Guru and Co. & Ors. v. Union of India & Ors.

Whether notifications issued by the Central Government under Sections 9 and 11 of the CGST Act, 2017 can travel beyond the recommendations of the GST Council, and whether the GST Council has the power to ratify a notification already issued by the Central

Date of Order: June 15, 2026
Case Law No: GIB-MHC-2026-56
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

The petitioners are suppliers of pulses (Moong Daal, Toor Daal) selling under brand names not registered under the Trade Marks Act, 1999 or Copyright Act, 1957. Under the original 2017 rate notifications, GST attached only to goods "put up in unit container and bearing a registered brand name," so the petitioners' unregistered-brand goods fell outside the tax net, and many traders de-registered brands to escape liability. To plug this, the Government issued amending Notifications No. 27/2017 and 28/2017 dated 22.09.2017 (and the State issued GO(MS) No. 114), expanding the levy to brands bearing an "actionable claim or enforceable right in a court of law." Show cause notices followed, and the petitioners challenged the amending notifications as ultra vires Article 279A and sought to quash the SCNs.

Facts

The writ petitioners are suppliers of pulses selling under unregistered brand names. Notification No. 1/2017 – Central Tax (Rate) dated 28.06.2017 levied 2.5% Central Tax on dried leguminous vegetables put up in a unit container and bearing a registered brand name, and Notification No. 2/2017 exempted such goods other than those bearing a registered brand name. As the petitioners' goods carried no registered brand name, they were not liable to GST, and a substantial volume of trade in pulses fell outside the tax net.

To remedy this, the Ministry of Finance issued amending Notifications No. 27/2017 and No. 28/2017 – Central Tax (Rate) and Integrated Tax (Rate), all dated 22.09.2017, and the State Government issued GO(MS) No. 114 dated 22.09.2017 (verbatim reproducing the Central notifications), bringing within the levy products bearing a brand name "on which an actionable claim or enforceable right in a court of law is available" (other than where such claim or right was voluntarily foregone, subject to

the conditions in Annexure I). The impugned show cause notices were issued to the petitioners as a consequence. The petitioners challenged the amending notifications as ultra vires Article 279A to the extent they affected them and sought to quash the SCNs as null and void.

The petitioners primarily relied on Union of India v. Mohit Minerals Private Limited. The respondents, through the Additional Solicitor General, contended that GST Council recommendations are not binding in the sense that the Government need not reproduce a mirror image, also relying on Mohit Minerals; they submitted that drafting mistakes in the recommendation of the 21st GST Council meeting (09.09.2017) were rectified through Notifications 27/2017 and 28/2017, and that these were duly ratified in the 22nd GST Council meeting held on 06.10.2017. Two issues thus arose: whether notifications under Sections 9 and 11 could go beyond the Council's recommendations, and whether the GST Council had the power to ratify such notifications.

Court Observations (Verbatim)

Para 1: "Taxation is often a cat and mouse game between the authority and the assessee. The authority spreads the net and seeks to ensnare the assessee who makes every effort to slip away. The game may witness more than one round with fluctuating fortunes."

Para 10 (applying Mohit Minerals): "While the GST Council's function is to make recommendations, the Central Government has the power to issue notifications. From the language of Sections 9 and 11 of the Act, it is seen that the notification by the Government will have to be 'on the recommendations' of the Council. In other words, the notification should be preceded by the recommendations... applying the very same yardstick, the recommendations of the GST Council will bind the Government when it issues statutory notifications under Sections 9 and 11 of the Act."

Para 14: "A bare comparison of the notifications with the Council recommendations would show that there has been an addition of the words 'enforceable right in a court of law'... It is too obvious that the expressions 'actionable claim' and 'enforceable right in a court of law' are not synonymous. While actionable claims may be enforceable rights, the vice versa may not hold good... The Government had gone over and above what was recommended by the GST Council... We are of the view that the additions lack the foundation of recommendation and it is not 'on the recommendation' of the GST Council. Thus, the impugned notifications by the Central Government as well as the State Government have to be declared as ultra vires the parent statute insofar as they incorporate the expression 'enforceable right in a court of law'. Minus this expression, the notifications are intra vires."

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

Para 17 (quoting Marathwada University): "These principles of ratification, apparently do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is ab initio void and cannot be ratified."

Para 19–20: "...the power to ratify should also be conferred explicitly or by necessary implication. Neither the Constitution nor any statute has invested the GST Council with the power of ratification. We, therefore, hold that ratification made by the GST Council in 22nd meeting is without jurisdiction... Since the impugned show cause notices are a fallout of the impugned notifications, they are liable to be set aside and stand set aside. Liberty is given to the department to issue fresh show cause notices if they can be issued in terms of the impugned notifications to the extent they have been held valid."

Verdict

The writ petitions were allowed. The impugned notifications of the Central and State Governments were declared ultra vires the parent statute insofar as they incorporate the expression "enforceable right in a court of law"; minus that expression, the notifications are intra vires. The ratification made by the GST Council in its 22nd meeting was held to be without jurisdiction. The impugned show cause notices, being a fallout of the impugned notifications, were set aside, with liberty to the department to issue fresh SCNs in terms of the notifications to the extent held valid.

Cases Referred by the Court

Relied upon / applied by the Court:

- Union of India vs. Mohit Minerals Private Limited — (2022) 10 SCC 700 (relied on by both sides; ratio that the Government is bound by GST Council recommendations in rule-making extended to notifications under Sections 9 and 11)
- State of Tamil Nadu vs. P. Krishnamurthy — (2006) 4 SCC 517 (parameters for striking down subordinate legislation)
- Marathwada University vs. Seshrao Balwant Rao Chavan — (1989) 3 SCC 132 (ratification is alien to exercise of statutory power)
- Brunda Infra (P) Ltd. vs. Commr. of Central Tax — (2025) 139 GSTR 657 (Telangana HC) (ratification cannot be equated to recommendation; post-issuance ratification gives no life to a notification)
- Maharashtra State Mining Corpn. vs. Sunil — (2006) 5 SCC 96 (ratification assumes an invalid act retrospectively validated)
- Patel Narshi Thakershi vs. Pradyumansinghji Arjunsinghji — (1971) 3 SCC 844 (authorities have no inherent power; power must be conferred)
- Hartman vs. Hornsby — 142 Mo 368, 44 SW 242, 244 (meaning of "ratification")

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