referring to the Central Act and the State Act, he would submit that both enactments contemplate a self-assessment mechanism. Unlike pre-existing law which was based on the principle of regular assessment to follow (almost by way of a necessary consequence), the filing of Annual Return, the GST regime is based on self-assessment arising as a consequence of filing of Annual Return. Only where tax may not have been paid or short paid or erroneously refunded etc., adjudication proceeding may arise, to recover such tax not paid or short paid etc.

63. For that process to be activated, the Central Act and the State Act are dependent on the process of scrutiny and audit of the Annual Returns. Unless audit and scrutiny of the returns is first made, no occasion may arise to initiate adjudication proceeding under Section 73 of the Act. Here, it has been emphasised, none of the present cases involve proceeding under Section 74 of the respective Acts. Then referring to the Prefatory note attached to TOLO, it has been submitted that amendment was made to the law, as a direct result of the spread of COVID-19. The Ordinance followed by the Act/TOLA were enacted merely to deal with the consequences arising from the spread of COVID-19, amongst other on the Central Act and the State Act.

64. While a general relaxation was granted under Section 3 of TOLO, with respect to Act Nos. 27 of 1957, 22 of 2021, 17 of 2013, 22 of 2015, 28 of 2016, 3 of 2020, the Central Act is conspicuous by its absence in that list of enactments appearing in Section 2(1)(a) of the TOLO. Insofar as the Central Act is concerned, TOLO/TOLA made special mention by incorporating Section 168A to the Central Act. Relying on the same, he would submit, there is a clear legislative understanding discernible from a plain reading of the said provision to deal with and provide differently all taxation and other laws in one way and the Central Act in another. In the Central Act, a separate section 168A, was incorporated.

65. Referring to the Explanation thereto, it has been submitted, the provisions of Constitution of India, he would submit, the Central Act and the State Act would take effect from the date to be recommended by the Council. Thus, in his submission, Constitution has given primacy to the Council in matters of Central Act and the State Act. Referring to the Resolution recorded in the 49th Meeting of the Council, a requirement was felt to further extend the limitation for reason of reduced staff, staggered timing and exemption to certain categories of employees from attending offices. This occurrence though referable to the period prior to the date of issuance of the impugned notifications., yet, that had led to much delays in processing of Annual Returns involving procedures of scrutiny and audits. That task could only be attempted after the COVID restrictions were lifted. By that time, not only the Annual Returns for F.Y. 2017-18 had been filed upon expiry of the extended last date but the last date to file the Annual Returns for the F.Y. 2018-19, 2019-20 and 2020-21 had also expired. Here, it may be noted, the last date of filing of the return for F.Y. 2017-18 was extended to 7.2.2020 (as noted above) whereas last date for filing returns for F.Y. 2019-20 and thereafter was never extended.

66. Then, it has been submitted, the earlier extension of time granted under Section 168A of the Act, that expired on 30.9.2022, was insufficient. The words - "due to force majeure" i.e. due to COVID-19 would also include within the plain meaning the after effects that spring directly from the occurrence of the spread of the pandemic COVID-19. Thus, Shri Mahajan has resisted the submissions advanced by learned counsel for the petitioners that the words - "due to force majeure" would refer to the period co-terminus with the spread of pandemic COVID-19. Since various Annual Returns had already been filed in the meantime and so to say life had moved on, multitude of transactions and work got piled in revenue offices. That piling of work and slow down of revenue activity was attributable directly to the COVID circumstance. Therefore, according to him, Section 168A of the Act enabled the Central and State governments to issue appropriate notifications, to deal with the situation that had been caused "due to force majeure". Other than the COVID-19 circumstance existing, due action would have been taken, at the relevant time. Thus, no other fact circumstance exists for the issuance of the impugned notifications. Here, he has also referred to the recommendation of the Law Committee noted in the Minutes of the 49th GST Council, taking note of such facts.

67. To buttress his submission, Shri Mahajan would submit, challenge has arisen in the context of legislative function and not an administrative action. So long as the delegate of the principal legislature was vested with the authority to issue the impugned notifications and insofar as relevant circumstances are clearly seen to exist - that prompted the exercise of delegated function and further

inasmuch as the procedural requirements, of prior recommendation of the Council did exist, the test of reasonableness stands satisfied.

68. Here, he has referred to State of Tamil Nadu Vs. P. Krishnamurthy & Ors., (2006) 4 SCC 517 to submit that there exists a presumption in favour of constitutionality and validity of a subordinate legislation and the burden to prove otherwise remains on the challenger i.e. the petitioners before this Court. Further, as to the grounds on which subordinate legislation may be struck down, amongst others, it may be either for lack of legislative competence or violation of fundamental rights or violation of another statute or failure to conform to the statute or repugnancy to other laws of the land or manifest arbitrariness. In considering the challenge raised to the subordinate legislation, the Court may consider if the impugned subordinate legislation is directly consistent with the mandatory provisions of the statute under which it had been issued. But where the inconsistency or non-conformity is not with respect to any specific provision but the object and scheme of the parent Act, the Court would proceed with caution before reaching the conclusion of invalidity.

69. Therefore, in his submission, the action by the Central Government and the State Government in issuing the impugned notifications is to be examined in the context of the Central Act and the State Act. That inconsistency may not be reached solely on the strength of the language of Section 168A of the Central Act and the State Act but by examining the context in which that section has been incorporated.

70. Referring to the Explanation of Section 168A of the Central Act and the State Act, he would submit besides the specific circumstances enumerated therein of war, epidemic, flood, drought, cyclone and earthquake and other calamity caused by nature, a residuary clause exists to include an event that may otherwise affect of the implementation of any of the provisions of the Act. In his submission, the last appearing words in the Explanation enlarge the scope of applicability under Section 168A of the Act to other circumstances not attributable directly to unforeseen and clearly definable events identified as "force majeure" circumstance. Thus, disruption of the revenue functioning over a long period of time itself is a circumstance that may fall within the description "otherwise affected the implementation of the provisions of the Act" appearing in Section 168A of the Act. That discussion also exists in the minutes of the Council.

71. Resisting the submissions advanced by learned counsel for the petitioners of colourable exercise, reliance has been placed on All India Bank Officers Configuration Vs. Regional Manager, C.B.I., Neutral Citation (2024) INSC 389. It has thus been submitted, no colourable exercise may be attributed to State and Central Governments inasmuch as, Section 168A of the Central Act and the State Act lays down the legislative policy but leaves the circumstance to be appreciated by the Executive - its delegate, to exercise that power on the existence of those circumstances. Thus essential legislative function cannot be described to have been left to the imagined appreciation of the Executive.

72. Reliance has been placed on Naresh Chand Agarwal Vs. Institute of Chartered Accountants of India, Neutral Citation 2024 INSC 94, to emphasize that the Court may first determine and consider the source of power which is relatable to the rule and second, it must determine the meaning of

subordinate legislation itself. Finally, it must decide whether the subordinate legislation is consistent to the scope of power delegated. Then, relying on Reckitt Benckiser India Private Limited Vs. UOI (2024) GSTL 113 (Del), it has been submitted, the words - "with respect to" are similar to the words "in respect of" used under Section 168A of the Central Act and the State Act. Those are words of wide amplitude and thus the power delegated to the Central Government and the State Government under that provision of law must be interpreted to include ancillary, incidental and necessary matters. It may not be confined to the direct actions as propounded by learned counsel for the petitioners. Therefore, the words "in respect of" though used in conjunction with the words "actions" do not restrict the exercise of power under Section 168A of the Central Act and the State Act to pending adjudication proceedings, only. The circumstances would have to be looked at holistically i.e. in the scheme of the Act in which the adjudication proceedings may arise.

73. Thus, in the first place the legislature and its delegate were conscious of the fact that arising from COVID-19 circumstances, resulting in reduced staff at government offices with restricted timings and exemption to certain class of employees - all directly attributable to COVID-19 circumstance, scrutiny and audit of annual returns had been impeded. That work of scrutiny and audit being the necessary preparatory work before initiating adjudication, it cannot be gainsaid that the revenue authorities are at fault in not carrying out the audit and scrutiny during the period of complete lockdown or during the period of enforcement of the restrictions with respect to travel, office attendance and office timings. It also cannot be ignored that during the continuance of such measures Annual Returns for subsequent years also came to be filed. Hence, as a circumstance necessitating the exercise of legislative power under Section 168A of the Central Act and the State Act, sufficient material existed. In the context of challenge raised to a legislative action, the revenue authorities or the respondents may not be burdened to establish the exact volume of work that may have arisen or may have been pending on the date of issuance of the impugned notifications. Insofar as existence of circumstance cannot be disputed and its consequence is not denied, it cannot be said that the delegate had acted outside the scope or channel of delegation made under Section 168A of the Central Act and the State Act. Directly on the issue, the Kerala High Court in Faizal Traders Pvt. Ltd. Vs. Deputy Commissioner Central Tax and Another, Neutral Citation: 2024 KER 10314 has repelled a similar challenge raised to the impugned notifications.

74. Last, Sri Mahajan has laid emphasis on the undeniable fact of the COVID-19 pandemic having spread in the country soon after expiry of the extended date of filing of Annual Return for the F.Y. 2017-18. Thus, according to him, no scrutiny or audit of Annual Return for the F.Y. 2017-18 may have taken place prior to the date of filing of Annual Return. In normal circumstance that would could have started soon after expiry of the last date being 07.2.2020. That work was completely disabled occasioned by the spread of the pandemic COVID-19. The lockdown itself was declared on 25.3.2020. It was followed by extreme measures taken by the Central Government under the Disaster Management Act, 2005 restricting the movement of citizens, curtailing their activities and resulting in staggered attendance at government offices with restricted timings and exemption to certain class of employees. Only minimum/necessary works were being performed at government offices, including by the revenue authorities. Therefore, the action taken by the Central and the State Governments/delegates is in conformity to the provisions of Section 168A of the Central Act and the State Act. Sri Mahajan would submit, neither the Council nor the Government have acted

mechanically.

75. Besides the discussion offered to the circumstances and the 'force majeure circumstance' and their consequences resulting in non-initiation/completion of the preliminary steps that were required to be undertaken before any valid adjudication may have arisen i.e. steps involving scrutiny and audit, both, the Council as well as the Central Government were mindful of the fact that such circumstance may only affect proceedings that may arise under Section 73 of the Act not involving allegations of fraud etc. Thus, contrary to the request of certain tax administrations to extend the time limits to initiate proceedings under Section 74 of the Central Act, the recommendation made by the Council and the action taken by the Central Government were to deny that request. Extension of limitation was granted only to actions contemplated in Section 73 of the Act i.e. proceedings arising from filing of regular Annual Returns and proceedings as may arise upon due scrutiny and audit of such returns. Since, in the opinion of the Council as found approval of the Central Government, only those proceedings had been obstructed for reasons beyond the control of the revenue authorities upon spread of pandemic COVID-19, that extension was granted. Even there the recommendation makes it plain that the same would be done by way of one last measure. Therefore, the tax administrations were impliedly advised to act with diligence or face consequence of adjudication proceedings (under Section 73) being rendered time barred.

76. Sri S.P. Singh learned Additional Solicitor General of India assisted by Sri N.C. Gupta appearing for the Union of India has additionally submitted that the Supreme Court in re:Cognizance for extension of limitation (supra) had clearly provided that the period 15.3.2020-28.2.2022 would stand excluded for the purposes of limitation that may be prescribed under any general or special law in respect of judicial and quasi judicial proceedings. Therefore, though it may not be completely wrong on part of the learned counsel for the petitioners to contend that the own appreciation of the CBIC remained that the said order was not applicable to adjudication proceedings inasmuch as by separate circular issued, that position of fact was stated by the CBIC, at the same time it can never be denied that as a fact, the period 15.3.2020-28.2.2022 was a period of disability suffered by the judicial and quasi judicial authorities. Read strictly, no appeal or other proceeding before a judicial or quasi judicial authority could ever be rendered time barred for reason of the limitation of time having expired during that disabling period 15.3.2020-28.2.2022. That judicial notice having been taken by the highest Court of the land and it having been thus recognised that no judicial or quasi judicial proceeding could be conducted for reason of disablement occasioned by spread of the pandemic COVID-19, the similar appreciation made by the Council while making a recommendation though couched differently, cannot be faulted for the reasons and circumstances pressed by the petitioners. In the present case, the period during which a scrutiny or audit or adjudication may have arisen for F.Y. 2017-18, began on 08.2.2022. Barely a month thereafter it got disabled, on 15.3.2020. It remained disabled till 28.2.2022. He has also referred to and relied on the decision of the Supreme Court in Dhanrajamal (supra) and Super Agrotech Ltd. Vs. State of U.P. and Others, (2006) 9 SCC 203. Also, he has relied on the decision of the Supreme Court in Vivek Narayan Sharma and Others Vs. Union of India and Others (2023) 3 SCC 1 to rely on the principle that a judicial review being claimed may not extend to test the fairness of the decision but only to the manner in which it may have been taken. Decisions that arise on consideration of numerous factors may never be tested on the merits of the decision made.

77. Last, it has been submitted that the impugned notifications are not original. Those are notifications to modify the principal notification being Notification Nos. 35/2020 dated 03.4.2020 and 445 dated 11.5.2020. Only because the time extension granted by the original notifications required revision/enhancement, the impugned notifications came to be issued. The petitioners having failed to raise any challenge to the original notifications, they may never be heard to challenge the modification notifications.

78. Sri Nimai Das learned Additional Chief Standing Counsel appearing for the State Government has also relied on the decision in Vivek Narayan (supra). Then referring to the words of the legislature "due to force majeure" he has laid great emphasis that the legislative words do not indicate or contain a legislative policy limiting the delegate i.e. Central or the State Government to act only during the subsistence of a 'force majeure' circumstance. According to him, the Explanation to Section 168A itself makes it plain that contrary to the submissions advanced, the legislative intent never required the delegate to act during the occurrence of 'force majeure'. By very nature an earthquake may last only for a few seconds or minutes. It may never last for even an hour, in continuation. Therefore, it would be wholly impossible to issue a notification during that short occurrence that too after the recommendation of the Council in that short time. If issued for that duration, it would be of no use. In his submission, the words "due to force majeure" clearly refer to the after-effects of a 'force majeure' occurrence whether epidemic or earthquake or cyclone. Those being acts over which humans may have no control, yet carry potential to disrupt human activity for an indefinite period of time, depending upon place, time, intensity and duration of their occurrence, the after effects caused by such occurrences would remain a circumstance to be considered by the legislative body. To the extent the principal legislature has delegated that evaluation/function to the Central and the State Governments and the issuance of the impugned notifications had been made upon the recommendation made by the Council, no defect may be found.

79. He has also referred to the advisory issued by the World Health Organisation dated 05.5.2023. Though that document is not part of the case record, it has been submitted, the issuance of that document cannot be denied. He would thus submit, the World Health Organisation first declared the pandemic COVID-19, not a Global Health Emergency, as late as on 05.5.2023. Therefore, the contention advanced by learned counsel for the petitioners that the COVID-19 circumstance came to an end in the year 2022, has been resisted. He would submit, it has clearly recognised that the COVID-19 pandemic and the circumstances arising therefrom continued to exist till May 2023.

80. As to the submission advanced by Sri Nishant Mishra that the impugned notification (by the State Government), was not issued on the strength of the recommendation made by the Council, that has been objected. In his submission, that Notification was also issued on the strength of the recommendation of the Council.

81. Then referring to the period of disruption recognised by the Supreme Court being 15.3.2020-28.2.2022 which is 01 year 11 months and 15 days, it has been submitted, if that period is to be excluded from the period of limitation that was otherwise available to the revenue authorities to pass adjudication orders for the F.Y. 2017-18 and that period were to be added to the normal period of limitation that existed from the date 07.2.2020 (last date of filing of return) for F.Y.

2017-18, the time limitation to make adjudication order for the F.Y. 2017-18 would exist practically upto 22.1.2025. The impugned notifications only seek to extend that limitation upto 31.12.2023 i.e. the extended period of limitation is short by one year than may otherwise be availed on the principle recognised by the Supreme Court.

82. Sri Ankur Agarwal learned Standing Counsel has laid great emphasis on the decision of the Supreme Court in Vivek Narayan (supra) to submit that the scope of judicial review has to be kept confined within the well recognised parameters of law. Neither, the Courts may interfere in policy decisions generally nor the Courts may seek to venture to sit in judgment over economic policy matters. If the action is not palpably arbitrary, the same may never be interfered. As to the palpable arbitrariness, it has been submitted, there is none. The desirable extension of time is per se not measurable. It is a matter of perception. Individual petitioners may only remain concerned with their individual facts. They neither have the role to make an overall assessment nor they may have the capacity to make that consideration. Consideration to extension of limitation is essentially a legislative policy decision. Insofar as it is not the case of the petitioners, that there existed no material whatsoever and insofar as it cannot be denied that the extension of time limitation was granted in the context of COVID-19 circumstance, there is no palpable arbitrariness in the action taken by the respondents. He would further contend that the World Health Organisation declared the end of Global Health Emergency, after issuance of the impugned notifications. Therefore, upto that time, material existed of continuance of the pandemic COVID-19.

83. Before we proceed to deal with the submissions advanced, it would be useful to take note of relevant provisions of the statutory law, notifications and statutory actions, relevant to the dispute brought before us, as they existed at the relevant time. First, Section 44 (1) of the Central Act and State Act read as below:

"Section 44 (1) Annual Return (1) Every registered person other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return 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:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

84. Notification No.6 of 2020 dated 03.02.2020 issued by CBIC and Notification No.509 dated 05.02.2020 issued by the Commissioner Commercial Tax, extended the last date of filing of Annual Return for FY 2017-18 for the State of U.P., to 07.02.2020. Then, Section 73 of the Central Act and the State Act (1), (2) (9) (10) reads as below:

Section 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 (1) 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.

(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.....

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent of tax or ten thousand rupees, whichever is higher, due from such person and issue an 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.

85. The Prefatory note appended to TOLO reads as below:

Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No. 2 of 2020) Promulgated by the President in the Seventy-first Year of the Republic of India.

An Ordinance to provide relaxation in the provisions of certain Acts and for matters connected therewith or incidental thereto.

WHEREAS, in view of the spread of pandemic COVID-19 across many countries of the world including India, causing immense loss to the lives of people, it has become imperative to relax certain provisions, including extension of time limit, in the taxation and other laws.

AND WHEREAS, Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

86. Since provisions of TOLO & TOLA are pari-materia, for the sake of brevity, the provisions of Section 7 of TOLA read as below:

7. After section 168 of the Central Goods and Services Tax Act, 2017, the following section shall be inserted, namely:

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 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.

87. The final order passed by the Supreme Court in Re: Cognizance for Extension of Limitation (supra) (paragraph nos.1, 2 5 and 6) reads as below.

(1). In March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/suits/ appeals/all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID-19 pandemic.

(2) On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders. On 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.....

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 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.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during period between 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

6. As prayed for by learned Senior Counsel, M.A. No. 29 of 2022 is dismissed as withdrawn"

88. At the same time, first extensions of time were provided invoking the general power to remove difficulties, enacted under Section 172 of the Central Act and the State Act. However, those extensions were granted arising from different circumstances namely, teething problems faced by all stake holders upon introduction of Central Act and the State Act. We find those are not relevant. Therefore, no reference is being made to the same.

89. Acting under the new provision - Section 168A of the Act, the first action emerged by issuance of Notification No. 35 of 2020 dated 03.04.2020 by the Central Government and a parallel/pari materia Notification No. 445 dated 11.05.2020 issued by the State Government. For ready reference, we extract the relevant portion of the Notification No. 35 of 2020. It reads as below :

"Notification-GST-Central GST (CGST) MINISTRY OF FINANCY (Department of Revenue) (CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS) NOTIFICATION No. 35/2020-Central Tax "New Delhi, the 3rd April, 2020 G.S.R. 235(E). In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification 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 Union Territory Goods and Services Tax Act, 2017 (14 of 2017), in view of the spread of pandemic COVID-19 across many countries of the world including India, the Government, on the recommendations of the Council, hereby notifies, as under,-

(i) where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the [30th day of August, 2020], and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended up to the [31st day of August, 2020], including for the purposes of -

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Acts stated above; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above;

but, such extension of time shall not be applicable for the compliances of the provisions of the said Act, as mentioned below-

(a) Chapter IV;

(b) sub-section (3) of section 10, sections 25, 27, 31, 37, 47, 50, 69, 90, 122, 129;

(c) section 39, except sub-section (3), (4) and (5);

(d) section 68, in so far as e-way bill is concerned; and

(e) rules made under the provisions specified at clause (a) to (d) above;"

90. Then, action was taken under the new law vide issuance of Notification No. 14 of 2021 dated 01.05.2021 issued by the Central Government and a parallel/pari materia Notification No. 496 dated 28.06.2021 issued by the State Government.

91. Thereafter, the following agenda item arose at the 47th Meeting of the GST Council held on 28/29 June 2020.

"1. Section 73 of the CGST Act, 2017 provides that the proper officer shall issue the order demanding any tax that 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, 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.

2.1 Some of the members of the Law Committee highlighted the problem 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 on account of Covid-19 pandemic. A request was made to consider extension of timelines in respect of proceedings under:

i. Section 73 and 74 ii. Section 54 and 55 2.2 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.

2.3 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.

2.4 Law Committee also observed that taxpayers may also have faced difficulties in timely filing of the refund claims during the COVID period. Besides, the tax officers were also hampered in issuing SCN during COVID period, in respect of erroneous refunds sanctioned. Therefore, the Law Committee also recommended that time period from 01.03.2020 to 28.02.2022 may be excluded from the limitation period for filing refund claim by an applicant under section 54 and 55 of CGST Act, as well as for issuance of order / demand in respect of erroneous refunds under section 73, by exercising power under section 168A of CGST Act.

3. A draft notification under section 168A of CGST Act, as per the above recommendations of the Law Committee, is placed at Annexure A.

4. In view of the above, the agenda, along with the draft notification, is placed before the GST Council for deliberation and approval."

92. The third action taken under Section 168A of the Act was witnessed by issuance of Notification No. 13 of 2022 dated 05.07.2022 issued by the Central Government and Notification No. 596 dated 21.07.2022 issued by the State Government. Again those are pari materia. For ready reference, we take note of the contents of Notification No. 13 of 2022. It reads as below :

"GOVERNMENT OF INDIA MINISTRY OF FINANCE DEPARTMENT OF REVENUE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS NOTIFICATION No. 13/2022-Central Tax "New Delhi, the 5th July, 2022 G.S.R. (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 in the 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, the Government, on the recommendations of the Council, hereby,-

(i) extends the time limit specified under sub-section (10) of section 73 for issuance of order under subsection (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, 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 subsection (9) of section 73 of the said Act, for recovery of erroneous refund;

(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 refund application under section 54 or section 55 of the said Act.

2. This notification shall be deemed to have come into force with effect from the 1st day of March, 2020."

93. Taking note of the interim order passed by the Supreme Court during the pendency of that matter, and the suspension of limitation provided therein, the CBIC issued Circular No. 157/13/21-GST dated 20.07.2022. After taking note of the order dated 27.04.2021, it records that legal opinion was sought and period of extension of limitation under Section 168A was considered. Based on that opinion, it was observed as below :

"On the basis of the legal opinion, it is hereby clarified that various actions/compliances under GST can be broadly categorised as follows :-

(a) Proceedings that need to be initiated or compliances that need to be done by the taxpayers :- These actions would continue to be governed only by the statutory mechanism and time limit provided/extensions granted under the statute itself. Various Orders of the Hon'ble Supreme Court would not apply to the said proceedings/compliances on part of the taxpayers.

(b) Quasi-Judicial proceedings by tax authorities :- The tax authorities can continue to hear and dispose off proceedings where they are performing the functions as quasi-judicial authority. This may interalia include disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc. Similarly, appeals which are filed and are pending, can continue to be heard and disposed off and the same will be governed by those extensions of time granted by the statutes or notifications, if any.

(c) Appeals by taxpayers/tax authorities against any quasi-judicial order :- Wherever any appeal is required to be filed before Joint/Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.

5. In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under Central Act and the State Act."

94. The fourth action witnessed upon enforcement of Section 168A and the one which is impugned in these proceedings arose pursuant to the 49th Meeting of the Council held on 29.02.2023. In that at agenda item 4(vii), the following discussion emerged:

"5.7 Principal Commissioner: (GSTPW) informed that there have been requests from tax administrations for further extension of time limit under Section 73 of CGST Act for issuance of Show Cause Notices (SCN) and Orders for financial year 2017-18,

2018-19 and 2019-20, considering that the scrutiny and audit were delayed because of Covid-19 pandemic. He informed that the issue was discussed by the Law Committee and it was observed that earlier, such extension was given for the F.Y. 2017-18. It was felt by the Law Committee that while there may be a need to provide additional time to the officers to issue notices and pass orders for FY 2017-18, 2018-19 and 2019-20 considering the delay in scrutiny, assessment and audit work due to COVID-19 restrictions, however, the same need to be made in a manner such that there is no bunching of last dates for these financial years as well as for the subsequent financial years. After detailed deliberations, Law Committee recommended that such time limits may be extended for another three months each for the FY 2017-18, 2018-19 and 2019-20. It was discussed in detail in officers meeting where one view was that extension for FY 2017-18 had already been given and further extension may create a perception that it is not a tax friendly measure and against the interest of taxpayers.

5.7.1 The Secretary stated that the Law Committee has recommended the extension of time limit for issuance of SCN and orders. However, the time period for issuance of notices and passing orders for these financial years has already been extended considerably due to extension in due dates of filing annual returns for the said financial years. Further, for FY 2017-18, the date of passing order has already been extended till September 2023. It has been proposed to extend it further from September 2023 to December 2023. He mentioned that while the request of some of the tax administrations was to extend the time limit for a longer period, however, keeping the taxpayers' interest in mind, the Law committee has recommended an extension of only three months for these three financial years. Since all the States have agreed, the said time limits could be extended.

5.7.2 Hon'ble Member from Bihar stated that while this proposal could be considered, however, it should be decided that such an extension in timelines for these financial years under sub-section (10) of section 73 of CGST Act is being made for the last time.

The Council agreed with the recommendation of the Law Committee made in agenda item 4(vii), along with the proposed notification."

95. Consequently, the Central Government issued the impugned Notification No. 9 of 2023 dated 31.3.2023 and the State Government issued impugned Notification No. 519 dated 24.4.2023. They are *pari materia*. In material part, Notification No. 9 of 2023 reads as below:

"GOVERNMENT OF INDIA MINISTRY OF FINANCE DEPARTMENT OF REVENUE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS New Delhi: 31.03.2023 Notification No. 09/2023 - Central Tax S.O.1564(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 (1), 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:-

(1) for the financial year 2017-18, up to the 31st day of December, 2023;

(ii) for the financial year 2018-19, up to the 31st day of March, 2024;

(iii) for the financial year 2019-20, up to the 30th day of June, 2024.

96. Coming to the submissions, we note, broadly the submissions have been advanced as to the validity of the action taken. Though worded differently by two Senior counsel for the petitioners, principally, it has been contended, the Central Government and the State Government could not have acted independent to the conditions of the delegation made under Section 168A of the Central Act and the State Act. To the extent the nature of power vested thereunder is concerned, we find ourselves in agreement with the principle that the said sections provide for conditional legislation to arise at the hands of the delegate of the principal legislature i.e. the Central Government and/or the State Government.

97. Also, as to the submission that the said provision authorizes the delegate to act in special circumstances and not by way of general power to be exercised to remove difficulty, we find ourselves in agreement with that submission advanced by learned counsel for the petitioners. Thus, in contrast to Section 172 of the Central Act and the State Act, powers under Section 168A of the Act, may be exercised:

(i) On the recommendation made by the Council;

(ii) By issuance of notification to extend the time limitation specified or prescribed or notified under the Central Act and the State Act;

(iii) In respect of actions which cannot be completed or complied,

(iv) Due to "force majeure".

98. As to the nature of "force majeure", the Explanation to the said section offers an inclusive definition namely - war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by the nature. The words "otherwise affected" take colour from the terms and expressions appearing earlier.

99. In addition to the four conditions noted in the preceding paragraph, the Explanation also suggests that the power may be exercised in a situation where in the presence of a "force majeure" circumstance, the implementation of any of the provisions of Central Act and the State Act may have been impaired, to the extent it may necessitate extension of time limits, referred to Section 168A(1) of the Act.

100. Tested on the above principle, as a fact, the recommendation of the Council to issue the impugned notifications - to extend the time limit, exist. Also, the occurrence of the "force majeure" circumstance i.e. epidemic COVID-19 is undisputed. Therefore, it is required to be considered is whether:

(i) that power was exercised in respect of actions which could not be "completed or complied" and,

(ii) due to "force majeure".

101. The action with respect to which the challenge has arisen is issuance of adjudication notices under Section 73(2) of the Central Act and the State Act and passing of orders under Section 73(9) of the Central Act and the State Act. Clearly, for both purposes, limitation of time prescription exists inasmuch as adjudication order is required to be passed within three years from the last date of filing of an Annual Return. Also, with respect to issuance of show cause notice, Section 73(2) requires such notice to be issued at least three months prior to expiry of time limitation to pass the adjudication order. Therefore, by way of a special power vested under Section 168A of the Central Act and the State Act, the Central Government and the State Government were authorized to issue necessary notifications.

102. The submission advanced by learned Senior counsel and other counsel for the petitioners that since adjudication notices were not issued, the period of limitation never started running and that there was no requirement to conduct scrutiny or audit/before issuance of those and therefore, the revenue authorities were not disabled from conducting that exercise, requires serious consideration.

103. In the first place, the powers under Section 168A of the Act is legislative and not an administrative power. While submissions have been advanced by some of learned counsel for the petitioners suggesting, the power under Section 168A of the Act was an administrative or executive power, at the same time, as submitted by Sri Mahajan, there can be no doubt as to the true nature of that power. Prescription of limitation to perform an action is a pure legislative function. In absence of any doubt thereto, the extension of limitation prescribed by law also remains legislative. The

power to condone delay may be granted both to the executive and the judicial bodies, at the same time, the prescription in law, as to limitation remains exclusively, a legislative function.

104. Seen in that light, discretion existed with the principal legislature to prescribe such limitation as it may have considered proper. In fact, it is the submission advanced by some of the learned counsel for the petitioners that if the prescription of limitation is provided by the impugned notification had been made by the principal legislature, there may not have arisen any valid challenge thereto.

105. Therefore, the narrow compass in which the present issue is to be examined is: if the delegation made is uncanalised and/or if the delegate had acted contrary to the conditions and stipulations of the principal legislation. On the first issue, there is no doubt. In fact, it is the submission of Shri Praveen Kumar and learned Senior counsel and the other counsel for the petitioners that the principal legislature has laid down strict conditions for exercise of special powers to extend the limitation. As to the second issue, we need to examine the manner in which such extension may have been granted.

106. The occurrence of the pandemic COVID-19 is an admitted fact. Further, arising therefrom, Re:Cognizance for Extension of Limitation (supra), the Supreme Court took cognizance of that occurrence and relaxed the period of limitation (in all), beginning 15.03.2020 to 28.02.2022. Besides, consideration of the same also exists in the minutes of meeting of the Council at its 47th meeting dated 28-29.06.2022 and at its 49th meeting dated 18.02.2023. The agenda item at those meeting has also been relied by all learned counsel. In the minutes of the 47th meeting of the Council, it had been clearly noted that the scrutiny and audit of Annual Returns for F.Ys. 2017-18, 2018-19 and 2019-20 was delayed because of "COVID-19 pandemic". Then, those minutes further record "considering the delay in scrutiny, assessment and audit work due to COVID-19 restrictions", it was desired to avoid "bunching" of last dates for those three Financial Years. On that consideration, the Law Committee recommended to the Council for appropriate time extensions for the F.Ys. 2017-18, 2018-19 and 2019-20. The Law Committee further took note of the concern expressed that such extension may not be a "tax-friendly" measure and may work against tax payers. The Council further took note of the fact that by virtue of earlier extensions granted, time stipulation had been considerably extended. Thereafter, all States/Member of participants of the Council agreed to the time extension for three months for the three Financial Years. Accordingly, the Council accepted the recommendation and proposed the draft notification.

107. That recommendation and issuance of the consequent notification, are not under challenge. It appears, another request arose before the Council for another time extension to be granted with respect to proceedings contemplated under Section 73 of the Central Act and the State Act, for the F.Ys. 2017-18, 2018-19 and 2019-20. In that regard, the discussion at the 49th meeting of the Council further reveals - representations had arisen before the Council from some tax administrations, seeking further extension of timelines. The basis for such representations have been noted in the minutes as "difficulties were faced by the government department during COVID period", (i) due to reduced staff; (ii) staggered timing; (iii) exemption to certain categories of employees and; (iv) leading to delay in process of scrutiny and audit. For those reasons, it was

represented to the Council that the proper functioning could arise only after COVID restrictions, were lifted. Further, it was represented that the earlier time extension granted was not sufficient, specifically considering the delay in scrutiny and audit process.

108. Upon that representation and its consideration, the Law Committee vide its meeting dated 8.2.2023 opined that it may not be desirable to extend the timelines as may lead to "bunching" of last dates of issuance of Show Cause Notices and passing of orders under Section 73 of the Act. At the same time, the Law Committee formed an opinion favourable to grant a limited extension of time. Accordingly, time extensions were granted for F.Y. 2017-18 up to 31.12.2023, for F.Y. 2018-19 up to 31.03.2024 and for F.Y. 2019-20 up to 30.06.2024.

109. Thus, in the context of a conditional legislative function exercised by the Central Government and the State Government on the recommendation made by its expert i.e., Council, we find it difficult to hold that there was no application of mind by the delegate in issuing the impugned Notifications. The material existed as has been discussed above. The application of mind is writ large on the face of the agenda and minutes relied by learned counsel for the petitioners and admitted to the respondents.

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.

111. Next, we have to examine, if that consideration was enough and if it satisfied any further test laid down in Section 168A of the Central Act and the State Act. Here, we are unable to accept the submission advanced by learned counsel for the petitioner that there were mere difficulties faced by the revenue authorities in conducting scrutiny and audit. The period 15.03.2020 to 28.02.2022 remains the darkest period of our recent past, arising after the second World War. No calamity of equal magnitude has disrupted human life since then. In the context of a global village, that our world has become, the pandemic COVID-19 disrupted all human activities across all continents and left no strata of the society, organisation or institution or other entity, unaffected over a long duration of time. The full impact of the COVID-19 is still to be assessed.

112. Then, directly material to our discussion before the Council it had been specifically represented to provide for suitable extensions of time keeping in mind the fact that the scrutiny and audit work with respect to Annual Returns for the F.Ys. 2017-18, 2018-19 and 2019-20 could not be done for reason of reduced working staff, staggered timings and exemptions granted to various category of employees, to attend office establishments, during the spread of the pandemic COVID-19. It was

specifically included through the agenda item material that no action for scrutiny and audit etc. could be undertaken during the initial period of the GST implementation. That recital may not be cited as a self-disabling act of the revenue authorities. It is undisputed to the petitioners that the last date of filing of Annual Return for the F.Y. 2017-18 was extended up to 7.2.2020. Consequently, no scrutiny or audit for the F.Y. 2017-18 may have been (effectively) undertaken, before that day. That function may have arisen only within a reasonable time thereafter.

113. As to the construction of reasonable time, in the context of the legislative policy providing for a three year time (to frame an adjudication order), from the last date of filing of Annual Return and further keeping in mind the legislative policy providing for issuance of Show Cause Notice up to two years and nine months from the last date of filing of Annual Return, that reasonable period of time extended up to November, 2022.

114. While the order of the Supreme Court in Re : Cognizance for Extension of Limitation (supra) may not per se apply to an adjudication proceeding and it is not the case of the respondents that they claim direct benefit of that relaxation of limitation granted for the period 15.03.2020 to 28.02.2022, at the same time, we must remember that judicial notice was taken of the disabling events triggered by the spread of the pandemic COVID-19, by the highest Court of the land. That judicial recognition of that fact, was commonly known to all, itself is irrebuttable evidence of both - the extent of disablement and the length of time for which such disablement continued to exist, unabated. In face of that recognition and established truth, no use or purpose may be served in offering any deliberation. Therefore, we conclude, the revenue authorities were visited with a circumstance that was not of their making. It was not a mere difficulty of the usual kind. It was not a wholly temporary or transient impairment caused to their functioning. Beginning 15.03.2020, it had disabled the working of the revenue authorities, over a long period, occasioned by a 'force majeure' circumstance..

115. The decision in S. Kasi (supra) is of no application to the present facts in view of distinction arising on the own strength of language of Section 168A of the Central Act and the State Act. Similarly the decision of the Jharkhand High Court in M/s Rungta Mines Ltd. (supra) is also of no application for the same reason. Though in that case the issue involved was with respect to adjudication and re-assessment proceedings under Jharkhand VAT Act, the opinion in that case is confined to the direct applicability of the order passed by the Supreme Court in Re: Cognizance for Extension of Limitation (supra).

116. It is equally admitted and undeniable to the petitioners that the time kept ticking and hard as the times were and despite continuance of the extreme circumstances and disablement accompanying, caused by COVID-19, life moved on. Economic activity was witnessed. Businesses continued to exist, resulting in Monthly and Annual Returns being filed both for the entire duration of time through which COVID-19 pandemic spread (in waves), and continued to disable human activity. Thus, Annual Returns came to be filed for the subsequent F.Ys. 2018-19 and 2019-20 as well. All such returns remained subject to scrutiny and audit. It is that volume of work that has been taken note of and considered in the 47th and 49th meetings of the Council. With reference to that work, legislative decisions have been made, in the backdrop of the disruption caused by the

pandemic COVID-19.

117. Also, we are also unable to accept the submission advanced by learned counsel for the petitioners that the process of framing adjudication order is independent of scrutiny and audit of Annual Returns. To offer that construct to the language of Section 73(1) would be over-simplistic. It is true that Central Act and the State Act specifically do not contemplate existence of limitation for prior scrutiny and audit, at the same time Section 61 of Central Act and the State Act provides that a Proper Officer may scrutinise the return, verify its correctness and, inform the registered person of the discrepancies noticed. If the explanation thereto is found acceptable, no further action is contemplated. Failure to comply with those conditions may invite action under Section 65, 66, 67 and even Section 73 of the Act. In that regard, provisions of Section 61 of the Central Act and the State Act read as below:

"Scrutiny of returns 61(1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74."

118. Again, under Section 65(7) of the Act, where an audit is conducted to tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised may result in action under Section 73 of the Act. For ready reference, Section 65(7) reads as below:

"Audit by tax authorities.

65.(1) ...

(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74."

119. To us, the above discussion is enough to persuade us to the conclusion that scrutiny and audit of Annual Returns is inherently linked to and is not independent of adjudication proceedings under Section 73 of the Central Act and the State Act. Though the Proper Officer may remain authorised to

act under Section 73 of the Central Act and the State Act independent of an audit and scrutiny at the same time that outcome would be dictated by facts of an individual case but not by way of a principle in law. In the entire scheme of the Central Act and the State Act, by way of procedure, steps contemplated under Section 61 and 65 would remain a normal occurrence. By very nature and by virtue of specific provisions of the Central Act and the State Act, those would have to precede action under Section 73 of those enactments.

120. The upshot of the above discussion is that the consideration offered by the Council in its 47th and 49th meetings, as has been extracted and discussed above was relevant to the exercise of power under Section 168A of the Central Act and the State Act. Neither the existence of material on which the discussion had arisen nor the discussion itself may be described as extraneous or irrelevant to the statutory requirement of Section 168A of the Act.

121. Again, we may remain reminded that the discussion and the decision made by the Central Government and the State Government on the advise/recommendation of the Council was not an administrative action but a legislative action. To the extent any legislature may have acted to provide for a law having nexus to the circumstance or the mischief sought to be addressed, to the extent it may be authorised to act in the manner it did, no fault may be found with the same. In exercise of judicial review, we may remain ever reluctant to explore the validity of that action beyond this point.

122. The decision in S.R. Bommai (supra) is not found applicable. In the first place, the issue arose in completely different law context of emergency provision under the Constitution of India. Even otherwise for reasons noted above, we find that the action that could not be completed or complied was adjudication function. The impossibility arose for reason of obstruction caused by the 'force majeure' circumstance to the preparatory action of scrutiny and audit. Once that obstruction had been caused and time lost to COVID-19, the legal and factual impossibility to conduct and conclude adjudication proceedings within the normal period of limitation of three years from the last date of filing of Annual Return, arose by way of a necessary consequence.

123. In the context of legislative action taken, upon a holistic consideration of the representations made by different tax administrations, the opinion of the Law Committee as also the own appraisal made by the Council, all of which is duly reflected in the agenda and the discussion relevant to the 47th and 49th meeting of the Council, the true test laid down in Dwarika Prasad Sahu (supra) is found inapplicable. That was a case of detention under Maintenance of Internal Security Act, 1971. It was the administrative order of detention that was in issue. Therefore, the test laid down in that case is wholly inapplicable and foreign to the challenge laid to legislative action, in the present case. In face of the discussion noted above, the decision in D.C. Wadhwa (supra), Krishna Kumar Singh (supra), Raja Ram Jaiswal (supra), Gurdial Singh (supra) and Kalabharati Advertising (supra) are all wholly irrelevant.

124. What then requires consideration is - if the words due to "force majeure" would include the period of time during which no lockdown may have been declared or during which human/economic activities may not have been specifically disrupted, by issuance of appropriate orders under the Disaster Management Act, 2005 etc. First, in the context of a legislative function,

the writ Court sitting in judicial review may not look to test the subjective satisfaction of the legislative body or its delegate to see if the law made had the exact/measurable fact justification, for its enactment. The legislative wisdom must remain insulated from that judicial query. Under the Constitutional scheme of division of powers, Courts may never be enthusiastic and may remain disinclined to test the subjective satisfaction of legislatures in enacting laws. In fact, the Courts are neither equipped nor they are expected to undertake that exercise.

125. Then as Sri Nimai Das, learned Additional Chief Standing Counsel has rightly submitted, there is intrinsic evidence in the provision of Section 168A of the Central Act and the State Act that clearly recommends to the Court that the exercise of that power is not intended to be made only during the sufferance of "force majeure" circumstance. Different "force majeure" events may visit the society and may impair its economic functioning for different durations with different intensities. By its very nature of "force majeure" circumstance as advanced by learned Senior Counsel for the petitioners and other learned counsel for the petitioners, remains unpredictable. Both as to its occurrence, duration of its continuance and the impact that it may leave, a "force majeure" event remains a mystery or atleast unpredictable to the human mind and perception, in real time. Only hindsight wisdom, that is so unique to a humans may give rise to a discussion or discourse as to what may have been done and what could have been done and what should have been done in the past. In the context of enacted laws, neither the petitioners nor the Courts may have a say. It would remain a subject best preserved to the legislature, to deal with in real time.

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

127. As discussed above, scrutiny and audit of returns was directly linked to framing of adjudication orders. To the extent that scrutiny and audit work was obstructed directly for reason of spread of the pandemic COVID-19, as was judicially noted in the order passed by the Supreme Court in Re: Cognizance for extension of limitation (supra) for the duration 15 March 2020 to 28 February 2022, it is not for this Court to reach another conclusion in that regard. Thus, the decision of the Supreme Court in Energy Watchdog (supra) and Dhanrajamal Gobindram (supra) are therefore not decisive of the issue involved in the present case. In view of judicial notice taken as to existence of "force majeure" circumstance upto 28.2.2022, there is no reason to conduct any further/deeper enquiry - as to its exact duration, in the context of challenge laid to a legislative action.

128. Submission that the resolution of the 49th meeting of the Council offered only a partial modification of the first time extension, also cuts no ice. The impugned notifications remains referable to exercise of legislative power, under Section 168A of the Central Act and the State Act. It

was exercised in the manner prescribed. The fact that the Council chose to make a partial modification remains within the insulated realm of legislative wisdom.

129. The submission that the issuance of the impugned notifications are pre-judicial to the rights and interest of the tax payers does not find our acceptance in the context of the discussion made above. A legislative action cannot be complained of as being prejudicial on account of extension of limitation. Limitation, though statutory, is not a pre-existing vested right of any party. It gets created and extinguished in accordance with the statutory law. Insofar as the statutory law prescribes a limitation, no argument may arise against such prescription made. Further, in the case of conditional legislation, the submission that it is not peripheral but substantive also loses its relevance in face of conditions seen fulfilled. Once the conditions for exercise of delegated legislative function stood fulfilled, no further test or scrutiny may arise, in that regard. Therefore, the decision of the Supreme Court in *Sudhir Kumar Singh* (supra) and *Independent Schools' Association* (supra) are also of no avail. Here, conditional legislation arose in accordance with law. Therefore, no fault is found therein. Accordingly, the decision in *Lachmi Narain* (supra) is also not applicable to the present facts.

130. The submission based on doctrine of public trust is found to be wholly foreign to the scope of specific challenge raised to an act of conditional legislation. In face of conditions fulfilled we find no merit in that submission. Therefore, the decision in *Tata Housing Development Company Ltd.* (supra) is also inapplicable.

131. Reference to Article 279A (4)(h) of the Constitution of India is equally mis-placed. In absence of any fact circumstance or legal compulsion shown to exist, no defect is found in the conduct of the Central Government and the State Government in having acted on the recommendation of the Council. In the context of the conditional legislation that Section 168A is, in our opinion the conditions were wholly fulfilled. Therefore, no benefit may be drawn on the strength of the decisions of the Supreme Court in *Hamdard Dawakhana (Wakf) Lal Kuan, Delhi* (supra) and *K. Sabanayagam* (supra).

132. We also are not convinced that there was any statutory mandate to provide for only short extensions of time or limited extensions of times. Suffice to note, if the COVID-19 pandemic had continued beyond the third wave (as experienced in our country), that argument would never arise. To the extent that argument arises on hindsight wisdom, and past actions were dictated by nature as were beyond the control of human beings, it would be erroneous to infer a legislative intent based on the experience gained on the strength of initial remedial actions taken by the executive and the legislative bodies, in response to the spread of the pandemic COVID-19. The argument is neither sustainable in law nor on the facts. As to the submission of repeated notifications being issued, again that fell within the domain of legislative wisdom. How the legislature perceived the situation at a given time, and what response it offered may never be a justiciable issue. Suffice to conclude, inherent indication exists that initially the legislature treated the COVID-19 pandemic circumstance to be temporary as may pass in a short while. However on its continuance, further extensions may have been felt desirable. Insofar as the power vested under Section 168A is not shown to be a power that may be exercised once as get exhausted upon that exercise made, the legislative wisdom to issue

a further notification, would always survive.

133. The submission as to disability of the performing party, while attractive in first place, the same does not require any deeper consideration in view of the discussion made above. In the context of a legislative action, as noted above the level of disability suffered is not justiciable. Unless shown to be manifestly unreasoned or palpably arbitrary or plainly opaque, judicial power may remain to be exercised to examine such issues, any further. Suffice to note that the pleadings made in the Counter Affidavit are not to be seen to test the validity of the law. The burden to establish the invalidity existed on the petitioners. As noted above, we find that burden has remained from being discharged. The fact that the Central Government lifted the measures enforced by it under the Disaster Management Act in the year 2022, lead us to nowhere. They do not militate and they may not ever militate against the judicial notice taken to the effect of the spread of the pandemic COVID-19, remained constant during the period 15 March 2020 to 28th February 2022.

134. The other principle submission advanced by Shri Mehrotra that the entire action taken by the respondents was a colourable exercise of power also cannot be accepted in view of the discussion made above. The power to issue the impugned notifications existed. It is undisputed. In view of our discussion, that power was exercised both within the confines of the legislative conditions and occasioned by circumstances confronted by the legislature. The extent to which the power may have been exercised i.e. the length of time extension granted would also remain outside the scope of judicial review. Suffice to note, no excessive extension of time is seen to have been granted. If the period beginning 15th March 2020 to 28th February 2022 were to be excluded, a similar result would have arisen in terms of limitation extension. However we make it clear that the above has been noted only to deal with submission of colourable exercise power and not by way of independent reason to uphold the exercise of legislative power.

135. The reliance placed on the marginal note appended to Section 168A is misconceived. The language of that section being clear and free from doubt or ambiguity, there does not exist the necessary pre-condition to look at the marginal note to interpret the true meaning of words used in the said section. To read the marginal note in face of clear language of Section 168A of the Central Act and the State Act, is impermissible. The decision of the Supreme Court in Eastern Coalfields Limited (supra) and Satyendra Kumar Mehra alias Satendera Kumar Mehra (supra) are therefore in-apposite. Geeta (supra) is also not applicable to the present facts inasmuch as the language of Section 168A being unequivocally clear, there is less room to read Object and Reasons of its incorporation, to limit its natural scope and extent. In any case there is no inconsistency seen between the object and reasons of TOLO and the provision of Section 168A of the Act.

136. Last, in P. Krishnamurthy (supra), it has been held as below :

"Whether the rule is valid in its entirety?"

15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the

following grounds:

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

16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.

17. In *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* [(1985) 1 SCC 641 : 1985 SCC (Tax) 121] this Court referred to several grounds on which a subordinate legislation can be challenged as follows: (SCC p. 689, para 75) "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."

(emphasis supplied)

18.

19. In *Shri Sitaram Sugar Co. Ltd. v. Union of India* [(1990) 3 SCC 223] a Constitution Bench of this Court reiterated: (SCC pp. 251-52, para 47) "47. Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other

laws of the land. They must be 'reasonably related to the purposes of the enabling legislation'. See *Leila Mourning v. Family Publications Service* [411 US 356 : 36 L Ed 2d 318 (1973)] . If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires': per Lord Russel of Killowen, C.J. in *Kruse v. Johnson* [(1898) 2 QB 91 : (1895-99) All ER Rep 105] ."

20. In *St. John's Teachers Training Institute v. Regional Director, NCTE* [(2003) 3 SCC 321] this Court explained the scope and purpose of delegated legislation thus: (SCC p. 331, para 10) "10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes."

(emphasis supplied)

137. Also, in *Vivek Narayan Sharma* (supra), it has been observed as below :

227. This Court in *Small Scale Industrial Manufactures Assn. v. Union of India*, (2021) 8 SCC 511] observed that the Court would not interfere with any opinion formed by the Government if it is based on the relevant facts and circumstances or based on expert's advice. The Court would be entitled to interfere only when it is found that the action of the executive is arbitrary and violative of any constitutional, statutory or other provisions of law. It has been held that when the Government forms its policy, it is based on a number of circumstances and it is also based on expert's opinion, which must not be interfered with, except on the ground of palpable arbitrariness. It is more than settled that the Court gives a large leeway to the executive and the legislature in matters of economic policy. A reference in this respect could be made to the judgments of this Court in *P.T.R. Exports (Madras) (P) Ltd. v. Union of India* [P.T.R. Exports (Madras) (P) Ltd. v. Union of India, (1996) 5 SCC 268] and *Bajaj Hindustan Ltd. v. Sir Shadi Lal Enterprises Ltd.* [Bajaj Hindustan Ltd. v. Sir Shadi Lal Enterprises Ltd., (2011) 1 SCC 640]

252. It has been held in *Metropolis Theater Co. v. City of Chicago*, 1913 SCC OnLine US SC 123 : 57 L Ed 730 : 228 US 61 (1913)] that if the action of the Government has a basis with the objectives to be achieved, it cannot be declared as palpably arbitrary. It has been held that, to be able to find fault with a law is not to demonstrate its invalidity. It has been held that the result of the act may seem unjust and oppressive, yet be free from judicial interference. The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. It has been held that what is best is not always discernible, and the wisdom of any choice may be disputed or condemned. It has been held that mere errors of the Government are not subject to judicial review. It is only the palpably arbitrary exercises which can be declared void.

253. We may gainfully refer to the following observations of this Court in *R.K. Garg v. Union of India*, (1981) 4 SCC 675 : 1982 SCC (Tax) 30], wherein this Court observed that it should constantly remind itself of what the Supreme Court of the United States said in *Metropolis Theater Co. v. City of Chicago*, 1913 SCC OnLine US SC 123 : 57 L Ed 730 : 228 US 61 (1913)] : (*R.K. Garg case v. Union of India*, (1981) 4 SCC 675 : 1982 SCC (Tax) 30], SCC p. 706, para 19) "19. The Court would not have the necessary competence and expertise to adjudicate upon such an economic issue. The Court cannot possibly assess or evaluate what would be the impact of a particular immunity or exemption and whether it would serve the purpose in view or not. There are so many imponderables that would enter into the determination that it would be wise for the Court not to hazard an opinion where even economists may differ. The Court must while examining the constitutional validity of a legislation of this kind, "be resilient, not rigid, forward looking, not static, liberal, not verbal" and the Court must always bear in mind the constitutional proposition enunciated by the Supreme Court of the United States in *Munn v. Illinois* [*Munn v. Illinois*, 1876 SCC OnLine US SC 4 : 24 L Ed 77 : 94 US 13 (1877)] , namely, "that courts do not substitute their social and economic beliefs for the judgment of legislative bodies". The Court must defer to legislative judgment in matters relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to be palpably arbitrary."

(emphasis supplied)

254. The Constitution Bench in *R.K. Garg v. Union of India*, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] holds that the Court would not have the necessary competence and expertise to adjudicate upon such an economic issue. The Court cannot possibly assess or evaluate what would be the impact of a particular immunity or exemption and whether it would serve the purpose in view or not. It has been held that it would be wise for the Court not to hazard an opinion where even economists may differ. It has been held that while examining the constitutional validity of such a legislation, the Court must "be resilient, not rigid, forward looking, not static, liberal, not verbal".

258. Therefore, while adjudging the illegality of the impugned notification, we would have to examine on the basis as to whether the objectives for which it was enacted has nexus with the decision taken or not. If the impugned notification had a nexus with the objectives to be achieved, then, merely because some citizens have suffered through hardships would not be a ground to hold the impugned notification to be bad in law.

138. Seen in that light the decisions cited by learned counsel for the petitioners are found to be distinguished. The writ petitions challenging the issuance of the impugned notifications must fail. Hearing of all cases where adjudication proceedings are pending may recommence and be concluded, after excluding the duration of stay of the extended limitation to frame the adjudication order. Wherever adjudication orders have been passed and recovery stayed by this Court, the petitioners shall have 45 days from today to file appropriate appeals.

139. The writ petitions are thus dismissed. No order as to costs.

Order Date :- 31.5.2024

Faraz//Prakhar/SA/Abhilash/A. Gautam

(Donadi Ramesh, J.)

(S. D. Singh, J.)