Page No.# 1/73 vs Union Of India And 4 Ors on 19 September, 2024

Author: Devashis Baruah

Bench: Devashis Baruah

GAHC010142792024

undefined

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3585/2024

M/S. BARKATAKI PRINT AND MEDIA SERVICES
A PROPRIETORSHIP CONCERN, HAVING ITS REGISTERED OFFICE AT PLOT NO. 9, INDUSTRIAL AREA, BAMUNIMAIDAM, GUWAHATI, DIST. KAMRUP(M), ASSAM, 781021. REPRESENTED BY ITS SOLE PROPRIETOR SRI DHRUBAJYOTI BARKOTOKY, I.E. THE PETITIONER NO. 2.

2: DHRUBAJYOTI BARKOTOKY
SON OF LATE PRABOTI PRASAD BARKOTOKY

RESIDENT OF H.NO. 14
MANALISHA PATH

ZOO NARENGI ROAD
GUWAHATI

DIST.- KAMRUP(M)
ASSAM
781021

VERSUS

UNION OF INDIA AND 4 ORS.
REPRESENTED BY BY THE SECRETARY OF GOVERNMENT OF INDIA,
MINISTRY OF FINANCE NEW DELHI-110001.

2:THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR TOWER NBCC
PLAZA-1
SECTOR 5

PUSHP VIHAR
NEW DELHI- 110017. REPRESENTED BY CHAIRMAN

3:THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR

TOWER-II
JEEVAN BHARATI BUILDING
JANPATH ROAD
CONNAUGHT PALACE
NEW DELHI-110001
REPRESENTED BY ITS CHAIRPERSON.

4:THE PRINCIPAL COMMISSIONER
STATE TAX
KAR BHAWAN
G.S. BHAWAN
KAMRUP(M)
GUWAHATI
ASSAM.

5:THE ASSISTANT COMMISSIONER
STATE TAX
KAR BHAWAN
GUWAHATI-A-10
GUWAHATI ZONE- A
ASSAM

Advocate for the Petitioner : MR. A K GUPTA, MS M NIROLA,MR. R S MISHRA

Advocate for the Respondent : DY.S.G.I., SC, FINANCE AND TAXATION,SC, GST

Linked Case : WP(C)/4118/2024

PALLAB KUMAR PANDIT
SON OF LATE CHITRA RANJAN PANDIT

RESIDENT OF 100
NAMGHAR PATH

HAIBORGAON

P.O.
P.S. AND DISTRICT- NAGAON

ASSAM- 782002.

VERSUS

UNION OF INDIA AND 4 ORS.
REPRESENTED BY BY THE SECRETARY OF GOVERNMENT OF INDIA
MINISTRY OF FINANCE NEW DELHI-110001.

2:THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR TOWER NBCC
PLAZA-1
SECTOR 5
PUSHP VIHAR
NEW DELHI- 110017. REPRESENTED BY ITS CHAIRMAN

3:THE GOODS AND SERVICE TAX COUNCIL
5TH FLOOR
TOWER-II
JEEVAN BHARATI BUILDING
JANPATH ROAD
CONNAUGHT PALACE
NEW DELHI-110001. REPRESENTED BY ITS CHAIRPERSON.

4:THE SUPERINTENDENT
HEADQUARTERS ANTI-EVASION
CENTRAL GOODS AND SERVICE TAX AND CX
GST BHAWAN
1ST FLOOR
KEDAR ROAD

MACHKHOWA
GUWAHATI- 781001.

5:THE SUPERINTENDENT OF CENTRAL GOODS AND SERVICE TAX
NAGAON RANGE
R.K. ROAD
NAGAON- 782001.

Advocate for : MR. A K GUPTA
Advocate for : DY.S.G.I. appearing for UNION OF INDIA AND 4 ORS.

Linked Case : WP(C)/4591/2024

M/S A L ENTERPRISE
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT
MANKACHAR BAZAR
DHUBRI
DISTRICT DHUBRI
ASSAM

PIN 783131

REPRESENTED BY ITS PROPRIETOR SMT SHALINI BOTHRA

2: SMT SHALINI BOTHRA
D/O KISHORE SINGH BOTHRA
R/O MANKACHAR BAZAR
MANKACHAR
DHUBRI
PIN 783131
ASSAM
VERSUS

THE UNION OF INDIA
MINISTRY OF FINANCE
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NEW DELHI

2:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST
1ST FLOOR
TOWER
NBCC PLAZA
SECTOR-5
PUSHP VIHAR
NEW DELHI-110017

3:THE PRINCIPAL COMMISSIONER
STATE GST

KAR BHAWAN
DISPUR
GUWAHATI
ASSAM

4:THE DEPUTY COMMISSIONER OF STATE TAX

DHUBRI-1
DHUBRI ZONE
ASSAM

Advocate for : MS. N HAWELIA
Advocate for : SC
GST appearing for THE UNION OF INDIA

Linked Case : WP(C)/3665/2024

Page No.# 5/73

SANKHA PRESS PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT

2013
HAVING ITS OFFICE AT 13
JUGASANKHA BUILDING
GREEN PATH
G.S.ROAD
ULUBARI
GUWAHATI
KAMRUP METROPOLITAN
ASSAM
781007 AND REPRESENTED BY MR. MANOJ KUMAR NATH
THE DIRECTOR OF THE PETITIONER COMPANY

VERSUS

UNION OF INDIA AND 5 ORS
THROUGH THE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
NORTH BLOCK
NEW DELHI- 110001

2:STATE OF ASSAM
THROUGH THE COMMISSIONER AND SECRETARY
FINANCE TAXATION DEPARTMENT
KAR BHAWAN
DISPUR
GANESHGURI
GUWAHATI
ASSAM
781006

3:GOODS AND SERVICES TAX COUNCIL
THROUGH THE SECRETARY
5TH FLOOR
TOWER-II
JEEVAN BHARTI BUILDING
JANPATH ROAD
CONNAUGHT PLACE
NEW DELHI- 110001

4:PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX
GUWAHATI COMMISSIONERATE
GST BHAWAN

5TH FLOOR
KEDAR ROAD
MACHKHOWA
GUWAHATI
ASSAM
781001

5:PRINCIPAL COMMISSIONER OF STATE TAX
KAR BHAWAN
DISPUR
GANESHGURI
GUWAHATI
ASSAM
781006

6:ASSISTANT COMMISSIONER OF STATE TAX
UNIT C
C-4- GUWAHATI
ASSAM KAR BHAWAN
DISPUR
GANESHGURI
GUWAHATI
ASSAM
781006

Advocate for : MR H BETALA
Advocate for : DY.S.G.I. appearing for UNION OF INDIA AND 5 ORS

Linked Case : WP(C)/4226/2024

M/S HINDUSTAN CONSTRUCTION COMPANY LIMITED
REP. BY MR. SACHIN KHARKANIS
ADDRESS- HAVING OFFICE AT 3RD FLOOR
MONAL TOWER
G.S. ROAD
GUWAHATI
KAMRUP METRO
ASSAM
PIN- 781006.

VERSUS

UNION OF INDIA AND 3 ORS.
THROUGH THE SECRETARY
DEPTT. OF REVENUE

MINISTRY OF FINANCE
NORTH BLOCK
NEW DELHI-110001.

2:STATE OF ASSAM
THROUGH THE PRINCIPAL SECRETARY
FINANCE DEPTT.
3RD FLOOR
CHIEF MINISTERS BLOCK
JANATA BHAWAN

DISPUR
GHY-781006.

3:ASSISTANT COMMISSIONER OF STATE TAX
GUWAHATI UNIT C
KAR BHAWAN
GANESHGURI
DISPUR
GHY-781006.

4:DEPUTY COMMISSIONER OF STATE TAX
UNIT-D
GUWAHATI-06
KAR BHAWAN
GANESHGURI
DISPUR
GHY-781006.

5:PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX
GUWAHATI COMMISSIONERATE
GST BHAWAN
FIFTH FLOOR
KEDAR ROAD
MACHKHOWA
GUWAHATI
ASSAM
PIN-781001

Advocate for : MR G K DEKA
Advocate for : DY.S.G.I. appearing for UNION OF INDIA AND 3 ORS.

Linked Case : WP(C)/4592/2024

MS MAHABIR STORES
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT KALDOBA
AGOMANI

DHUBRI
DISTRICT- DHUBRI
ASSAM
PIN 783335
REPRESENTED BY ITS PROPRIETOR SRI PANNA LAL SANCHETI

2: PANA LAL SANCHETI

R/O KALDOBA
AGOMANI
DHUBRI
DISTRICT-DHUBRI
ASSAM

PIN 783335
VERSUS

THE UNION OF INDIA AND 3 ORS.
MINISTRY OF FINANCE
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NEW DELHI.

2:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

1ST FLOOR
TOWER
NBCC PLAZA
SECTOR-5
PUSHP VIHAR
NEW DELHI-110017

3:THE PRINCIPAL COMMISSIONER

STATE GST
KAR BHAWAN
DISPUR
GUWAHATI
ASSAM

4:THE DEPUTY COMMISSIONER OF STATE TAX

DHUBRI-1
DHUBRI ZONE
ASSAM

Advocate for : MS. M L GOPE
Advocate for : SC
GST appearing for THE UNION OF INDIA AND 3 ORS.

Page No.# 9/73

Linked Case : WP(C)/4490/2024

M/S KAKOTI ENGINEERING WORKS AND ANR
A PARTNERSHIP FIRM
HAVING ITS REGISTERED OFFICE AT A.T. ROAD
SIVASAGAR
ASSAM
785640.
REPRESENTED BY ITS PARTNER SRI RIPENDRA PRASAD KAKOTI
I.E. THE PETITIONER NO. 2.

2: RIPENDRA PRASAD KAKOTI
SON OF LATE RAM PRASAD KAKOTI

RESIDENT OF PHUKAN NAGAR

SIVASAGAR TOWN

P.O. AND DIST.- SIVASAGAR

ASSAM
785640.
VERSUS

UNION OF INDIA AND 6 ORS.
REPRESENTED BY THE SECRETARY OF GOVERNMENT OF INDIA

MINISTRY OF FINANCE

NEW DELHI- 110001.

2:THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR TOWER NBCC

PLAZA-1
SECTOR 5
PUSHP VIHAR

NEW DELHI- 110017.
REPRESENTED BY ITS CHAIRMAN.

3:THE GOODS AND SERVICE TAX COUNCIL
5TH FLOOR
TOWER-II
JEEVAN BHARATI BUILDING

JANPATH ROAD
CONNAUGHT PLACE
NEW DELHI- 110001.
REPRESENTED BY ITS CHAIRPERSON.

4:THE PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICES
TAX
GST BHAWAN
MACHKHOW
GUWAHATI-1.

5:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM

FINANCE AND TAXATION DEPARTMENT

DISPUR

ASSAM-6.

6:THE PRINCIPAL COMMISSIONER
STATE TAX
KAR BHAWAN
G.S. ROAD
KAMRUP(M)
GUWAHATI
ASSAM.

7:THE ASSISTANT COMMISSIONER
STATE TAX
SIBASAGAR-3
SIBASAGAR ZONE
ASSAM.

Advocate for : MR. A K GUPTA
Advocate for : DY.S.G.I. appearing for UNION OF INDIA AND 6 ORS.

Linked Case : WP(C)/4594/2024

M/S GOOD WILL HARDWARE AND ANR
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT
MANKACHAR MAIN ROAD
DHUBRI
DISTRICT DHUBRI
ASSAM

Page No.# 11/73

PIN 783131
REPRESENTED BY ITS PROPRIETOR MITUL HUSSAIN

2: MITUL HUSSAIN

S/O ABDUL MOTIN HUSSAIN
R/O MANKACHAR
DHUBRI
DISTRICT DHUBRI
ASSAM
PIN 783131.
VERSUS

THE UNION OF INDIA

MINISTRY OF FINANCE
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NEW DELHI

2:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

1ST FLOOR
TOWER
NBCC PLAZA
SECTOR-5
PUSHP VIHAR
NEW DELHI-110017

3:THE PRINCIPAL COMMISSIONER
STATE GST

KAR BHAWAN
DISPUR
GUWAHATI
ASSAM

4:THE DEPUTY COMMISSIONER OF STATE TAX

DHUBRI-1
DHUBRI ZONE
ASSAM

Advocate for : MS. N HAWELIA
Advocate for : SC
GST appearing for THE UNION OF INDIA

Page No.# 12/73

Linked Case : WP(C)/4598/2024

M/S KRISHNA GAS SERVICE
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT GAURIPUR
DHUBRI
DISTRICT DHUBRI
ASSAM
PIN 783331
REP. BY ITS PROPRIETORSHIP SRI NABA KRISHNA BRAHMA

2: SRI NABA KRISHNA BRAHMA

R/O GAURIPUR
DHUBRI
DISTRICT DHUBRI
ASSAM
PIN- 783331.
VERSUS

THE UNION OF INDIA AND 3 ORS.
MINISTRY OF FINANCE
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NEW DELHI

2:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

1ST FLOOR
TOWER
NBCC PLAZA
SECTOR-5
PUSHP VIHAR
NEW DELHI-110017

3:THE PRINCIPAL COMMISSIONER
STATE GST

KAR BHAWAN
DISPUR
GUWAHATI
ASSAM

4:THE DEPUTY COMMISSIONER OF STATE TAX

DHUBRI-1

DHUBRI ZONE
ASSAM

Advocate for : MS. M L GOPE
Advocate for : SC
GST appearing for THE UNION OF INDIA AND 3 ORS.

Linked Case : WP(C)/4595/2024

M/S A B ENTERPRISE AND ANR
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT GAURIPUR
DHUBRI
DISTRICT- DHUBRI
ASSAM
PIN 783131
REPRESENTED BY ITS PROPRIETOR SRI BIKASH KUMAR BAID

2: SRI BIKASH KUMAR BAID

R/O WARD NO.4
GAURIPUR
DHUBRI
DISTRICT DHUBRI
ASSAM
PIN 783131.
VERSUS

THE UNION OF INDIA

MINISTRY OF FINANCE
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NEW DELHI

2:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

1ST FLOOR
TOWER
NBCC PLAZA
SECTOR-5
PUSHP VIHAR
NEW DELHI-110017

3:THE PRINCIPAL COMMISSIONER

STATE GST

KAR BHAWAN
DISPUR
GUWAHATI
ASSAM

4:THE DEPUTY COMMISSIONER OF STATE TAX

DHUBRI-1
DHUBRI ZONE
ASSAM

Advocate for : MS. M L GOPE
Advocate for : SC
GST appearing for THE UNION OF INDIA

Linked Case : WP(C)/4456/2024

MS KAKOTI ENGINEERING WORKS AND ANR
A PARTNERSHIP FIRM
HAVING ITS REGISTERED OFFICE AT A.T. ROAD
SIVASAGAR
ASSAM
785640
REPRESENTED BY ITS PARTNER SRI RIPENDRA PRASAD KAKOTI
I.E. THE PETITIONER NO. 2

2: SRI RIPENDRA PRASAD KAKOTI
SON OF LATE RAN PRASAD KAKOTI
RESIDENT OF PHUKAN NAGAR
SIVASAGAR TOWN

P.O. AND DIST. SIVASAGAR
ASSAM
785640
VERSUS

UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY OF GOVERNMENT OF INDIA
MINISTRY OF FINANCE
NEW DELHI-110001

2:THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR TOWER NBCC
PLAZA-1
SECTOR 5
PUSHP VIHAR

NEW DELHI
110017 REPRESENTED BY ITS CHAIRMAN

3:THE GOOD AND SERVICE TAX COUNCIL
5TH FLOOR
TOWER-II
JEEVAN BHARATI BUILDING
JANPATH ROAD
CONNAUGHT PALACE
NEW DELHI- 110001
REPRESENTED BY ITS CHAIRPERSON

4:THE PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICES
TAX
GST BHAWAN
MACHKHOW
GUWAHATI-1

5:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
ASSAM
FINANCE AND TAXATION DEPARTMENT
DISPUR
ASSAM-6

6:THE PRINCIPAL COMMISSIONER
STATE TAX
KAR BHAWAN
G.S.ROAD
KAMRUP (M)
GUWAHATI
ASSAM

7:THE ASSISTANT COMMISSIONER STATE TAX
SIBASAGAR-3
SIBASAGAR ZONE

ASSAM

Advocate for : MR. R S MISHRA
Advocate for : DY.S.G.I. appearing for UNION OF INDIA AND 6 ORS

Linked Case : WP(C)/4257/2024

SRI JAGADISH DAS
SON OF SRI GAJIN DAS

RESIDENT OF NH-37 GUWAHATI
KAMRUP METRO
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECRETARY OF GOVERNMENT OF INDIA
MINISTRY OF FINANCE
NEW DELHI-110001

2:THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR TOWER NBCC
PLAZA-1
SECTOR 5
PUSHP VIHAR
NEW DELHI-110017. REPRESENTED BY CHAIRMAN

3:THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR
TOWER-II
JEEVAN BHARATI BUILDING
JANPATH ROAD
CONNAUGHT PALACE
NEW DELHI-110001. REPRESENTED BY ITS CHAIRPERSON

4:THE PRINCIPAL COMMISSIONER
STATE TAX
KAR BHAWAN
G.S. ROAD
KAMRUP(M)
GUWAHATI
ASSAM.

5:THE COMMERCIAL TAX OFFICER
(SUPERINTENDENT OF TAXES)

GUWAHATI-B-5
GUWAHATI- ZONE-B

ASSAM

6:THE ASSISTANT COMMISSIONER
STATE TAX
GUWAHATI-B-5
ZONE-B
ASSAM.

Advocate for : MR. A K GUPTA
Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/4597/2024

M/S GAUTAM GAS SERVICE AND ANR
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT D.K. ROAD
DHUBRI
DISTRICT DHUBRI
ASSAM
PIN 783301
REPRESENTED BY ITS PROPRIETOR SRI SUNIL KUMAR DHARIWAL

2: SRI SUNIL KUMAR DHARIWAL

S/O MOOL CHAND DHARIWAL
R/O D K ROAD
DHUBRI
DISTRICT DHUBRI
PIN 783301
ASSAM
VERSUS

THE UNION OF INDIA AND 3 ORS
MINISTRY OF FINANCE
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NEW DELHI

2:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

1ST FLOOR
TOWER
NBCC PLAZA
SECTOR-5
PUSHP VIHAR
NEW DELHI-110017

3:THE PRINCIPAL COMMISSIONER
STATE GST

KAR BHAWAN
DISPUR
GUWAHATI
ASSAM

4:THE DEPUTY COMMISSIONER OF STATE TAX

DHUBRI-1
DHUBRI ZONE
ASSAM

Advocate for : MS. N HAWELIA
Advocate for : SC
GST appearing for THE UNION OF INDIA AND 3 ORS

Linked Case : WP(C)/4596/2024

MS ARIYAN DRUG AND SURGICALS AND ANR
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT MAIN ROAD
MANKACHAR
DHUBRI
ASSAM
PIN 783131
REP BY ITS PROPRIETOR JIAUR RAHMAN

2: JIAUR RAHMAN
S/O LATE MATIOR RAHMAN
R/O MAIN ROAD
MANKACHAR

DHUBRI
DISTRICT DHUBRI
ASAM
PIN 783131
VERSUS

THE UNION OF INDIA
MINISTRY OF FINANCE
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NEW DELHI

2:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

1ST FLOOR
TOWER
NBCC PLAZA

SECTOR-5
PUSHP VIHAR

NEW DELHI-110017

3:THE PRINCIPAL COMMISSIONER

STATE GST
KAR BHAWAN
DISPUR
GUWAHATI
ASSAM

4:THE DEPUTY COMMISSIONER OF STATE TAX

DHUBRI-1
DHUBRI ZONE
ASSAM

Advocate for : MS. N HAWELIA
Advocate for : SC
GST appearing for THE UNION OF INDIA

Linked Case : WP(C)/3610/2024

M/S. DHB MULTIPURPOSE ENGINEERING ENTERPRISE AND ANR
A REGISTERED PARTNERSHIP FIRM HAVING ITS REGISTERED OFFICE AT
NACHANIAL CHUK
NA-ALI
JORHAT
REPRESENTED BY ITS MANAGING PARTNERS SMT BORNALI DUTTA BORA
i.e.
THE PETITIONER NO. 2

2: SMT BORNALI DUTTA BORA
WIFE OF BIMALA PRASAD DUTTA
RESIDENT OF NACHANIAL CHUK
NA-ALI
P.O.
P.S. AND DISTRICT- JORHAT
78501
VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY OF GOVERNMENT OF INDIA
MINISTRY OF FINANCE NEW DELHI- 110001

2:THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR TOWER NBCC

PLAZA-1
SECTOR 5
PUSHP VIHAR
NEW DELHI- 110017 REPRESENTED BY ITS CHAIRMAN

3:THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR
TOWER-II
JEEVAN BHARATI BUILDING
JANPATH ROAD
CONNAUGHT PALACE
NEW DELHI-110001
REPRESENTED BY ITS CHAIRPERSON

4:THE COMMISSIONER OF CENTRAL GOOD AND SERVICE TAX
DIBRUGARH
P.O. C.R. BUILDING
MILAN NAGAR
DIBRUGARH

5:THE ASSISTANT COMMISSIONER OF CENTRAL GOOD AND SERVICE TAX
DIBRUGARH DIVISION

Advocate for : MR. R S MISHRA
Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS

Linked Case : WP(C)/3661/2024

MIZO PUBLICATION PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT
2013
HAVING ITS OFFICE AT 13
JUGASANKHA BUILDING
GREEN PATH
G.S. ROAD
ULUBARI
GUWAHATI
KAMRUP METROPOLITAN DISTRICT
ASSAM
781007 AND REPRESENTED BY MR. GAURAV NATH
THE DIRECTOR OF THE PETITIONER COMPANY.

VERSUS

UNION OF INDIA AND 5 ORS.
THROUGH THE SECRETARY

DEPARTMENT OF REVENUE
MINISTRY OF FINANCE

NEW DELHI-110001.

2:STATE OF ASSAM
THROUGH THE COMMISSIONER AND SECRETARY

FINANCE (TAXATION) DEPARTMENT

KAR BHAWAN
DISPUR
GANESHGURI

GUWAHATI
ASSAM 781006.

3:GOODS AND SERVICE TAX COUNCIL
THROUGH THE SECRETARY

5TH FLOOR
TOWER-II
JEEVAN BHARTI BUILDING

JANPATH ROAD
CONNAUGHT PLACE

NEW DELHI- 110001.

4:PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX
GUWAHATI COMMISSIONERATE

GST BHAWAN
5TH FLOOR

KEDAR ROAD
MACHKHOWA

GUWAHATI
ASSAM 781001.

5:PRINCIPAL COMMISSIONER OF STATE TAX
KAR BHAWAN
DISPUR

GANESHGURI
GUWAHATI

ASSAM- 781006.

6:ASSISTANT COMMISSIONER OF STATE TAX
UNIT- C

C-4- GUWAHATI
ASSAM
KAR BHAWAN
DISPUR

GANESHGURI
GUWAHATI

ASSAM 781006.

Advocate for : MR H BETALA
Advocate for : DY.S.G.I. appearing for UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/4590/2024

M/S RUCHI BASTRALAYA AND ANR
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT J P
AGARWALLA
GAURIPUR
DHUBRI
DISTRICT DHUBRI
ASSAM
PIN 783331
REPRESENTED BY ITS PROPRIETOR SRI SURESH KUMAR NAHAR

2: SRI SURESH KUMAR NAHAR

S/O MOHAN LAL NAHAR
R/O J P AGARWALA
GAURIPUR
DHUBRI
DISTRICT DHUBRI
ASSAM
PIN 783331
VERSUS

THE UNION OF INDIA AND 3 ORS
MINISTRY OF FINANCE
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE
Page No.# 23/73

GOVERNMENT OF INDIA
NEW DELHI

2:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

1ST FLOOR
TOWER
NBCC PLAZA
SECTOR-5
PUSHP VIHAR

NEW DELHI-110017

3:THE PRINCIPAL COMMISSIONER

STATE GST

KAR BHAWAN
DISPUR
GUWAHATI
ASSAM

4:THE DEPUTY COMMISSIONER OF STATE TAX

DHUBRI-1
DHUBRI ZONE
ASSAM

Advocate for : MS. M L GOPE
Advocate for : SC
GST appearing for THE UNION OF INDIA AND 3 ORS

Linked Case : WP(C)/4681/2024

JAWAHAR SINGH
SON OF RAMDEV SINGH

RESIDENT OF 101
SHRI RAM BHAWAN

MISSION COMPOUND
RAJABARI
JORHAT

ASSAM
PIN 785014.

Page No.# 24/73

VERSUS

UNION OF INDIA AND 6 ORS.
REPRESENTED BY BY THE SECRETARY OF GOVERNMENT OF INDIA
MINISTRY OF FINANCE
NEW DELHI-110001

2:THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR TOWER NBCC
PLAZA-1
SECTOR 5
PUSHP VIHAR

NEW DELHI-110017. REPRESENTED BY CHAIRMAN.

3:THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR
TOWER-II
JEEVAN BHARATI BUILDING
JANPATH ROAD
CONNAUGHT PALACE
NEW DELHI-110001
REPRESENTED BY ITS CHAIRPERSON.

4:THE PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICE
TAX
GST BHAWAN
MACHKHOW
GUWAHATI-1.

5:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM

FINANCE AND TAXATION DEPARTMENT

DISPUR
ASSAM-6.

6:THE PRINCIPAL COMMISSIONER
STATE TAX
KAR BHAWAN
GS ROAD
KAMRUP(M)
GUWAHATI
ASSAM.

7:THE ASSISTANT COMMISSIONER
STATE TAX
JORHAT-6
JORHAT ZONE
ASSAM.

Advocate for : MR. A K GUPTA
Advocate for : DY.S.G.I. appearing for UNION OF INDIA AND 6 ORS.

Linked Case : WP(C)/4593/2024

M/S VARDHMAN STORES AND ANR
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT
SHERNAGAR
AGOMANI
DHUBRI

DISTRICT DHUBRI
ASSAM
PIN 783335
REPRESENTED BY ITS PROPRIETOR SRI MAHENDRA KUMAR SANCHETI.

2: SRI MAHENDRA KUMAR SANCHETI
S/O MNGAL LAL SANCHETI
R/O SHERNAGAR
AGOMANI
DHUBRI
DISTRICT DHUBRI
ASSA
PIN 783335
VERSUS

THE UNION OF INDIA AND 3 ORS
MINISTRY OF FINANCE
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NEW DELHI

2:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

1ST FLOOR
TOWER
NBCC PLAZA
SECTOR-5
PUSHP VIHAR
NEW DELHI-110017

Page No.# 26/73

3:THE PRINCIPAL COMMISSIONER
STATE GST

KAR BHAWAN
DISPUR
GUWAHATI
ASSAM

4:THE DEPUTY COMMISSIONER OF STATE TAX

DHUBRI-1
DHUBRI ZONE
ASSAM

Advocate for : MS. N HAWELIA
Advocate for : appearing for THE UNION OF INDIA AND 3 ORS

Linked Case : WP(C)/3877/2024

M/S NITAI KANGSA BANIK AND ANR

A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT SONAI ROAD
NEAR HOLY CROSS SCHOOL
SILCHAR
ASSAM- 788006
REPRESENTED BY ITS PROPRIETOR NITAI KANGSA BANIK

2: SRI NITAI KANGSA BANIK
SON OF SRI SUBAL KANGSA BANIK
RESIDENT OF RAMCHARAN ROAD
KANAKPUR MAIN ROAD
SILCHAR
DISTRICT- CACHAR- 788006
VERSUS

THE UNION OF INDIA AND 3 ORS
MINISTRY OF FINANCE
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVERNMENT OF INDIA NEW DELHI

2:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR
TOWER
NBCC PLAZA
SECTOR-5
PUSHP VIHAR
NEW DELHI- 110017

3:THE PRINCIPAL COMMISSIONER
STATE GST
KAR BHAWAN
DISPUR
GUWAHATI
ASSAM

4:THE ASSISTANT COMMISSIONER OF STATE TAX
SILCHAR-4
SILCHAR
ASSAM

Advocate for : MS. M L GOPE
Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 3 ORS

Linked Case : WP(C)/3865/2024

M/S MERLE CONSTRUCTION AND MARKETING PVT. LTD.
A PRIVATE LIMITED COMPANY INCORPORATED UNDER THE COMPANIES
ACT
1956 READ WITH THE COMPANIES ACT
2013 HAVING ITS REGISTERED OFFICE AT NEAR IOC PETROL PUMP

NEW DUDHNOI
P.O. AND P.S
DUDHNOI
GOALPARA
ASSAM.

VERSUS

THE UNION OF INDIA AND 3 ORS
MINISTRY OF FINANCE
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NEW DELHI.

2:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR
TOWER
NBCC PLAZA
SECTOR- 5
PUSHP VIHAR
NEW DELHI- 110017

3:THE PRINCIPAL COMMISSIONER
STATE GST
KAR BHAWAN
DISPUR
GUWAHATI
ASSAM.

4:THE ASSISTANT COMMISSIONER OF STATE TAX
GOALPARA UNIT
DHUBRI ZONE
ASSAM

Advocate for : MS. M L GOPE
Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 3 ORS

Linked Case : WP(C)/4756/2024

M/S DNA AGROTECH PRIVATE LIMITED
A PRIVATE LIMITED COMPANY REGISTERED UNDER INDIAN COMPANIES
ACT
1956 HAVING ITS REGISTERED OFFICE AT SUPER MARKET
A.T. ROAD
JAGIROAD
MORIGAON
ASSAM.
REPRESENTED BY ITS DIRECTOR SRI NAROTTAM NANDI.

VERSUS

UNION OF INDIA AND 6 ORS.
REPRESENTED BY BY THE SECRETARY OF GOVERNMENT OF INDIA
MINISTRY OF FINANCE
NEW DELHI-110001.

2:THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR TOWER NBCC
PLAZA-1
SECTOR 5
PUSHP VIHAR
NEW DELHI- 110017. REPRESENTED BY CHAIRMAN.

3:THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR
TOWER-II
JEEVAN BHARATI BUILDING

JANPATH ROAD
CONNAUGHT PALACE
NEW DELHI-110001. REPRESENTED BY ITS CHAIRPERSON.

4:THE PRICIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX
GST BHAWAN
MACHKHOWA
GUWAHATI-1.

5:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM

FINANCE AND TAXATION DEPARTMENT

DISPUR
ASSAM-6.

6:THE PRINCIPAL COMMISSIONER
STATE TAX
KAR BHAWAN
GS ROAD
KAMRUP(M)
ASSAM.

7:THE ASSISTANT COMMISSIONER
STATE TAX
MORIGAON-1
MORIGAON- NAGAON ZONE
ASSAM

Advocate for : MR. A K GUPTA

Advocate for : DY.S.G.I. appearing for UNION OF INDIA AND 6 ORS.

Linked Case : WP(C)/4577/2024

M/S GOYAL HARDWARE AND ANR
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT
MANKACHAR
DHUBRI
DISTRICT- DHUBRI
ASSAM
PIN- 783131
REPRESENTED BY ITS PROPRIETOR SRI MANISH KUMAR GOYAL.

2: MANISH KUMAR GOYAL

Page No.# 30/73

R/O- MANKACHAR
DHUBRI
DIST. DHUBRI
ASSAM
PIN- 783131.
VERSUS

THE UNION OF INDIA AND 3 ORS.
MINISTRY OF FINANCE
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVERNMENT OF INDIA
NEW DELHI.

2:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

1ST FLOOR
TOWER
NBCC PLAZA
SECTOR-5
PUSHP VIHAR
NEW DELHI-110017.

3:THE PRINCIPAL COMMISSIONER

STATE GST
KAR BHAWAN
DISPUR
GUWAHATI
ASSAM

4:THE DEPUTY COMMISSIONER OF STATE TAX

DHUBRI-1
DHUBRI ZONE
ASSAM

Advocate for : MS. M L GOPE
Advocate for : SC
GST appearing for THE UNION OF INDIA AND 3 ORS.

Linked Case : WP(C)/4495/2024

M/S NORTH EAST SILLIMANITE
REPRESENTED THROUGH ITS PROPRIETOR BANI KALITA
D/O- LATE GOLAK KALITA
HAVING ITS REGISTERED OFFICE AT 1

KAMRKUCHI
KAMRUP
ASSAM
PIN- 782402.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
NORTH BLOCK
NEW DELHI-110001.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE (TAXATION) DEPARTMENT DISPUR
GHY-781006
ASSAM

3:THE PRINCIPAL COMMISSIONER
CENTRAL GOODS AND SERVICE TAX AND CENTRAL EXCISE
GST BHAWAN
KEDAR ROAD
GHY-781001.

4:THE COMMISSIONER OF TAXES
STATE GOODS AND SERVICE TAX
KAR BHAWAN
BISHNU PRASAD RAVA FLYOVER
DISPUR
GANESHGURI
GHY-781006.

5:THE ASSISTANT COMMISSIONER OF STATE TAX
GUWAHATI-C-7
GUWAHATI

ASSAM

6:THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR
TOWER NBCC PLAZA
1
SECTOR-5
PUSHP VIHAR
NEW DELHI-110017.

7:THE CHAIRPERSON
GOODS AND SERVICES TAX COUNCIL
5TH FLOOR
TOWER-II
JEEVAN BHARTI BUILDING
JANPATH ROAD
CONNAUGHT PLACE
NEW DELHI-110001.

Advocate for : MR. DEVENDR SARAF
Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 6 ORS.

Linked Case : WP(C)/3607/2024

SRI PANKAJ KHANIKAR
SON OF SRI BAKUL KHANIKAR
RESIDENT OF HOUSE NO 07
DWARKA NAGAR
KHANAPARA
KAMRUP METROPOLITAN
ASSAM- 781022

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY OF GOVERMENT OF INDIA
MINISTRY OF FINANCE NEW DELHI- 110001

2:THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR TOWER NBCC
PLAZA-1
SECTOR 5
PUSHP VIHAR
NEW DELHI
110017 REPRESENTED BY ITS CHAIRMAN

3:THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR
TOWER-II
JEEVAN BHARATI BUILDING
JANPATH ROAD
CONNAUGHT PALACE

NEW DELHI-110001
REPRESENTED BY ITS CHAIRPERSON

4:THE PRINCIPAL COMMISSIONER OF CGST AND CENTRAL EXCISE
GUWAHATI
GST BHAWAN
KEDAR ROAD
FANCY BAZAR
GUWAHATI
ASSAM- 781001

5:THE ASSISTANT COMMISSIONER DIVISION-II
CGST AND CENTRAL EXCISE
GUWAHATI
2ND FLOOR
G.S.T. BHAWAN
KEDAR ROAD
FANCY BAZAR
GUWAHATI
ASSAM- 781001

For the Petitioner(s) : Ms. Nitu Hawelia, Advocate
: Ms. Medha Lila Gope, Advocate
: Ms. N. Gogoi, Advocate
: Mr. R. S. Mishra, Advocate
: Mr. D. Saraf, Advocate
: Mr. A. Jain, Advocate
: Mr. H. Raichandani, Advocate
For the Respondent(s) : Mr. S. C. Keyal, SC, CGST
: Dr. B. N. Gogoi, SC, CGST
: Mr. B. Gogoi, SC, Finance and Taxation

Date of Hearing : 17.09.2024, 19.09.2024
Date of Judgment : 19.09.2024

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Heard, the learned counsels appearing on behalf of the Petitioners in the instant batch of writ petitions. I have also heard Mr. S. C. Keyal, and Dr. B. N. Gogoi, the learned Standing counsels appearing on behalf of the Central Goods and Service Tax (CGST) and Mr. B. Gogoi, the learned

Standing counsel appearing on behalf of the Finance and Taxation Department of the Government of Assam (SGST) PREFACE :

2. In the instant batch of writ petitions, the Petitioners herein have challenged their respective Order-in-Original passed under Section 73(9) of the Central Goods and Service Tax Act, 2017 (for short 'the Central Act') as well as Assam Goods and Services Tax Act, 2017 (for short 'the State Act') on the ground that the Notification No.9/2023-CT dated 31.03.2023 and the Notification No.56/2023-CT dated 28.12.2023 by which the period for passing of the order under Section 73(10) of the Central Act was extended in exercise of the powers under Section 168A of the Central Act was ultra vires the Central Act. In addition to that, the Petitioners have assailed the imposition under the State Act on the ground that there is no Notification issued under Section 168A of the State Act extending the period for passing order under Section 73(10) of the State Act.

3. The Notification No.09/2023-CT and Notification No.56/2023-CT are challenged on the grounds that the condition precedent for issuance of the Notifications in exercise of powers under Section 168A of the Central Act Page No.# 35/73 were not fulfilled. To elaborate, the Notification No.9/2023-CT is challenged on the ground that in absence of force majeure, the Government could not have exercised the power under Section 168A of the Central Act. In respect to the Notification No.56/2023-CT, the challenge is on the ground that the twin conditions for issuance of the Notification i.e. existence of a recommendation of the Goods and Service Tax Council (for short the 'GST Council') and due to force majeure were absent.

4. Before further proceeding, it is pertinent herein to mention that during the pendency of these writ petitions, the State of Assam issued a Notification on 06.09.2024 in exercise of the powers under Section 168A of the State Act. Pertinent herein to mention that the said Notification dated 06.09.2024 is a replica to the Notification No.9/2023-CT. Though there is no specific challenge to the said Notification dated 06.09.2024, the learned counsels appearing on behalf of the Petitioners submitted that as during the pendency of the writ petitions, the Notification dated 06.09.2024 was issued, the challenge made to the Notification No.9/2023-CT should also be extended to the Notification dated 06.09.2024 on the ground of there being no existence of force majeure.

5. The Orders-in-Original which are subject matter of challenge in the present batch of writ petitions are appealable under Section 107 of the Central Act. However, it is noticed that the Notification issued under Section 168A of both the Central Act and the State Act cannot be challenged under the Central Act and the State Act. It is also pertinent to observe that it is only in a proceedings under Article 226 of the Constitution, the said Notifications can be challenged. It is also pertinent to note that if the Page No.# 36/73 impugned Notifications are held to be ultra vires, the provisions of the Central Act as well as the State Act, the respective

Orders-in-Original would be without jurisdiction being barred by period prescribed in Section 73(10) of both the Central Act and the State Act. In addition to the above, it is also apposite to mention that the questions raised in the present proceedings are purely legal questions and as such, this Court finds it relevant to entertain the present batch of writ petitions.

RELEVANT PROVISIONS OF LAW AND ITS INTERPRETATION:

6. To decide the challenge to the impugned notifications, this Court finds it relevant to take note of the Constitutional provision of Article 246A of the Constitution as the said Article forms the basis of empowering the Parliament as well as the State Legislatures to make laws with respect to goods and service tax by the Union or by the State. Article 246A of the Constitution is reproduced here in below.

"246A.Special provision with respect to goods and services tax.--

(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce. Explanation.--The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council."

7. From a perusal of the above quoted Article, it would be seen that it Page No.# 37/73 provides the Parliament and the State Legislature the concurrent power to legislate on Goods and Service Tax. Article 246A starts with a non-obstinate clause thereby overriding Article 246 and Article 254 of the Constitution. Article 246A does not provide a repugnancy clause like Article 254, which stipulates that the law made by the Parliament on the subject in the concurrent list shall prevail over conflicting laws made by the State Legislature. It is also pertinent to observe that Article 246A are available both to the Parliament and the State Legislature, save and except for the exclusive power of the Parliament to enact GST legislation where the supply of goods or services take place in the course of inter-State trade or commerce. In the case of Union of India and Others Vs. VKC Footsteps India Private Limited reported in (2022) 2 SCC 603, the Supreme Court while noticing the changes in the Constitutional Scheme introduced by Article 246A categorically observed that Article 246A embodies the Constitutional Principle of simultaneous levy as distinct from the principle of concurrence.

The Parliament enacted the Central Act and the State of Assam enacted the State Act in exercise of the powers conferred under Article 246A of the Constitution.

8. In the above backdrop, it is very important to note that as Article 246A vests upon the Parliament and the State Legislatures with the unique simultaneous law making power on Goods and Service Tax, the Goods and Service Tax Council gains significance. To understand the scope and ambit of the Goods and Service Tax Council (for short "GST Council), it is relevant to take note of Article 279A of the Constitution. Article 279A of the Constitution is reproduced herein under:

> Page No.# 38/73 "279A. Goods and Services Tax Council.--(1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.
>
> (2) The Goods and Services Tax Council shall consist of the following members, namely:--
>
> (a) the Union Finance Minister -- Chairperson;
>
> (b) the Union Minister of State in charge of Revenue or Finance --

Member;

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

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

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

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

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

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

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

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

Page No.# 39/73

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

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

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

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

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

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

(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

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

(a) the vote of the Central Government shall have a weightage of one-

third of the total votes cast; and

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

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

Page No.# 40/73

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

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

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

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

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

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

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

9. From a perusal of the above quoted Article, it would be seen that the GST Council have been given a Constitutional status. What the GST Council would be comprised of have been stipulated in Sub-Article (2) and (3) of Article 279A. Sub-Article (4) of Article 279A is of paramount importance for the purpose of the instant proceedings taking into account that the said Sub- Article stipulates in what fields the GST Council shall make recommendation to the Union and the States. The scope and interpretation of the recommendation(s) made by the GST Council would be specifically dealt with in the later segments of the instant judgment.

10. Before further proceeding to analyze Article 279A of the Constitution, it is relevant to note that a reading of the Objects and Reasons of the Constitution (122nd Amendment) (GST) Bill, 2014, the Parliamentary reports and the speeches would indicate that Article 246A and Article 279A were Page No.# 41/73 introduced with the objective of enhancing cooperative federalism and harmony between the States and the Centre. In that context, Article 279A(6) of the Constitution is required to be analyzed. Sub-Article (6) of Article 279A brings into effect the concept of cooperative federalism. In terms with the said Sub-Article, the recommendations to be made by the GST Council has to be made through a harmonized deliberation between the federal units.

11. This Court further finds it pertinent to mention that on account of the outbreak of COVID-19 pandemic and the difficulties faced by assessee as well as the GST Authorities, the Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act, 2020 was enacted on 29.09.2020. By the said Act of 2020, Section 168A was inserted to the Central Act.

12. The State of Assam also followed suit by initially bringing the Assam Goods Service Tax (Amendment) Ordinance, 2020, which was subsequently repealed and the Assam of Goods and Service Tax (Amendment) Act, 2020 was enacted thereby incorporating Section 168A to the State Act.

13. The provision of Section 168A in both the Central Act and the State Act are replica of each other and the said provision is reproduced herein below:

"Section 168A. Power of Government to extend time limit in special circumstances.--

> (1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.
>
> (2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier Page No.# 42/73 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."

14. A perusal of Section 168A as quoted hereinabove would show that it starts with a non-obstinate clause, thereby empowering the Government to issue a notification thereby extending the time limit specified in or prescribed or notified in the Act in respect of actions which cannot be completed or complied with due to force majeure. Deciphering therefore Section 168A, it would show the following:

> The Government can extend the time limit specified or prescribed or notified in the Act-
>
> (i) On the recommendation made by the GST Council;
>
> (ii) By issuance of a notification;
>
> (iii) In respect of actions which cannot be completed or complied;

and

(iv) Due to force majeure.

15. The term "force majeure" had been defined in the Explanation to Section 168A to mean a case of (i) war, (ii) epidemic, (iii) flood, (iv) drought,

(v) fire, (vi) cyclone, (vii) earthquake or any other calamity caused by the nature or otherwise which would effect the implementation of any other provisions of the Act. Therefore, it would be seen that in order to exercise Page No.# 43/73 the power under Section 168A, the Government would be required to show that on account of the force majeure, it was beyond the control of the Authorities to complete or comply within the time limit specified/prescribed/notified in the Act.

16. Sub-Section (2) of Section 168A is also very relevant inasmuch as it empowers the Government to issue a notification in terms with Sub-Section (1) of Section 168A and such power shall also include the power to give retrospective effect from a date not earlier than the date of commencement

of the Act.

17. Section 44 of the Central Act stipulates the requirement of filing of the Annual Return for every financial year in FORM GSTR-9 on or before the 31 st day of December following the end of such financial year, through the common portal, either directly or through a facilitation center notified by the Commission. For the financial year 2017-18 the annual return was therefore required to be filed on or before 31 st of December, 2018. By a Notification No.8/2019-CT dated 14.11.2019, the Central Government by exercising the powers under Section 179 of the Central Act, extended the period for filing the annual return to 31st December, 2019.

18. Applying the above principle for the Financial Year 2018-19, the last date for filing of the Annual Return would have been 31 st December, 2019 and for the Financial Year 2019-20, the last date for filing the Annual Return would have been 31st December, 2020. Vide the Notification No.8/2019-CT, the period for filing the Annual Return for the Financial Year 2018-19 was Page No.# 44/73 extended up to 31st March, 2020.

It is also noteworthy to mention that vide another Notification bearing No.6/2020-CT dated 03.02.2020, the due date for filing the Annual Return for the Financial Year 2017-18 was extended to 7th February, 2020 for the State of Assam. In respect to the Financial Year 2018-19, various notifications were issued and the last of such Notification was bearing No. 80/2020-CT dated 28th October, 2020 whereby the period for filing the Annual Return was extended to 31 st December, 2020. For the Financial Year 2019-20, the period for filing the Annual Return was also extended vide a notification up to 31.03.2021 vide a Notification No.4/2021-CT dated 28.02.2021.

19. Now the effect of these notifications extending the period for filing the Annual Return have also a corresponding effect on the period prescribed for passing orders. Section 73(10) of the Central Act as well as the State Act stipulates that the proper Officer shall issue the order under Section 73(9) within three years from the due date for furnishing the Annual Return for the Financial Year. It is also necessary to take note of Section 73(2) which stipulates that the proper Officer shall issue the notice in terms with Section 73(1) at least three months prior to the time limit specified in Section 73(10) for issuance of order. In that view of the matter, the following situation emerges in view of the various notifications issued extending the period for furnishing the Annual Return. The same are detailed in the table below:

> Page No.# 45/73 Financial Due date for Last date for Last date for Year filing Annual issuance of Notice issuance of order Return under Section under Section 73(9) 73(2) 2017-18 07.02.2020 07.11.2022 07.02.2023 2018-19 31.12.2020 30.09.2023 31.12.2023 2019-20 31.03.2021 30.12.2023 31.03.2024

20. In the meantime, as Section 168A was incorporated to both the Central Act and the State Act, a notification was issued bearing No.13/2022- CT dated 05.07.2022 whereby in exercise of the powers under Section 168A, the time limit specified under Sub-Section (10) of Section 73 of the Central Act for issuance of the order under Sub-Section (9) of Section 73 for the Financial Year 2017-18 was extended upto 30th of September, 2023.

21. The records further reveals that various tax administrations requested before the GST Council seeking recommendation for extending the period in respect to the financial year 2017-18, 2018-19 and 2019-20. The GST Council in its 49th Meeting recommended extension of the time limit under Sub-Section (10) of Section 73 of the Central Act for Financial Years 2017- 18, 2018-19 and 2019-20 for only three months. The relevant portion of the 49th Meeting of the GST Council being pertinent to the dispute involved is reproduced herein under:

> "Agenda item 4(vii) : Extension of time limit under sub-section (10) of section 73 of CGST Act for FY 2017-18, FY 2018-19 and FY 2019-20.
>
> Page No.# 46/73 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."

22. On the basis of the said recommendation, the Notification No.9/2023- Page No.# 47/73 CT was issued on 31st of March 2023 whereby the period for passing the order in terms of Section 73(9) was extended for the Financial Year 2017-18 up to 31st of December, 2023; for the Financial Year 2018-19 up to 31 st March, 2024 and for the Financial Year 2019-20 up to the 30 th of June, 2024. This Notification No.9/2023-CT is impugned in some of the writ petitions.

23. The record further reveals and more particularly from the stand of the CGST in their first affidavit filed in WP(C) No.1229/2024 that though the period was extended vide the Notification No.9/2023-CT but as the time limit for issuance of notice in terms of Section 73(2) of the Central Act for the financial year 2018-19 was expiring on 31.12.2023 and there was no meeting of the GST Council scheduled to be held, the Central Government issued the Notification No.56/2023-CT thereby extending the time limit for passing of the order under Section 73(9) for the financial year 2018-19 up to 30th April, 2024 and for the financial year 2019-20 up to 31st August, 2024.

24. It is pertinent to mention herein that in spite of the fact that there was no recommendation from the GST Council but in the Notification No. 56/2023-CT, the Central Government had used the phrase "on the recommendation of the Council". It is also apposite to take note of circular bearing No.FNO.CBIC-20/10/07/2021-GST/516 dated 14.05.2024 which was issued by the Deputy Commissioner, GST to all the Principal Chief Commissioners/ Chief Commissioners of Central Tax and Customs, DGRI, DGGI wherein at Clause 2.8.1, it was categorically mentioned that there was no recommendation taken prior to issuance of the Notification No.56/2023- CT dated 28.03.2023 and the request for recommendation shall be placed Page No.# 48/73 before the GST Council for ratification in the next meeting. In addition to that, in the first affidavit filed by the Assistant Commissioner, Law in WP(C) No.1229/2024, the same stand was taken. It is also relevant to mention that during the course of the hearing, the relevant excerpts of Meeting of the GST Council in its 50th, 51st, 52nd, 53rd and 54th Meeting were placed wherein also there is no mention of any recommendation from the GST Council.

25. This Court finds it pertinent to mention that in WP(C) No.1229/2024 another affidavit-in-opposition was filed wherein it was mentioned that the affidavit-in-opposition which was filed on 01.06.2024 may not be taken into consideration for the ends of justice inasmuch as the said affidavit was filed on non-reading of the provisions of the Constitution and the Central Act. A perusal of the said affidavit shows that a complete summersault had been made by the CGST to its earlier stand by stating that the recommendation is not binding. However, there is no explanation to the content of the Notification No.56/2023-CT wherein it is mentioned that the said Notification had been issued on the recommendation of the GST Council.

CONTENTIONS OF THE PARTIES:

26. The learned counsels appearing on behalf of the Petitioners submitted that as apparently there is no recommendation from the GST Council prior to issuance of the Notification No.56/2023-CT, the

said notification is ultra vires the provisions of Section 168A of the Central Act. It is further submitted that in spite of having no recommendations, the Central Government for reasons other than bona fide, have resorted to falsehood by mentioning in the Notification No.56/2023-CT that there was a recommendation and as such, Page No.# 49/73 the manner in which the power has been exercised by the Central Government while issuing the impugned Notification No.56/2023-CT amounts to colorable exercise of power. The learned counsel appearing on behalf of the Petitioners further submitted that the Respondent Authorities on the basis of the Notification No.56/2023-CT had passed various impugned orders under Section 73(9) of the Central Act as well as the State Act and as such, the said orders are without jurisdiction having been passed beyond the period prescribed in Section 73(10). It has also been submitted to the effect that a perusal of Section 168A of the both the Central Act and the State Act shows that the recommendation of the GST Council is a condition precedent, there cannot be a subsequent ratification by the GST Council. The learned counsels for the petitioners further submitted that although in the circular dated 14.05.2024 as well as the initial affidavit filed in WP(C) No.1229/2024, there is a mention that the matter would be placed before the next GST Council Meeting, however, from a perusal of the Minutes of the Meeting which followed after the 49 thMeeting of the GST Council i.e. the 50 th, 51st, 52nd, 53rd as well as on 54th, there is no agenda seeking recommendations for extension.

27. The learned counsel for the petitioners further submitted that the affidavit so filed by the CGST on 19.08.2024 is completely misconceived inasmuch as on one hand, they have taken a stand that the recommendation of the GST Council are persuasive and not binding but and on the other hand in the impugned Notification No.56/2023-CT they have themselves mentioned that the Notification was issued on the recommendation of the GST Council. The learned counsels appearing on behalf of the Petitioners Page No.# 50/73 therefore submitted that the conflicting stand so taken by the CGST in both the affidavits are nothing but to mislead the Court.

28. The learned counsel for the Petitioners further submitted that in respect to the challenge to the Notification No.9/2023-CT, the question of there being a force majeure does not arise inasmuch as the COVID pandemic was not affecting the working of the administration in the year 2022 and thereupon there is already an extension granted earlier and as such, unless the State Government or the Central Government would have proved by way of affidavit or otherwise giving material particulars that they were not able to perform on account of force majeure, the condition precedent that it is only when there exists force majeure is not fulfilled and as such, the Notification No.9/2023-CT is also required to be interfered with.

29. The learned counsels further submitted that the State of Assam had issued a Notification dated 06.09.2024 only covering the period stipulated in the Notification No.9/2023-CT and as such, there is a notification in terms with Section 168A of the State Act for the period when the impugned Orders-in-Original have been passed. Under such circumstances, the impugned Orders-in-Original could not have been passed by the State GST Authorities on or after 01.04.2024 insofar as Financial Year 2018-19 is concerned and on or after 01.07.2024 for the Financial Year 2019-20 is concerned.

30. The learned counsels for the Petitioners further submitted that when Section 168A of both the Central Act and the State Act categorically mentions "on the recommendations of the Council", the

power to extend can only be on the recommendation of the Council. It was submitted that the Page No.# 51/73 judgment in the case of Union of India and Another Vs. Mohit Minerals Private Limited reported in (2022) 10 SCC 700 does not lay a proposition that without recommendations, the Union Government or the State Government can exercise the power under Central Act or the State Act. The said judgment is only for the proposition that in certain cases, the recommendation of the GST Council is not binding whereas in respect to secondary legislations, it is binding. It was therefore contended that when Section 168A of both the Central Act or the State Act stipulated that only on recommendation, the power can be exercised, then it is only following the mandate of the said stipulations, the power could have been exercised.

31. Per Contra, Mr. S. C. Keyal, the learned Standing counsel appearing on behalf of the CGST submitted that in view of the coming into effect of the Finance Act, 2024, no cause of action in respect to the instant writ petition survive inasmuch as the Petitioners herein would be entitled to the various reliefs in terms with the amendments so brought in to the Central Act. Mr. S. C. Keyal, the learned Standing counsel fairly submitted that in respect to the Notification No.56/2023-CT, there was no recommendations made by the GST Council for issuance of the said notification and to his knowledge there is also no ratification by the GST Council till date. In addition to that, as regards the force majeure, the learned counsel submitted that during this period, on account of the COVID-19 pandemic, there were various delays on account of completing certain assessment, audit etc. and under such circumstances, the existence of force majeure as defined in the Explanations to Section 168A was there.

32. The learned counsel appearing on behalf of the CGST submitted that Page No.# 52/73 all recommendations made by the GST Council are not binding and are persuasive in nature and as such, the Union Government or the State Government can issue Notification under Section 168A of the Central Act more so when the Supreme Court in Mohit Minerals Pvt. Ltd. (supra) had watered down the effect of the recommendations to be made by the GST Council.

33. The learned counsel further submitted that it is inconceivable as to why the Notification No.9/2023-CT had been put to challenge inasmuch as none of the Petitioners are effected by the said Notification as the impugned Orders-in-Original are passed during the period covered by the Notification No.56/2023-CT.

34. Dr. B. N. Gogoi, the learned Standing counsel appearing on behalf of the CGST also made similar submissions to what Mr. S.C. Keyal, the learned Standing counsel for the CGST had made and for the sake of brevity, this Court is not repeating the same.

35. Mr. B. Gogoi, the learned Standing counsel appearing on behalf of the Finance and Taxation Department of the Government of Assam submitted that the State Government have issued a notification on 06.09.2024 by exercising the powers under Section 168A of the State Act which is pari materia in content to the notification No.9/2023-CT.He further submitted that this notification has been issued with the recommendation of the GST taking into account that the GST had granted the recommendation in its 49thMeeting. The learned Standing counsel however fairly submitted that there is no other notification issued by the Government of Assam which is pari materia to the

Notification No.56/2023-CT.

Page No.# 53/73

36. The learned counsels appearing on behalf of the Petitioners in reply submitted that the submission made by the learned Standing counsel for the CGST insofar as the applicability of the Finance Act, 2024 is concerned is misconceived taking into account that the provisions of Section 114 to 157 of the Finance Act, 2024 which are the amendments sought to be made to the Central Act have not yet been notified.

ANALYSIS AND DETERMINATION:

37. I have the learned counsels for the parties and have given anxious consideration to the respective submission.

38. This Court has duly taken note of that the impugned Orders-in-Original which are challenged in the instant batch of writ petitions are orders passed in respect to the Financial Year 2018-19 and 2019-20. The impugned Order- in-Original insofar as Financial Year 2018-19 are concerned have been passed on or after 01.04.2024. Insofar as WP(C) No.4990/2024 which relates to Financial Year 2019-20, the impugned Order-in-Original was passed on 30.08.2024. Under such circumstances, the challenge so made to the Notification No.9/2023-CT as well as the pari materia notification issued by the State Government dated 06.09.2024 has no relevance for which this Court is not considering the challenge to the Notification No.09/2023-CT as well as the Notification dated 06.09.2024 issued by the State Government.

The question which therefore arises is as to whether the Notification No.56/2023-CT dated 28.12.2023, is ultra vires the provisions of Section 168A of the Central Act?

39. In the preceding segments of the instant judgment, this Court had Page No.# 54/73 dealt with Section 168A of both the Central Act and the State Act as well as its amplitude. From the said discussions, it is apparent that for the Government to exercise the powers under Section 168A to extend the time limit specified or prescribed or notified, it can be made on the recommendation of the GST Council by way of a notification in respect to acts which could not be completed or complied with due to force majeure. The challenge to the Notification No.56/2023-CT is on account of absence of recommendation by the GST Council and existence of force majeure as defined in the Explanation to Section 168A of the Central Act.

40. There is no denial to the fact that the Notification No.56/2023-CT was issued without the recommendation of the GST Council. The use of the phrase "on the recommendation of the Council" in Section 168A prima facie suggests that the power to be exercised under Section 168A by the Government is when a recommendation is made by the GST Council. The question therefore arises as to whether the recommendation of the GST Council is sine qua non for exercise of the power under Section 168A by the Government.

41. In the Black's Law Dictionary, 11th Edition, the term "recommendation" is defined as -

> "A specific piece of advice about what to do, esp. when given officially.
>
> A suggestion that someone should choose a particular thing or person that one thinks particularly good or meritorious."

42. In the case of V.M. Kurian Vs. State of Kerala reported in (2001) 4 SCC 215, the Supreme Court was dealing with Rule 5 of Kerala Building Rules and Page No.# 55/73 the question which arose was whether without the recommendation of Greater Cochin Development Authority and the Chief Town Planner, the State Government could have granted exemption from the operation of the Kerala Building Rules for construction of an eight storey building. The Supreme Court in the said judgment observed that the word "recommendation" is "a statement expressing commendation or a message of this nature". However, taking into account that the word "recommendation" was not defined in the Kerala Building Rules, it was observed that the meaning of the word "recommendation" has to be understood in the context of the provisions of the Kerala Building Rules and the object behind the Rules. Paragraph No.7 of the said judgment being relevant is quoted herein below:

> "7. Learned counsel appearing for the appellant urged that the application submitted by the 5th respondent having not been processed in conformity with Rule 5 of the Rules and, therefore, the said application could not have been entertained by the State Government. It was also argued that in the absence of any recommendation by GCDA and the Chief Town Planner, the State Government could not have granted exemptions from operation of the Rules for construction of an eight-storeyed building by the 5th respondent. Whereas, learned counsel for the 5th respondent contended that the meaning of the word "recommendation" does not necessarily mean "a no-objection certificate" by GCDA and the Chief Town Planner, but it contemplates only their viewpoint. He further argued that even if GCDA and the Chief Town Planner had objected to grant of the application, the State Government, in exercise of its overriding power can permit dispensation of the Rules for construction of a high-rise building. In order to appreciate the argument of the parties, it is necessary to quote the relevant portion of Rule 5, which runs thus:
>
> "5. Power of Government to exempt buildings.--The Government may in consultation with the Chief Town Planner exempt any building from the operation of all or any of the provisions of these Rules, subject to Page No.# 56/73 conditions if any, to be stipulated in the order, granting such exemptions:
>
> Provided that such exemption shall be considered on individual application forwarded to the Government through the authority and the Chief Town Planner with their specific recommendations:

> Provided further that such exemption shall be considered only if the individual application for exemption from Building Rules is forwarded to Government along with a challan receipt remitting the application fee in the Government Treasury as detailed below...."

A perusal of Rule 5 shows that an application for exemption from the provisions of the Rules is required to be processed through GCDA and the Chief Town Planner. The Rule further requires that the application is to be forwarded to the State Government along with the specific recommendations of GCDA and the Chief Town Planner. The question, therefore, that arises for consideration is whether in the absence of any recommendation by GCDA and the Chief Town Planner the State Government was competent to grant exemption from the operation of the Rules for construction of a high- rise building. The dictionary meaning of the word "recommend" is "to advise", "to praise or commend". In P. Ramanatha Aiyar's Law Lexicon, the meaning of the word "recommendation" is "a statement expressing commendation or a message of this nature" or suggests fit. It is true that the word "recommendation" is not defined in the Rules. If we do not go by the meaning of the word "recommendation", as suggested by learned counsel for the 5th respondent, and found that there is no conclusive meaning of the word "recommendation" we are of the view that in such a situation the meaning of the word has to be understood in the context of the provisions of the Rules and the object behind such Rules. The Rules with which we are concerned here provide for regulation and construction of a building in an urban area. The object behind the Rules is maintenance of public safety and convenience. The Municipal Corporation, GCDA, and the Chief Town Planner are entrusted with the functions and duties for carrying out development and regulation of building in the urban area. These are the authorities on the spot who have special and technical knowledge to advise the Government whether public safety and convenience requires dispensing Page No.# 57/73 with the provisions of the Rules while permitting construction of an eight- storeyed building. Thus, the meaning of the word "recommend", when read in the context of the Rules shows that it means "giving of a favourable report opposed to an unfavourable one". We, therefore, find that recommendations by GCDA and the Chief Town Planner are sine qua non for granting exemption from operation of the Rules by the State Government. In the absence of such recommendations, the State Government was not legally justified in granting exemption from operation of the Rules for construction of a high-rise building. However, the position would be different where GCDA and the Chief Town Planner give an unfavourable report on irrelevant or extraneous ground and in that case, the Government can call for a fresh report for meeting the viewpoint of GCDA and the Chief Town Planner. Here, what we find is that there were neither recommendations by GCDA and the Chief Town Planner, nor the State Government obtained any fresh report to contradict the viewpoint of GCDA and the Chief Town Planner while granting exemption from operation of the Rules for constructing a high-rise building. We are, therefore, of the view that the impugned orders suffer from serious legal infirmity."

From the above quoted paragraph, it would be seen that the Supreme Court after taking into account the object behind the Kerala Building Rules observed that the recommendation from the Greater Cochin Development Authority and the Chief Town Planner were sine qua non for granting exemption from operation of the Rules by the State Government and as such held that the State Government was not legally justified in granting exemption.

43. In the instant case, it would be seen that both the Central Act as well as the State Act do not define the term "recommendation". Under such circumstances, it would be necessary to understand the impact of the word "recommendation" in the context of the provisions of the Constitution as well as the Central Act and State Act. In the earlier segments of the instant Page No.# 58/73 judgment, this Court had dealt with Article 246A as well as Article 279A of the Constitution. Article 246A of the Constitution confers both upon the Parliament and the State Legislature simultaneous power to legislate on Goods and Service Tax. The said power can be exercised notwithstanding anything contained in Article 246 and 254 of the Constitution. It is also pertinent to take note of that the said power conferred on the Parliament and the State Legislature is not subject to Article 279A except to the extent that in respect to the Goods and Service Tax to be levied on petroleum, crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel, the power can be exercised under Article 246A from the date recommended by the GST Council.

44. This Court had also dealt with in detail as regards Article 279A of the Constitution. The power to make recommendation to the Union and the States is mentioned in Article 279A(4) of the Constitution. It is also apposite to observe that the recommendation to be made shall be guided by the need for a harmonized structure of Goods and Service Tax and for development of a harmonized national market for Goods and Service Tax in terms with Article 279A(6). Article 279A(9) stipulates the value of the votes of the Central Government vis-à-vis the State Government i.e. one third of the votes cast and two third of the votes cast respectively. The role of the GST Council is succinctly explained by the Supreme Court in the case of Mohit Minerals Pvt. Ltd. (supra) at paragraph No.50 and the same is quoted herein below:

> "50. Article 246-A vests Parliament and the State Legislatures with a unique, simultaneous law-making power on GST. It is in this context that the role of the GST Council gains significance. The recommendations of the GST Page No.# 59/73 Council are not based on a unanimous decision but on a three-fourth majority of the members present and voting, where the Union's vote counts as one-third, while the States' votes have a weightage of two-thirds of the total votes cast. There are two significant attributions of the voting system in the GST Council. First, the GST Council has an unequal voting structure, where the States collectively have a two-third voting share and the Union has a one-third voting share; and second, since India has a multi-party system, it is possible that the party in power at the Centre may or may not be in power in various States. Therefore, the GST Council is not only an avenue for the exercise of cooperative federalism but also for political contestation across party lines. Thus, the discussions in the GST Council impact both federalism and democracy. The constitutional design of the Constitution Amendment Act, 2016 is sui generis since it introduces unique features of federalism. Article 246-A treats the Centre and States as equal units by conferring a simultaneous power of enacting law on GST. Article 279-A in constituting the GST Council envisions that neither the Centre nor the States can act independent of the other."

45. Another very important aspect which is also required to be kept in mind insofar as to the role of the GST Council is that as Article 246A of the Constitution provides simultaneous power to both the

Parliament and the State Legislatures and the said power so conferred overrides Article 254 of the Constitution, the GST Council is the only body to harmonize any inconsistency between the Union and the States to reach a workable fiscal model through cooperation and collaboration. This Court at this stage further finds it relevant to quote paragraph Nos. 55 and 56 of the judgment of the Supreme Court in Mohit Minerals Pvt. Ltd. (supra).

> "55. Such form of contestation or as the authors term it, "uncooperative federalism" is valuable since "it is desirable to have some level of friction, some amount of State contestation, some deliberation-generating froth in our democratic system." [Jessica Bulman-Pozen and Heather K. Gerken, "Uncooperative Federalism", Yale Law Journal, Vol. 118. No. 7 (May, Page No.# 60/73 2009), p. 1284.] Therefore, the States can use various forms of contestation if they disagree with the decision of the Centre. Such forms of contestation are also within the framework of Indian federalism. The GST Council is not merely a constitutional body restricted to the indirect tax system in India but is also an important focal point to foster federalism and democracy.
>
> 56. One of the important features of Indian federalism is "fiscal federalism".

A reading of the Statement of Objects and Reasons of the 2014 Amendment Bill, the Parliamentary reports and speeches indicate that Articles 246-A and 279-A were introduced with the objective of enhancing cooperative federalism and harmony between the States and the Centre. However, the Centre has a one-third vote share in the GST Council. This coupled with the absence of the repugnancy provision in Article 246-A indicates that recommendations of the GST Council cannot be binding. Such an interpretation would be contrary to the objective of introducing the GST regime and would also dislodge the fine balance on which Indian federalism rests. Therefore, the argument that if the recommendations of the GST Council are not binding, then the entire structure of GST would crumble does not hold water. Such a reading of the provisions of the Constitution diminishes the role of the GST Council as a constitutional body formed to arrive at decisions by collaboration and contestation of ideas."

46. Therefore, from the above analysis, it is apparent that the object behind the insertion of the Article 246A and Article 279A and overriding Article 254 is to promote fiscal federalism and cooperative federalism. Under such circumstances, the recommendations to be made by the GST Council if required as per the provisions of the Central Act or the State Act has to be construed to be a sine qua non for exercise of power by the Union or the State Government. In other words, wherever the provisions of the Central Act or the State Act stipulates that an act is required to be done on the recommendation of the GST Council, the act can be done only when there is a recommendation. As observed by the Supreme Court in V.M. Kurian (supra), the meaning of the word "recommend" would also in the opinion of Page No.# 61/73 this Court be applicable to the interpretation of Section 168A to mean "giving of a favourable report opposed to an infavourable one" by the GST Council for exercise of power under Article 168A.

47. At this stage, let this Court take into account the submission of the learned counsel for the CGST to the effect that all recommendation of the GST Council are not binding and as such even without

the recommendation, the Government could exercise the powers under Section 168A of the Central Act. The said submission is misconceived for the following reasons:

(A) (i) There is a fundamental difference between no recommendation made and the effectiveness of the recommendations. A perusal of Section 168A stipulates that the power may be exercised on the recommendation of the GST Council meaning thereby taking into account the analysis made in the previous paragraphs that there is a favourable report by the GST Council for the Government to exercise the power under Section 168A. The existence of the recommendation is a sine qua non for exercising the power under Section 168A to extend the timelines and without the recommendations, the exercise of the power would be legally not sustainable. On the other hand, the effectiveness of the recommendation has to be judged on the principles of whether such recommendation is binding on the Union or the State. For example, the GST Council may have made a recommendation to carry out a particular exercise by the Government under the Central Act or the State Act. The said recommendation may be Page No.# 62/73 binding upon the Government or may not be depending upon the purpose of the enactment. But the fact that it is not binding cannot be construed to mean that the Government can act without a recommendation of the GST Council if the Central Act or the State Act stipulates that the Government can exercise on the recommendation of the GST Council.

(ii) At this stage, this Court finds it pertinent to further deal with the judgment of the Supreme Court in the case of Mohit Minerals Pvt. Ltd. (supra) and under such circumstances, the said judgment was rendered. A perusal of the facts of the said judgment would show that two Notifications bearing No.8/2017 and 10/2017 were the subject matter of challenge. These notifications were issued on the recommendation of the GST Council. The Gujarat High Court set aside both the Notifications No.8/2017 and 10/2017 being unconstitutional for exceeding the powers conferred by the IGST Act and the Central Act. In the Appeal before the Supreme Court, the learned Attorney General amongst other contentions submitted that taking into account the constitutional scheme and that the Union and the States have agreed to go by the recommendations of the GST Council in every aspect of GST law wherever required, the recommendations so made by the GST Council were binding and must be respected in the spirit of collaborative federalism.

(iii) The Supreme Court in the said judgment and more particularly at Paragraph No. 57 and its sub-paragraphs analyzed the five Page No.# 63/73 categories into which the phrase "recommendation" had been deployed in the Constitution i.e.

(a) Recommendations by the President under Articles 3, 109, 111, 113, 117, 203, 207, 255 and 274 prior to laying before the Parliament for voting.

(b) Recommendations followed by consultation;

(c) Recommendations with accountability;

(d) Non-Qualifying recommendations;

(e) Recommendations which are obligatory in nature.

(iv) The observations of the Supreme Court in paragraph Nos. 58 and 59 are relevant and the same are quoted herein below:

"58. A survey of the above provisions indicates that the nature and meaning of the term "recommendation" differs contextually. All the provisions qualify the nature of recommendation. For instance, in category one, the recommendation of the President is for the initiation of the discussion; in category two, a decision on the recommendation is arrived upon "consultation"; in category three, the decision-making authority has to submit an explanatory note on the action or inaction taken on the recommendations; in category four, the recommendations are not qualified. Article 263 only states that the inter-State Council has a duty to recommend. There is no further explanation on whether the recommendation ought to be mandatorily accepted, or deliberated upon; in category five, the recommendations of the authority are expressly stated to be "binding" on the decision-making authority.

Page No.# 64/73

59. The GST Council which is a constitutional body is entrusted with the duty to make recommendations on a wide range of areas concerning GST. The GST Council has plenary powers under Article 279-A(4)(h) where it could make recommendations on "any other matter" related to GST as the Council may decide. The GST Council has to arrive at its recommendations through harmonised deliberation between the federal units as provided in clause (6) of Article 279-A. Unlike the other provisions of the Constitution which provide that recommendations shall be made to the President or the Governor, Article 279-A states that the recommendations shall be made to the "Union and the States". The recommendation of the GST Council made under Article 279-A is non-qualified. That is, there is no explanation on the value of such a recommendation. Yet the notion that the recommendations of the GST Council transform into legislation in and of themselves under Article 246-A would be far-fetched. If the GST Council was intended to be a decision-making authority whose recommendations transform to legislation, such a qualification would have been included in Articles 246-A or 279-A. Neither does Article 279-A begin with a non-obstante clause nor does Article 246-A provide that the legislative power is "subject to"

Article 279-A."

(v) The above observations only go to show that the recommendations made by the GST council on its own would not result in a legislation.

(vi) In the said judgment, the Supreme Court further dealt with the interpretation of the recommendation vis-à-vis the Central Act and IGST Act, 2017 and observed at paragraph No. 65 and 66 as follows:

> "65. The contention of the Union is that the recommendations of Page No.# 65/73 the GST Council are binding since Parliament and the State Legislatures have agreed to align themselves with the recommendations as is evident from the provisions of the IGST Act and the CGST Act. Certain provisions of the IGST Act, the CGST Act and the SGST Acts expressly provide that the rule- making power delegated to the Government shall be exercised on the recommendations of the GST Council. For instance, Section 5 of the IGST Act provides that the taxable event, taxable rate and taxable value shall be notified by the Government on the "recommendations of the Council". Similarly, the power of the Central Government to exempt goods or services or both from levy of tax shall be exercised on the recommendations of the GST Council under Section 6 of the IGST Act. Section 22 provides that the Government may exercise its rule-making power on the recommendations of the GST Council. The CGST Act also provides for similar provisions in Sections 9, 11 and 164.
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> 66. The provisions of the IGST Act and the CGST Act which provide that the Union Government is to act on the recommendations of the GST Council must be interpreted with reference to the purpose of the enactment, which is to create a uniform taxation system. The GST was introduced since different States could earlier provide different tax slabs and different exemptions. The recommendations of the GST Council are made binding on the Government when it exercises its power to notify secondary legislation to give effect to the uniform taxation system. The Council under Article 279-A has wide recommendatory powers on matters related to GST where it has the power to make recommendations on subject-matters that fall outside the purview of the rule-making power under the provisions of the IGST and the CGST Act. Merely because a few of the recommendations of the GST Council are binding on the Government under the provisions of the CGST Act and the IGST Act, it cannot be argued that all of the GST Council's recommendations are binding. As a matter of first principle, the provisions of the Constitution, which is the grundnorm of the Page No.# 66/73 nation, cannot be interpreted based on the provisions of a primary legislation. It is only the provisions of a primary legislation that can be interpreted with reference to the Constitution. The legislature amends the Constitution by exercising its constituent power and legislates by exercising its legislative power. The constituent power of the legislature is of a higher constitutional order as compared to its legislative power. Even if it is Parliament that has enacted laws making the recommendations of the GST Council binding on the Central Government for the purpose of notifying secondary legislations, it would not mean that all the recommendations of the Council made by virtue of its power under Article 279-A have a binding force on the legislature."

(vii) The above analysis by the Supreme Court would show when a recommendation would be binding and when not. The ratio which emerges from the above paragraphs only show that merely because of a few recommendation of GST Council are binding on the Government, it cannot be argued that all recommendations are binding. The ratio is based on the principle as stated that a Constitutional provision cannot be interpreted on the basis of a primary legislation rather a primary legislation is to be interpreted on the basis of the Constitution. However, the said judgment does not lay down the proposition that as some of the recommendations are not binding, there is no requirement of recommendation by the GST Council to exercise the power.

(B) The power to be exercised under Section 168A by the Government is a delegated power to issue a Notification which can be termed as a delegated legislation or a secondary legislation. The Page No.# 67/73 primary legislation is the Central Act or the State Act. In the judgment of the Mohit Minerals Pvt. Ltd. (supra), the Supreme Court at paragraph No.66 as quoted above had clearly observed that when the Government is exercising power to notify secondary legislations to give effect to the uniform taxation system, the recommendations are binding. Be that as it may, irrespective of the fact whether the recommendations are binding or not can it be said that without recommendations, the power under Section 168A could be exercised. The answer has to be in the negative.

(C) It is also very important to note that the power conferred on the Government under Section 168A to extend the timelines is power conferred under both the Central Act and the State Act. This power is conferred on the basis of the exercise of the legislative powers of the Parliament and the State Legislature as the case may be. Under such circumstances, when such power is conferred on the Government to make delegated legislation, the said power has to confirm to the stipulations contained in the parent Act and in the instant case, the Notification No.56/2023-CT had to confirm to the stipulations prescribed in Section 168A of the Central Act which would include the requirement of the recommendations of the GST Council.

(D) The Central Government knew that there was no recommendation from the GST Council and this aspect is clearly admitted. However, in the Notification No.56/2023-CT, the Central Government for reasons best known mentioned that "on the recommendations of the Council"

> which on the face of it shows that the exercise of power by the Central Page No.# 68/73 Government insofar as the Notification No.56/2023-CT is concerned is a colourable exercise of power for which the said Notification No.56/2023- CT is a colourable legislation.

48. Another ground of challenge to the Notification No.56/2023-CT is that as there was no element of force majeure, the question of exercising the power under Section 168A did not arise. In the previous segment of this judgment, this Court had dealt with the Explanation to Section 168A. The Explanation to Section 168A deals with various types of natural calamities, war, epidemic to come within the ambit of force majeure. It is pertinent to mention that the recommendation to be made by the GST Council have also to be based upon the existence of force majeure conditions. In the 49 th Meeting of the GST Council, it was clearly recorded that there shall be no further extension beyond

the three months in the interest of the tax payers. The Notification No.56/2023-CT was issued without the recommendation and that natural corollary thereof is that the GST Council had no occasion to consider existence of force majeure inasmuch as the same was never placed before the GST Council before issuance of the same. Therefore, the Notification No.56/2023-CT if construed from that angle also would be a notification issued without the force majeure condition being not considered in accordance with law.

49. Under such circumstances, this Court is of the opinion that the Notification No.56/20123-CT is ultra vires the Central Act and the same is not legally sustainable in law. Accordingly, the same is set aside and quashed.

50. It is also very pertinent to mention that the State of Assam have not Page No.# 69/73 issued any pari materia notification for the period on or after 01.04.2024 for the Financial Year 2018-19 and for the period on or after 01.07.2024 for the Financial Year 2019-20.

51. Under such circumstances, the impugned Orders-in-Original which have been passed under Section 73(9) both under the Central Act as well as State Act are beyond the time period prescribed under Section 73(10) of both the Central Act or the State Act for which the same are liable to be interfered with as being passed without jurisdiction.

52. The respective impugned Orders-in-Original which have been put to challenge in the instant batch of writ petitions are set aside and quashed. The details of the impugned Orders-in-Original which are set aside are provided in the Appendix to the instant judgment.

53. With above observations and directions, all the writ petitions stands allowed. However no costs.

54. Before parting with the records, the learned Standing counsels appearing on behalf of both the CGST and the SGST submitted that both the Union Government as well as the State Government has the power in terms of Section 168A(2) of both the Central Act and State Act to issue retrospective notifications and the judgment so passed herein should not prejudice their rights.

55. This Court finds it relevant to clarify that this Court had set aside the impugned Orders-in-Original detailed out in the Appendix to the instant judgment on the basis of declaring that the notification No.56/2023-CT is ultra vires the provisions of Section 168A of the Central Act as well as there Page No.# 70/73 being no notification issued by the State Government in conformity with Section 168A of the State Act. Under such circumstances, the decision herein shall not prejudice both the Central Government and the State Government to take such steps in the manner provided under law.

JUDGE APPENDIX

1. The impugned Order-in-Original bearing No.ZD18042403321T dated 26.04.2024 passed by the Assistant Commissioner of State Tax, Guwahati challenged in WP(C) No.3585/2024 is set aside and quashed.

2. The impugned Order-in-Original bearing No.37/AC/OIO/GST/PK/DIV- II/R-IID/ACG-II/2024 dated 23.04.2024 passed by the Assistant Commissioner of Central GST & Central Excise, Guwahati challenged in WP(C) No.3607/2024 is set aside and quashed.

3. The impugned Order-in-Original bearing No.05/GST/ADJ/ACD/20- 2024-25 dated 16.04.2024 passed by the Assistant Commissioner of Central GST, Dibrugarh challenged in WP(C) No.3610/2024 is set aside and quashed.

4. The impugned Order-in-Original bearing No.ZD180424044406G dated 30.04.2024 passed by the Assistant Commissioner of State Tax, Guwahati challenged in WP(C) No.3661/2024 is set aside and quashed.

5. The impugned Order-in-Original bearing No.ZD1804240485755 dated 30.04.2024 passed by the Assistant Commissioner of State Tax, Guwahati challenged in WP(C) No.3665/2024 is set aside and quashed.

Page No.# 71/73

6. The impugned Order-in-Original bearing No.ZD180424027002X dated 24.04.2024 passed by the Assistant Commissioner of State Tax, Goalpara challenged in WP(C) No.3865/2024 is set aside and quashed.

7. The impugned Order-in-Original bearing No.ZD1805240063900P dated 08.05.2024 passed by the Assistant Commissioner of State Tax, Cachar challenged in WP(C) No.3877/2024 is set aside and quashed.

8. The impugned Order-in-Original bearing No.12/SUPDT/OIO/GST/18ADVPP8678D1ZM/Nagaon dated 18.04.2024 passed by the Superintendent of CGST, Nagaon challenged in WP(C) No.4118/2024 is set aside and quashed.

9. The impugned Order-in-Original bearing No.ZD180424045491G dated 30.04.2024 passed by the Deputy Commissioner of State Tax, Guwahati challenged in WP(C) No.4226/2024 is set aside and quashed.

10. The impugned Order-in-Original bearing No.ZD180424046955130 dated 30.04.2024 passed by the Assistant Commissioner of State Tax, Guwahati challenged in WP(C) No.4257/2024 is set aside and quashed.

11. The impugned Order-in-Original bearing No.ZD1804240476738 dated 30.04.2024 passed by the Assistant Commissioner of State Tax, Dibrugarh challenged in WP(C) No.4456/2024 is set aside and quashed.

12. The impugned Order-in-Original bearing No.ZD180824024091L dated 30.08.2024 passed by the Assistant Commissioner of State Tax, Dibrugarh challenged in WP(C) No.4990/2024 is set aside

and quashed.

13. The impugned Order-in-Original bearing No.ZD1804240449850 dated Page No.# 72/73 30.04.2024 passed by the Assistant Commissioner of State Tax, Guwahati challenged in WP(C) No.4495/2024 is set aside and quashed.

14. The impugned Order-in-Original bearing No.ZD180424021954C dated 23.04.2024 passed by the Deputy Commissioner of State Tax, Dhubri challenged in WP(C) No.4577/2024 is set aside and quashed.

15. The impugned Order-in-Original bearing No.ZD180424026300G dated 24.04.2024 passed by the Deputy Commissioner of State Tax, Dhubri challenged in WP(C) No.4590/2024 is set aside and quashed.

16. The impugned Order-in-Original bearing No.ZD180124032607K dated 23.04.2024 passed by the Deputy Commissioner of State Tax, Dhubri challenged in WP(C) No.4591/2024 is set aside and quashed.

17. The impugned Order-in-Original bearing No.ZD18042402234Q dated 24.04.2024 passed by the Deputy Commissioner of State Tax, Dhubri challenged in WP(C) No.4592/2024 is set aside and quashed.

18. The impugned Order-in-Original bearing No.ZD180424026329C dated 24.04.2024 passed by the Deputy Commissioner of State Tax, Dhubri challenged in WP(C) No.4593/2024 is set aside and quashed.

19. The impugned Order-in-Original bearing No.ZD180424022153T dated 23.04.2024 passed by the Deputy Commissioner of State Tax, Dhubri challenged in WP(C) No.4594/2024 is set aside and quashed.

20. The impugned Order-in-Original bearing No.ZD180424026512N dated 24.04.2024 passed by the Deputy Commissioner of State Tax, Dhubri challenged in WP(C) No.4595/2024 is set aside and quashed.

Page No.# 73/73

21. The impugned Order-in-Original bearing No.ZD180424022467C dated 23.04.2024 passed by the Deputy Commissioner of State Tax, Dhubri challenged in WP(C) No.4596/2024 is set aside and quashed.

22. The impugned Order-in-Original bearing No.ZD180424022409C dated 23.04.2024 passed by the Deputy Commissioner of State Tax, Dhubri challenged in WP(C) No.4597/2024 is set aside and quashed.

23. The impugned Order-in-Original bearing No.ZD180424021863F dated 23.04.2024 passed by the Deputy Commissioner of State Tax, Dhubri challenged in WP(C) No.4598/2024 is set aside and quashed.

24. The impugned Order-in-Original bearing No.ZD180424048937X dated 30.04.2024 passed by the Assistant Commissioner of State Tax, Morigaon challenged in WP(C) No.4756/2024 is set aside and quashed.

25. The impugned Order-in-Original bearing No.ZD180424020402W dated 22.04.2024 passed by the Assistant Commissioner of State Tax, Jorhat challenged in WP(C) No.4681/2024 is set aside and quashed.

Comparing Assistant