



**IN THE HIGH COURT OF KARNATAKA,
KALABURAGI BENCH**

R

DATED THIS THE 1ST DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 200893 OF 2024 (T-RES)

BETWEEN:

M/S SAHAJ CONSTRUCTION
THROUGH ITS SUPERVISOR,
MR. DUDHAT GHANSHYAN BHUPATBHAI,
AGED 31 YEARS,
REGISTERED OFFICE AT SHOP NO.1,
GROUND FLOOR, MA PLAZA,
OPP. ABBAS TOWER,
NR GANESH NAGAR, RING ROAD,
KALABURAGI,
KARNATAKA-585101.

...PETITIONER

(BY DR. PODAR.,
SRI. RAGHAVENDRA C. R.,
SRI. BHANU MURTHY J S &
SRI. VEERSHETTY B K .,ADVOCATE)

AND:

1. UNION OF INDIA
THROUGH,
THE SECRETARY MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE),
NO. 137, NORTH BLOCK,
NEW DELHI-110001.
2. CENTRAL BOARD OF INDIRECT TAXES
THROUGH ITS CHAIRMAN,
DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE,
NORTH BLOCK,
NEW DELHI-110001.





3. OFFICE OF GST COUNCIL, SECRETARIAT
5TH FLOOR, TOWER-II,
JEEVAN BHARATHI BUILDING,
JANAPATH ROAD,
CONNAUGHT PLACE,
NEW DELHI-110001.
4. COMMISSIONER OF COMMERCIAL STATE TAX
VANIJYA THERIGE KARYALAYA,
KALIDASA ROAD, GROUND FLOOR,
GANDHINAGAR, BENGALURU-560009.
5. DEPUTY COMMISSIONER OF COMMERCIAL TAX
AUDIT-2, ROOM NO. F-11,
VANIJYA TERIGEGALA KARYALAYA,
NEAR RAILWAY STATION,
KALABURAGI,
KARNATAKA-585102.

...RESPONDENTS

(BY SRI. SUDHIRSINGH VIJAPUR., DSGI FOR R1
SRI. GIRISH HULIMANI., ADVOCATE FOR R2 & R3
SRI. MALHAR RAO., AAG &
SMT. MAYA T.R., HCGP FOR R4 & R5)

THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION, HOLDING DECLARING THAT THE NOTIFICATION NO. 09/2023 DATED 31-03-2023. ISSUED BY THE RESPONDENT AUTHORITIES NO 2, AS DEHORS AND VIOLATIVE OF THE PROVISION OF SECTION 168A, ARBITRARY, EX-FACIE ILLEGAL AND WITHOUT JURISDICTION (ANNEXED AS ANNEXURE A) AND ETC.

THIS WRIT PETITION, COMING ON FOR FURHTER HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ



ORAL ORDER

(PER: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ)

1. The petitioner is before this Court seeking for the following reliefs:

(a) To issue a writ of certiorari or any other appropriate writ, order or direction, holding declaring that the notification no. 09/2023 dated 31-03-2023. issued by the respondent authorities no 2, as de hors and violative of the provision of section 168A, arbitrary, ex-facie illegal and without jurisdiction (Annexed as Annexure A)

(b) To issue a writ of certiorari any other appropriate writ, order or direction, quashing and setting aside the show cause notice dated 29-09-2023 and summary show cause notice dated 30-09-2023 issued by the respondent authorities no. 5 vide Annexure B and B1 bearing no. DCCT/AUDIT/-2/KLB/DRC-01/2023-24/B and reference no. ZD290923055644Y respectively

(c) To issue a writ of certiorari, mandamus or any other appropriate writ, order or direction, quashing and setting aside the order dated 21-12-2023 and summary of order dated 21-12-2023 issued by the respondent authorities no. 5 vide Annexure C and C1 bearing no. DCCT/AUDIT-2/KLB/DRC-07/2023-24 and reference no. ZD2912230635881 respectively

(d) To issue order(s), direction(s), writ(s), or any other relief(s) as this honourable court deems fit and proper in the facts and



circumstances of the case and in the interest of justice.

(e) To award costs of and incidental to this application be paid by the Respondents.

2. A show cause notice came to be issued to the petitioner under Subsection (10) of Section 73 of the GST Act on 29.09.2023 under Subsection (1) of Section 73 of the KGST and CGST Acts 2017.
3. The contention of the petitioner is that orders on the same in terms of Subsection (10) of Section 73 being required to be passed by 30.09.2023, it is by virtue of a notification No.9/2023 dated 31.03.2023, that the time limit under Section 168A of the CGST Act has been extended in an arbitrary manner. If the said notification No.9/2023 is eschewed, no orders could be passed on the show cause notice issued under Subsection (1) of Section 73 by 30.09.2023 and the extension of time till 31.12.2023 for passing such orders is without any basis.



4. In this regard Dr.Podar, learned counsel for the petitioner would submit that,

4.1. In terms of decision of the Hon'ble Apex court in Misc. Application No. 21/2022 in Misc. Application No.665/2021 in Suo moto writ petition No.(C)3/2020, the Hon'ble Apex court vide its order dated 10.01.2022 at para 5 of the said order has held that the period from 15.03.2021 till 28.02.2022 would stand excluded for the purpose of calculation of limitation and the balance period of limitation as available on 3.10.2021 would be available with effect from 1.03.2022.

4.2. In the present case, the limitation having expired on 30.09.2023, the extension of time granted by the Hon'ble Apex Court would not be available to the Authorities and as such, the reliance placed by the Authorities on COVID pandemic would not be applicable.



4.3. Secondly, he relies upon the decision of the Hon'ble Apex Court in **Union of India Vs. Mohit Minerals Private Limited**¹ more particularly para No.148 thereof, which is reproduced hereunder for easy reference:

E Conclusion

148. *Based on the above discussion, we have reached the following conclusion:*

(i) The recommendations of the GST Council are not binding on the Union and States for the following reasons:

(a) The deletion of Article 279B and the inclusion of Article 279(1) by the Constitution Amendment Act 2016 indicates that the Parliament intended for the recommendations of the GST Council to only have a persuasive value, particularly when interpreted along with the objective of the GST regime to foster cooperative federalism and harmony between the constituent units;

(b) Neither does Article 279A begin with a non-obstante clause nor does Article 246A state that it is subject to the provisions of Article 279A. The Parliament and the State legislatures possess simultaneous power to legislate on GST. Article 246A does not envisage a repugnancy provision to resolve the inconsistencies between the Central and the State laws on GST. The 'recommendations' of the GST Council are the product of a collaborative dialogue involving the Union and States. They are recommendatory in nature. To regard them as binding edicts would disrupt fiscal federalism, where both the Union and the States are conferred equal power to legislate on GST. It is not imperative that one of the federal units must

¹ Civil Appeal No.1390/2022 & others



always possess a higher share in the power for the federal units to make decisions. Indian federalism is a dialogue between cooperative and uncooperative federalism where the federal units are at liberty to use different means of persuasion ranging from collaboration to contestation; and

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

(ii) On a conjoint reading of Sections 2(11) and 13(9) of the IGST Act, read with Section 2(93) of the CGST Act, the import of goods by a CIF contract constitutes an "inter-state" supply which can be subject to IGST where the importer of such goods would be the recipient of shipping service;

(iii) The IGST Act and the CGST Act define reverse charge and prescribe the entity that is to be taxed for these purposes. The specification of the recipient – in this case the importer – by Notification 10/2017 is only clarificatory. The Government by notification did not specify a taxable person different from the recipient prescribed in Section 5(3) of the IGST Act for the purposes of reverse charge;

(iv) Section 5(4) of the IGST Act enables the Central Government to specify a class of registered persons as the recipients, thereby conferring the power of creating a deeming fiction on the delegated legislation;

(v) The impugned levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on



the Indian importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act.

4.4. By relying on the above paragraph, he submits that the recommendation of the GST Council is not binding on the Union. The Union of India could either accept or reject the recommendation of the GST Council. Thus, any recommendation, if at all, made by the GST Council would not be binding on the Union.

4.5. Insofar as the recommendation of GST Council, by referring to para No.5.7 of the minutes of the 49th meeting of the GST Council held on the 19.02.2023, he submits that the said recommendation made was not unanimous, there was certain dissent expressed as regards the recommendation inasmuch as certain Members of the Council were of the opinion that the extension of time could create a perception that it is not tax friendly measure and is against the interest of taxpayers. The said para. 5.7,



5.7.1 and 5.7.2 are reproduced hereunder for easy reference:

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 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 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.*

4.6. On the basis of all the above submissions, he submits that the extension of time of three months made vide notification No.9/2023 dated 31.03.2023 at Annexure-A to the petition is without any basis. The same is required to be quashed and consequently the notice issued under Subsection (1) of Section 73 not capable of being complied by passing necessary orders under Subsection (10) of Section 73 by 30.09.2023, the proceedings initiated against the petitioner are required to be quashed.



5. Sri.Malhar Rao, learned Addl. Advocate General would submit that,

5.1. The notification No.9/2023 has been issued on the 31.03.2023 on the basis of the recommendation made by the GST Council, which has been accepted by the Ministry of Finance, Government of India.

5.2. The Government of India having accepted the said recommendation, it cannot be contended by the petitioner that the GST Council recommendation is not mandatory. Once the same has been accepted by the Union of India and a notification issued, the notification would be binding on all concerned.

5.3. His further submission is that there is no requirement for any recommendation of the GST Council to be unanimous, the majority having recommended the extension of the



limitation period. The same has been accepted by the Government of India, and no fault can be found therewith.

5.4. In that background, he submits that the above writ petition must be dismissed.

6. Heard Dr.Podar, learned counsel, Sri Raghavendra C.R., Sri. Bhanu Murthy D.S., and Sri. Veershetty B.K., Advocates for Petitioner and Sri. Sudhir Singh R. Vijapur. DSGI for R1, Sri. Girish S. Hulamani., Advocate for R2 and R3 and Sri. Malhar Rao, Addl. Advocate General and Smt. Maya T.R., HCGP for R4 and R5. Perused papers.
7. The short question that would arise for consideration is, whether the notification No.9/2023 issued by the Government of India on 31.03.2023 at Annexure-A can be said to be without any basis or without application of mind?



8. Section 168-A of CGST Act is reproduced hereunder for easy reference:

168A. Power of Government to extend time limit in special circumstances.--(1) *Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.*

(2) *The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.*

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

9. The explanation to Section 168A indicates as regards the time limit which has been fixed that notwithstanding anything contained in the Act, the Government may, on the recommendation of Council by notification, extend the time limit specified in or prescribed or notified under the Act. The explanation to the said Section indicates that the expression **force majeure** would include case of war, epidemic,



flood, drought, fire, cyclone, earthquake, or any other calamity caused by nature otherwise affecting the implementation of any of the provision of the Act.

10. A perusal of the discussion made in the GST Council in the 49th meeting held on 18.02.2023 which has been extracted hereinabove indicates that the Law Committee had considered the representation of various officers, the delay in the scrutiny and audit because of Covid-19 pandemic, the workload having been increased and that it not being capable that the proceedings be closed in terms of Subsection (10) of Section 173 by 30.09.2023, therefore, recommended an extension of a period of three months.
11. This extension has been made after taking into account dissenting opinion by certain of the Members that the said extension could create a perception that it is not a tax friendly measure and against the interest of taxpayers.



12. The fact, however, remains that the GST Council has recommended the extension of the limitation from September, 2023 to December 2023 which has been accepted by the Government of India vide Notification No.9/2023 dated 31.03.2023.
13. The submission of the learned counsel for the petitioner that the recommendation of the GST Council is not binding by relying upon the decision in ***Mohit Minerals Private Limited [supra]*** is one which would not be applicable in the present case, since the acceptance or otherwise of the recommendation is left to the Government of India and it is for the Government of India to decide whether to accept the recommendation or not.
14. In this particular matter, the Government of India having voluntarily accepted the recommendation, it would not be available for the assessee to now



contend that the recommendation of the council is not binding on the Government of India.

15. Insofar as the decision of the Hon'ble Apex Court in Misc. Application No.21/2022 relied upon by the counsel for the petitioner at para No.2 of the said judgment reads as under:

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

16. A perusal of the said above paragraph would indicate that the extension of the period of limitation in all proceedings before Courts and Tribunals is what was considered by the Hon'ble Apex Court in the said decision and not matters pertaining to assessment, reassessment, show cause notice or the like issued by tax Authorities. Thus, I am of the considered opinion that the decision of the Hon'ble Apex Court in



suo motu proceedings referred to supra would also not be applicable to the present facts and circumstances.

17. In view of my above reasoning, the notification No.9/2023 dated 31.03.2023 at Annexure-A cannot be found fault with on the basis of the submission made by the Council for the petitioner.
18. The GST Council, having considered all material aspects, having recommended the extension of period of limitation from September 2023 to December 2023, the same having been accepted by the Government of India, the assessee cannot challenge the same on the basis of the submissions made herein.
19. In that view of the matter, there are no grounds that have been made out in the present petition, so the petition is dismissed.



20. After the dictation of the order, learned counsel for the petitioner seeks permission to file an appeal. He however submits that the appeal would be barred by limitation.
21. Considering that the petitioner was under a misconception, the petitioner is granted 21 days' time from today to file an appeal. If the appeal is filed within 21 days from today, the Appellate Authority shall consider the same without advertent to the appeal being barred by limitation.
22. The above order is passed in the present peculiar facts and circumstances of this case and shall not be treated as a precedent.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE