CONTENTS OF THIS PART

SUBJECT INDEX TO CASES REPORTED IN THIS PART

HIGH COURTS

Bank—Value added tax—Recovery of tax—Recovery of dues—Priority of debts—Non obstante clause in section 31B of Recovery of Debts and Bankruptcy Act, 1993—Gives priority over all existing dues—First charge of Department comes into play only after liability finally assessed and amount becomes due and payable—Assessment order later in point of time—Priority over secured assets shall be of bank and not of Department—Gujarat Value added Tax Act, 2003 (1 of 2005), ss. 47, 48—Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act (54 of 2002), ss. 26E, 37—Recovery of Debts Due to Banks and Financial Institutions Act (51 of 1993), ss. 2(la), 31B.—KALUPUR COMMERCIAL CO-OPERATIVE BANK LTD. *v.* STATE OF GUJARAT (Guj) . . . 417

Discrimination—Energy development cess—Validity—Levy of cess on "distributors" of electricity as well as on "producers" of electricity—Rate common—No unreasonable classification—Statute providing complete mechanism as to quantum of liability, duty to submit return, period within which tax to be paid and liability to interest on delay—Assessee, a distributor, not complying with requirements by paying cess or filing return—Contention that levy unconstitutional for lack of mechanism not bona fide—Purpose of levy to render service by utilising collections in connection with generation, transmission, distribution and utilization of energy—Assessee as distributor bound to file return after payment of duty—No provision for issuance of notice for fixation of liability—No case of violation of principles of natural justice—Assessee permitted but failing to collect cess

STATUTE INDEX TO CASES REPORTED

(*Contd. on cover page 3*)

[2020] 75 GSTR 417 (Guj)

[IN THE GUJARAT HIGH COURT]

KALUPUR COMMERCIAL CO-OPERATIVE BANK LTD.

v.

STATE OF GUJARAT

J. B. PARDIWALA and **A. C. RAO** JJ.

September 23, 2019.

HF ▸ Petitioner

VALUE ADDED TAX—RECOVERY OF TAX—BANK—RECOVERY OF DUES—PRIORITY OF DEBTS—NON OBSTANTE CLAUSE IN SECTION 31B OF RECOVERY OF DEBTS AND BANKRUPTCY ACT, 1993—GIVES PRIORITY OVER ALL EXISTING DUES—FIRST CHARGE OF DEPARTMENT COMES INTO PLAY ONLY AFTER LIABILITY FINALLY ASSESSED AND AMOUNT BECOMES DUE AND PAYABLE—ASSESSMENT ORDER LATER IN POINT OF TIME—PRIORITY OVER SECURED ASSETS SHALL BE OF BANK AND NOT OF DEPARTMENT—GUJARAT VALUE ADDED TAX ACT, 2003 (1 of 2005), ss. 47, 48—SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITIES INTEREST ACT (54 OF 2002), ss. 26E, 37—RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT (51 OF 1993), ss. 2(la), 31B.

A non obstante clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the non obstante clause. When two or more laws or provisions operate in the same field and each contains a non obstante clause stating that its provision will override those of any other provisions or law, no settled principles can be applied except to refer to the object and purpose of each of the two provisions, containing a non obstante clause. Two provisions in the same Act each containing a non obstante clause, require a harmonious interpretation of the two seemingly conflicting provisions in the same Act and a proper consideration of the effect to the object and purpose of two provisions and the language employed in each. If there is a conflict between the provisions of two Acts and if there is nothing repugnant, the provisions in the later Act would prevail. If the language of a particular provision is found to be more emphatic, that would be indicative of the intention of the Legislature that the Act shall prevail over the other statutes. This is because at the time of enactment of the later statute, the Legislature could be said to be aware of the earlier legislation and its non obstante clause. If the Legislature still confers the later enactment with a non

obstante clause, it means that the Legislature wanted that enactment to prevail.

Section 48 of the Gujarat Value Added Tax Act, 2003, section 31B of the Recovery of Debts and Bankruptcy Act, 1993 and section 26E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 all start with non obstante clauses. The insertion of section 31B of the 1993 Act by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 with effect from September 1, 2016, will give priority to secured creditors even over subsisting charges under other laws on the date of the implementation of the new provision, i. e., September 1, 2016. Apart from the fact that section 31B of the 1993 Act is a later enactment, the language of the provision also clearly indicates the intention of Parliament to give precedence even over the Government dues notwithstanding anything to the contrary in any other law. Section 31B of the 1993 Act, being a substantive provision giving priority to secured creditors, would be applicable irrespective of the procedure through which the recovery was sought to be made. This is particularly because section 2(la) of the 1993 Act defines the phrase "secured creditors" to have the same meaning as assigned to it under the 2002 Act. Moreover, section 37 of the 2002 Act clearly provides that the provisions of the 2002 Act shall be in addition to, and not in derogation of, inter alia, the 1993 Act. The 2002 Act was enacted only with the intention of allowing faster recovery of debts to secured creditors without intervention of the court. This is apparent from the Statement of Objects and Reasons of the 2002 Act. Thus, an interpretation that, while the secured creditors will have priority in case they proceed under the 1993 Act they will not have such priority if they proceed under the 2002 Act, will lead to an absurd situation and, in fact, would frustrate the object of the 2002 Act which is to enable fast recovery to the secured creditors.

The language of section 48 of the 2003 Act is plain and simple and the phrase "any amount payable by a dealer or any other person on account of tax, interest or penalty" therein assumes significance. The amount could be said to be payable by a dealer on account of tax, interest or penalty once the same is assessed in the assessment proceedings and the amount is determined accordingly by the authority concerned. Without any assessment proceedings, the amount cannot be determined, and if the amount is yet to be determined, then prior to such determination there cannot be any application of section 48 of the 2003 Act.

Section 47 of the 2003 Act is with respect to transfer of property by the dealer to defraud the Revenue. According to section 47, if a dealer creates a

charge over his property by way of sale, mortgage, exchange or any other mode of transfer after the tax has become due, such transfer would be a void transfer. The phrase "after any tax has become due from him" suggests that before the assessment proceedings, or, to put it in other words, before a particular amount is determined and becomes due to be payable if there is any transfer of property of the dealer, such transfer would not be a void transfer. Therefore, the condition precedent is that the tax should become due and such tax which has become due shall be payable by a dealer.

The petitioner, multi-State scheduled bank, advanced credit facilities of Rs. 60 crores to the dealer, for which immovable properties were taken as security by way of mortgage. A mortgage deed was entered into with the dealer in respect of the immovable properties offered as security for the purpose of securing the loans/credit facilities. The secured interest in the properties was duly registered by the bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. The dealer thereafter committed defaults in terms of the conditions of the credit facilities and the bank initiated action for recovery of outstanding amount of Rs. 7,87,49,127 plus interest in terms of the provision of the 2002 Act. The bank sent notice taking over possession of the securities under section 13(4) of the 2002 Act for default committed by the dealer and filed an application before the Chief Metropolitan Magistrate under section 14 of the 2002 Act. The magistrate allowed the application by order, possession of the assets was taken over by the court commissioner and handed over to the bank. In the meantime the dealer had possible future dues under the Gujarat Value Added Tax Act, 2003 for which purpose the commercial tax authorities imposed provisional attachment on the properties which were already mortgaged with the bank. The Department issued a garnishee notice to the bank for the dues of the dealer, affixed notice over the properties claiming first charge over the properties. In the meantime the bank started auction proceedings for sale of one of the mortgaged assets and conducted sale of property conducted in exercise of powers conferred by the 2002 Act. The Department wrote a letter to the bank requiring the bank to give details about the purchaser of the property and sought to recover the tax dues from purchaser of property already sold by the bank under the 2002 Act. On a writ petition by the bank contending that it had the first charge over the properties mortgaged by the dealer by virtue of section 26E of the 2002 Act which would override the charge of the State Government under section 48 of the 2003 Act :

Held, *allowing the petition, that the bank had put forward its claim over the secured assets of the bank for the first time on October 1, 2016 and there*

being no crystallised dues as on October 1, 2016, there was no question of there being any charge under section 48 of the 2003 Act which could only be in respect of actual dues. Prior to the dues being crystallised in the case of the defaulting dealer, the bank had already taken over possession of the properties of the dealer, and by that time, section 31B of the 1993 Act had already been enforced by the Central Government. It was preposterous to suggest that the charge over the property under section 48 of the 2003 Act would come into force from the assessment of the earlier financial years. What was relevant was that the dues and resultantly the charge under section 48 of the 2003 Act came into existence after the implementation of section 31B of the 1993 Act. Section 48 of the 2003 Act would come into play only when the liability is finally assessed and the amount becomes due and payable. It is only thereafter if there is any charge, that it would operate. The authority under the 2003 Act passed the assessment order later in point of time. The first priority over the secured assets shall be of the bank and not of the State Government by virtue of section 48 of the 2003 Act. The attachment notice dated January 22, 2018 and the communication dated April 19, 2018 issued by the Department was to be quashed. The bank had the first charge over the properties mortgaged from the dealer by virtue of section 26E of the 2002 Act. The excess, if any, shall be adjusted towards the dues of the State under the 2003 Act. The Department could not proceed against the purchasers of the properties sold under the 2002 Act.

Cases referred to :

A. P. State Financial Corporation *v.* Official Liquidator [2000] 102 Comp Cas 1 (SC) (para 5.2)

Allahabad Bank *v.* Canara Bank [2000] 101 Comp Cas 64 (SC) (para 28)

Assistant Collector of Central Excises *v.* Kashyap Engineering & Metallurgicals (P) Ltd. [2002] 10 SCC 443 (para 6.10)

Assistant Commissioner (CT) *v.* Indian Overseas Bank [2017] 99 VST 222 (Mad) [FB] ; [2017] 202 Comp Cas 226 (Mad) [FB] (paras 5.9, 39, 44, 45)

Aswini Kumar Ghose *v.* Arabinda Bose [1952] AIR 1952 SC 369 (para 20)

Axis Bank Ltd. *v.* State of Maharashtra [2017] 202 Comp Cas 228 (Bom) (para 44)

Bank of Baroda *v.* Commissioner of Sales Tax [2018] 55 GSTR 210 (MP) (para 38)

Bank of Baroda *v.* State of Gujarat (Special Civil Application No. 12995 of 2018, decided on September 16, 2019) (para 53)

Bhoruka Steel Ltd. *v.* Fairgrowth Financial Services Ltd. [1997] 89 Comp Cas 547 (Bom) (para 28)

Bipathumma *v.* Mariam Bibi [1966] (1) Mysore Law Journal page 162 (para 23)

Builders Supply Corporation *v.* Union of India [1965] 56 ITR 91 (SC) (para 46)

Central Bank of India *v.* Joint Sub-Registrar No. 1 (W. P. (MD) No. 10724 of 2018, dated December 6, 2018) (para 45)

Central Bank of India *v.* State of Kerala [2009] 21 VST 505 (SC) ; [2010] 153 Comp Cas 497 (SC) (paras 6.8, 6.10, 15, 16, 20, 34, 37)

Chandavarkar Sita Ratna Rao *v.* Ashalata S. Guram [1986] 4 SCC 447 (para 20)

Collector of Aurangabad *v.* Central Bank of India [1968] 21 STC 10 (SC) (paras 46, 48)

Commissioner of Sales Tax *v.* Radhakishan [1979] 43 STC 4 (SC) (paras 46, 47)

Dena Bank *v.* Bhikhabhai Prabhudas Parekh & Co. [2000] 120 STC 610 (SC) ; [2001] 247 ITR 165 (SC) ; [2001] 107 Comp Cas 157 (SC) (paras 6.5, 6.10, 46, 48)

Dominion of India *v.* Shrinbai A. Irani [1954] AIR 1954 SC 596 (para 20)

Employees Provident Fund Commissioner *v.* Official Liquidator of Esskay Pharmaceuticals Ltd. [2011] 168 Comp Cas 206 (SC) (paras 6.4, 6.10)

G. M. C. Engineers & Contractor Pvt. Ltd. *v.* State (Finance Department) (S.B. Civil Writ Petition No. 6872 of 2017 decided on 5th July, 2017—Rajasthan High Court) (para 37)

Giles *v.* Grover [1832] 131 English Reports 563 (para 48)

Government of A. P. *v.* J. B. Educational Society [2005] AIR 2005 SC 2014 (para 5.4)

ICICI Bank Ltd. *v.* SIDCO Leathers Ltd. [2006] 131 Comp Cas 451 (SC) (para 20)

Indian Overseas Bank *v.* Sub Registrar, Tuticorin Keelur, Tuticorin District (Writ Petition No. 14618 of 2018, decided on 18th December 2018) (para 45)

Kumaon Motor Owners' Union Ltd. *v.* State of Uttar Pradesh [1966] AIR 1966 SC 785 (paras 5.2, 24, 25, 27)

Laxman alias Laxman Mourya *v.* Divisional Manager, Oriental Insurance Company Limited [2011] 10 SCC 756 (para 6.10)

Madhav Rao Jivaji Rao Scindia *v.* Union of India [1971] 1 SCC 85 (para 20)

Maharashtra Tubes Ltd. *v.* State Industrial & Investment Corporation of Maharashtra Ltd. [1993] 78 Comp Cas 803 (SC) (para 28)

Nisar *v.* State of U. P. [1995] 2 SCC 23 (para 6.10)

Punjab National Bank *v.* Maa Banbhori Steel Industry Pvt. Ltd. (Writ Petition No. 11018 of 2018, decided on October 29, 2018—Bombay High Court) (para 41)

Raghunath (R. S.) *v.* State of Karnataka [1992] 1 SCC 335 (para 20)

Sarwan Singh *v.* Kasturi Lal [1977] 2 SCR 421 (para 28)

Shri Ram Narain *v.* Simla Banking and Industrial Co. Limited [1956] 26 Comp Cas 280 (SC) (para 28)

Shri Swaran Singh *v.* Shri Kasturi Lal [1977] 1 SCC 750 (para 22)

SICOM Ltd. *v.* State of Maharashtra [2010] 6 Bom. CR 537 (para 44)

Solidaire India Ltd. *v.* Fairgrowth Financial Services Ltd. [2001] 104 Comp Cas 569 (SC) (paras 24, 28, 29)

South India Corporation (P.) Ltd. *v.* Secretary, Board of Revenue, Trivandrum [1964] 15 STC 74 (SC) (para 20)

Special Civil Application No. 10642 of 2015 decided on September 4, 2015—Gujarat High Court (para 3)

State Bank of Bikaner & Jaipur *v.* National Iron & Steel Rolling Corporation [1995] 96 STC 612 (SC) ; [1995] 212 ITR 428 (SC) ; [1995] 82 Comp Cas 551 (SC) (paras 5.7, 6.3, 6.10)

State of Madhya Pradesh *v.* State Bank of Indore [2002] 126 STC 1 (SC) ; [2002] 108 Comp Cas 622 (SC) (paras 5.6, 6.10, 36)

State of Maharashtra *v.* Bharat Shanti Lal Shah [2008] 13 SCC 5 (paras 6.7, 6.10)

State of West Bengal *v.* Union of India [1963] AIR 1963 SC 1241 ; [1964] 1 SCR 371 (para 20)

Stock Exchange, Bombay *v.* Kandalgaonkar (V. S.) [2014] 368 ITR 296 (SC) (paras 46, 48)

Third Income-tax Officer *v.* Arunagiri Chettiar [1996] 220 ITR 232 (SC) (para 46)

Union of India *v.* Kokil (G. M.) [1984] AIR 1984 SC 1022 (para 20)

Union of India *v.* Maj I. C. Lala [1973] AIR 1973 SC 2204 (para 20)

Varadarajulu (A. G.) *v.* State of Tamil Nadu [1998] 4 SCC 231 (para 20)

Vishin N. Kanchandani *v.* Vidya Lachmandas Khanchandani [2000] 102 Comp Cas 340 (SC) (para 20)

R/Special Civil Application No. 17891 of 2018.

Uchit N. Sheth (7336) for the petitioner .

Ms. Maithili Mehta, Assistant Government Pleader, for the respondent.

JUDGMENT

The judgment of the court was delivered by

J. B. PARDIWALA J.—By this writ application under article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs : 1

"(A) This honourable court may be pleased to issue a writ of mandamus or a writ in nature of mandamus or any other appropriate writ, order or direction quashing and setting aside impugned attachment notice dated January 22, 2018 (annexed at annexure A) and impugned communication dated April 19, 2018 (annexed at annexure B) issued by the learned respondent No. 2.

(B) This honourable court may be pleased to declare that the petitioners have first charge over the properties mortgaged from M/s. M. M. Traders under section 26E of the SARFAESI Act which would override the charge of the learned respondents under section 48 of the VAT Act.

(C) This honourable court may be pleased to hold that the learned respondents can claim right only over the excess sale proceeds, if any, from sale of mortgaged properties by the petitioners after adjusting the sale proceeds towards the secured dues of the petitioners.

(D) This honourable court may be pleased to hold that the learned respondents cannot proceed against purchasers of properties sold under the SARFAESI Act.

(E) Pending notice, admission and final hearing of this petition, this honourable court may be pleased to prohibit the learned respondent-authorities from taking any further steps in relation to the properties mortgaged by the petitioners from M/s. M. M. Traders.

(F) Ex parte ad interim relief in terms of prayer E may kindly be granted.

(G) Such other relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioners shall forever pray."

2 The writ applicant No. 1 is a multi-State co-operative scheduled bank, whereas the writ applicant No. 2 is the chief manager and the authorized officer of the bank.

3 The case of the writ applicants, in their own words, as pleaded in the writ application, is as under :

"1. By way of this petition under article 226 of the Constitution of India the petitioners pray for writ of mandamus quashing and setting aside attachment notice dated January 22, 2018 issued by the learned respondent No. 2 in relation to tax dues of M/s. M. M. Traders under the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as 'the VAT Act') affixed at the mortgaged properties in September 2018 and the letter dated April 19, 2018 claiming first charge over the properties mortgaged with the petitioners. The petitioners pray for a writ declaring that the petitioners under the SARFAESI Act have first charge over the properties which overrides the charge of the learned commercial tax authorities under the VAT Act. Copies of the impugned attachment notices dated January 22, 2018 and the letter dated April 19, 2018 are attached herewith and marked as annexure A and annexure B, respectively.

2. The relevant facts giving rise to the present petition are briefly stated hereinbelow :

The first petitioner is a multi-State scheduled bank having place of business at "Kalupur Bhavan", Near Income-tax Circle, Ashram Road, Ahmedabad 380 014. The second petitioner is director of the first petitioner and his rights and interest are directly affected by the impugned attachment notices and letter issued under the VAT Act. The first respondent is the State of Gujarat. The second respondent is an officer of the State of Gujarat entrusted with the task of collecting tax under the VAT Act and thereby being a State within the meaning of article 12 of the Constitution is amenable to the writ jurisdiction of this honourable court.

The petitioners are engaged in banking business. The petitioners had given loan/credit facilities of Rs. 60 crores to M/s. M. M. Traders (hereinafter referred to as "the borrower") for which immovable properties located at the following addresses were taken as security by way of mortgage :

(a) Residential Flat No. A/702, 7th Floor, Tulip Citadel, Manekbaug, Ahmedabad

(b) Commercial Office Nos. 303-304, Lalita Complex, Near Jain Temple, Rasala Marg, Ahmedabad.

(c) Residential Bungalow No. 30, Golden Tulip, Behind Shreyas Foundation, Bhudarpura Char Rasta, Shreyas Cross Road, Ahmedabad.

Copy of renewal letter dated October 9, 2013 regarding the loan/credit facilities is annexed herewith and marked as annexure C.

4. Mortgage deed was entered into with the borrower in respect of the immovable properties offered as security for the purpose of securing the loans/credit facilities. The secured interest in the properties was duly registered by the petitioners with the Central registry under the SARAFAESI Act. Copy of challans showing registration of secured interest are annexed and marked as annexure D.

5. The borrower thereafter committed defaults in terms of the conditions of the loan/credit facilities and hence the petitioners initiated action for recovery of outstanding amount of Rs. 7,87,49,127 plus interest in terms of the provision of the Securitization and Reconstruction of Financial Assets Act, 2002 (hereinafter referred to as "the SARAFAESI Act"). Copy of notice dated February 26, 2015 sent to the borrower is annexed herewith and marked as annexure E.

6. The petitioners sent another notice on April 27, 2015 for taking over possession of the securities under section 13(4) of the SARAFAESI Act for default committed by the borrower. Copy of the notice dated April 27, 2015 sent to the borrower is annexed herewith and marked as annexure F.

7. The petitioners point out that there was litigation on the issue as to whether co-operative banks were governed by the provisions of the SARAFAESI Act or not. The SARAFAESI Act was amended on January 15, 2013 to include multi-State co-operative bank and validity of such provision was upheld by this honourable court in the case of Special Civil Application No. 1012 of 2014.

8. Thereafter the borrower had filed Special Civil Application No. 10642 of 2015 before this honourable court wherein multiple grounds were raised. This honourable court by order dated September 4, 2015 held that while the petitioners were liable to release the assets taken into possession prior to the amendment, the petitioners were entitled to initiate fresh proceedings in terms of the amended provisions of the SARAFAESI Act. Copy of order of this honourable court dated September 4, 2015 is annexed herewith and marked as annexure G.

9. The petitioners therefore returned possession of the assets of the borrower seized earlier. Fresh notice was issued under the SARA-

FAESI Act on March 3, 2016 for recovery of outstanding dues. Copy of notice dated March 3, 2016 issued under section 13(2) of the SARAFAESI Act is annexed herewith and marked as annexure H.

10. Another notice for taking over possession of the assets of the borrower was issued on June 20, 2016 under section 13(4) of the SARAFAESI Act. Copy of the notice dated June 20, 2016 issued to the borrower under section 13(4) of the SARAFAESI Act is annexed herewith and marked as annexure I.

11. The petitioners thereafter filed application before the learned Chief Metropolitan Magistrate under section 14 of the SARAFAESI Act. The learned magistrate allowed the application by order dated November 16, 2017 whereby the Court Commissioner was appointed and ordered to take possession of the secured assets and forward the same to the petitioners. Copy of the order dated November 16, 2017 passed by the learned Chief Metropolitan Magistrate is annexed herewith and marked as annexure J.

12. Thereafter the possession of the assets was taken over by the learned court Commissioner and handed over to the petitioners on January 21, 2018. The petitioners duly gave possession notice in newspapers. Copies of the advertisements for possession notice are collectively annexed herewith and marked as annexure K.

13. In the meantime it appears that the borrower had possible future dues under the VAT Act for which purpose the learned commercial tax authorities imposed provisional attachment on the properties which were already mortgaged with the petitioners. Intimation of such attachment was sent to the Revenue Department with request for entering charge on the property. Copy of letter dated October 1, 2016 sent by the learned commercial tax authorities to the Revenue Department is annexed herewith and marked as annexure L.

14. The learned officer of the VAT Department thereafter addressed a letter to the petitioners on March 18, 2017 contending that they had first charge over the properties of the borrower on the basis of section 48 of the VAT Act. It was further alleged that the petitioners were not covered by the provisions of the SARAFAESI Act. Copy of letter dated March 18, 2017 received by the petitioners is annexed herewith and marked as annexure M.

15. The petitioners immediately responded by letter dated March 21, 2017 wherein it was pointed out that it had been held by this honourable court that the petitioners being multi-State scheduled bank were covered by the provisions of the SARAFAESI Act. It was

further pointed out that the petitioners had first charge over the property by virtue of section 26E of the SARAFAESI Act which would have an overriding effect over section 48 of the VAT Act. Copy of reply dated March 21, 2017 given by the petitioners to the VAT authorities is annexed herewith and marked as annexure N.

16. Thereafter on October 24, 2017 a garnishee notice was issued by the learned VAT authorities to the petitioners for the dues of the borrower. Copy of garnishee notice dated October 24, 2017 received by the petitioners is annexed herewith and marked as annexure O.

17. The learned respondent-authorities thereafter removed the proclamation of first charge over the property affixed on the mortgaged properties by the petitioners and affixed the impugned notice dated January 22, 2018 (annexed at annexure A) over the properties claiming first charge over the properties.

18. In the meantime the petitioners started auction proceedings for sale of one of the mortgaged assets located at Commercial Office Nos. 303-304, Lalita Complex, Near Jain Temple, Rasala Marg, Ahmedabad. Copy of public auction notice dated April 18, 2018 is annexed herewith and marked as annexure P.

19. Thereafter the impugned letter (annexed at annexure B) was received by the petitioners on April 19, 2018 reiterating that the dues under the VAT Act had priority over the dues of the petitioners by virtue of section 48 of the VAT Act.

20. The petitioners responded by letter dated April 23, 2018 again reiterating that multi-State scheduled banks such as the petitioners were specifically covered by the provisions of the SARAFAESI Act and that their dues had priority over VAT dues because of section 26E of the SARAFAESI Act. Copy of letter dated April 23, 2018 submitted by the petitioners to the VAT authorities is annexed herewith and marked as annexure Q.

21. Since no response was received from the VAT Department the petitioners proceeded to sell one of the mortgaged properties. The petitioners may point out that offers received in response to the public auction notice were below the reserve price and therefore the petitioners proceeded to sell the property through private agreement after giving due notice under the SARAFAESI Act. The offices were sold for a sum totalling for approximately Rs. 1.21 crores which were appropriated by the petitioners towards the outstanding dues of the borrower.

22. The petitioners thereafter received a letter on May 25, 2018 from the VAT Department inquiring about the auction sale as well as asking for details of the buyer of the property. Copy of letter dated May 25, 2018 received by the petitioners is annexed herewith and marked as annexure R.

23. Reminder in this regard was given by the VAT Department on August 20, 2018. Copy of reminder dated August 20, 2018 received by the petitioners is annexed herewith and marked as annexure S.

24. The petitioners responded by letter dated August 29, 2018 informing the learned VAT authority that the sale of property was conducted in exercise of powers conferred by the SARAFAESI Act and that even after adjustment of sale proceeds towards the outstanding dues of the borrower, huge loan amount still remained outstanding. Copy of letter dated August 29, 2018 submitted by the petitioners to the learned VAT authority is annexed herewith and marked as annexure T.

25. The learned VAT authorities however again wrote a letter to the petitioners on September 6, 2018 requiring the petitioners to give details about the purchaser of the property. Copy of letter dated September 6, 2018 received by the petitioners is annexed herewith and marked as annexure U.

26. The learned VAT authorities are refusing to give up the claim of first charge over the properties mortgaged with the petitioners based on section 48 of the VAT Act despite there being clear overriding provision contained in section 26E of the SARAFAESI Act. The learned VAT authorities also want to recover the tax dues from purchaser of property already sold by the petitioners under the SARAFAESI Act.

27. In the respectful submission of the petitioners the action of the learned VAT authorities of claiming first charge over the properties of the borrower for alleged tax dues under the VAT Act by virtue of the impugned attachment notice read with impugned letter dated April 19, 2018 is wholly without jurisdiction and illegal. Section 26E of the SARAFAESI Act unequivocally gives priority to charge of secured dues of lending banks such as the petitioners over any other charge including charge under taxing statutes.

28. Section 26E of the SARAFAESI Act reads as under :

'26E. *Priority to secured creditors.*—Notwithstanding anything contained in any other law for the time being in force, after registration of security interest, the debts due to any secured creditor shall

be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.'

29. The VAT Department has staked claim over the properties for the first time only on October 1, 2016 and, that too by way of provisional attachment for possible future dues of the defaulting dealer. By such time the petitioners had already registered the security interest in terms of the provisions of the SARAFAESI Act. The petitioners therefore clearly have first charge over the property and the action of the learned respondents in claiming first charge over the properties and attaching the properties for such purpose is wholly without jurisdiction, bad and illegal.

30. It is respectfully submitted that the learned respondent-authorities can claim right only over the excess sale proceeds, if any, from sale of mortgaged properties by the petitioners after adjusting the sale proceeds towards the secured dues of the petitioners. The learned respondent-authorities cannot go after the purchasers of the properties for enforcement of the charge since if the purchasers are held to be liable for the secondary charge then this would deflate the sale value of the properties when sold by the petitioners under the SARAFAESI Act thus effectively encroaching over the statutory first charge of the petitioners. The action of the learned respondents in claiming charge over the property even after it is sold in accordance with the provisions of the SARAFAESI Act is also therefore wholly without jurisdiction, bad and illegal."

Thus, the issue that falls for our consideration is with regard to the first priority of the bank over the dues vis-a-vis the sales tax dues which the State Government wants to recover from the assets of the defaulter. In other words, the case of the writ applicants is that the bank has the first charge over the properties mortgaged by M/s. M. M. Traders by virtue of section 26E of the SARFAESI Act. According to the writ applicants, section 26E of the SARFAESI Act would override the charge of the State Government under section 48 of the Act. 4

Submission on behalf of the writ applicants : 5

5.1 Mr. Uchit Sheth, the learned counsel appearing for the bank submitted that section 31B has been inserted in the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as "the RDB Act") by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 with effect from September 1, 2016 which contains a non obstante clause and which expressly provides

that the secured debts shall be paid in priority over all other debts and Government dues including the State taxes. In the light of such provision the dues of the petitioner clearly have priority over the alleged tax dues of the defaulter under the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as "the VAT Act") and hence the impugned attachment by the VAT Department on the properties of the defaulter is wholly without jurisdiction and illegal.

5.2 Mr. Sheth submitted that although section 48 of the VAT Act has a non obstante clause, yet it is well-settled that in case of two conflicting provisions having non obstante clause the provision enacted later in point of time will prevail. For such proposition, Mr. Sheth seeks to place reliance upon the judgment of the Supreme Court in the case of *Kumaon Motor Owners' Union Ltd.* v. *State of Uttar Pradesh*, AIR 1966 SC 785 as well as the judgment of the Supreme Court in the case of *A. P. State Financial Corporation* v. *Official Liquidator* [2000] 102 Comp Cas 1 (SC) ; AIR 2000 SC 2642.

5.3 Mr. Sheth submitted that apart from the fact that section 31B of the RDB Act is a later enactment, the language of the said provision also clearly indicates the intention of the Parliament to give precedence even over the Government dues notwithstanding anything to the contrary in any other law. In such circumstances, the bank has the priority over the secured assets of the defaulter over the alleged dues of the defaulter under the VAT Act.

5.4 Mr. Sheth submitted that in case of conflict between the law enacted by the Parliament and the law enacted by the State Legislature, the Parliamentary law will prevail. He referred to article 246 of the Constitution of India which is the source of power for both Parliament and the State Legislature. While article 246(1) of the Constitution of India gives exclusive power to the Parliament to make laws with respect to any matters enumerated in List I in the Seventh Schedule, the power of the State Legislature as flowing from article 246(2) is expressly "subject to" clause (1). Moreover, it is provided in article 254 of the Constitution that in case of inconsistency between the laws made by the Parliament and the laws made by the State Legislature, it is the law made by the Parliament which shall prevail. Therefore also section 31B of the RDB Act will prevail over section 48 of the VAT Act. Mr. Sheth seeks to rely upon the decision of the Supreme Court in the case of *Government of A. P.* v. *J. B. Educational Society*, AIR 2005 SC 2014.

5.5 He further submitted that while it is true that the bank has taken over the possession of the assets of the defaulter under the SARFAESI Act

and not under the RDB Act, section 31B of the RDB Act being a substantive provision giving priority to the "secured creditors" the same will be applicable irrespective of the procedure through which the recovery is sought to be made. This is particularly because section 2(1a) of the RDB Act defines the phrase "secured creditors" to have the same meaning as assigned to it under the SARFAESI Act. Moreover, section 37 of the SARFAESI Act clearly provides that the provisions of the SARFAESI Act shall be in addition to, and not in derogation of, inter alia, the RDB Act. As such the SARFAESI Act was enacted only with the intention of allowing faster recovery of debts to secured creditors without intervention of the court. This is apparent from the Statement of Objects and Reasons of the SARFAESI Act. Thus an interpretation that while the secured creditors will have priority in case of they proceed under the RDB Act while they will not have such priority if they proceed under the SARFAESI Act will lead to an absurdity and in fact frustrate the object of the SARFAESI Act which is to enable fast recovery to secured creditors.

5.6 He also submitted that the insertion of section 31B of the RDB Act will give priority to the secured creditors even over the subsisting charges under other laws on the date of implementation of the new provision, i. e., September 1, 2016. He seeks to rely upon the decision of the Supreme Court in the case of *State of Madhya Pradesh* v. *State Bank of Indore* [2002] 126 STC 1 (SC) ; [2002] 108 Comp Cas 622 (SC).

5.7 He also seeks to rely on the decision of the Supreme Court in the case of *State Bank of Bikaner & Jaipur* v. *National Iron & Steel Rolling Corporation* [1995] 96 STC 612 (SC) ; [1995] 212 ITR 428 (SC) ; [1995] 82 Comp Cas 551 (SC).

5.8 Mr. Sheth submitted that indisputably, for the first time, the authorities under the VAT Act claimed charge over the secured assets on October 1, 2016, and that too, by way of provisional attachment under section 45 of the VAT Act keeping in mind the dues that may be determined in future. According to Mr. Sheth, there were no crystallized dues as on October 1, 2016 and, therefore, there was no question of there being any charge under section 48 of the VAT Act which could only be in respect of the actual dues. Mr. Sheth pointed out that before the dues could be crystallized under the VAT Act the bank had already taken over the possession of the properties of the dealer, and by that time, section 31B of the RDB Act had already been enforced by the Central Government. According to Mr. Sheth, whether section 31B of the RDB Act will give priority over the subsisting charge under the VAT Act as on September 1, 2016, i. e., the date on which section 31B of the RDB Act came into force.

5.9 Mr. Sheth, in support of his aforesaid submission, has placed strong reliance on a Full Bench decision of the Madras High Court in the case of *Assistant Commissioner (CT), Anna Salai-III Assessment Circle, Chennai* v. *Indian Overseas Bank* [2017] 99 VST 222 (Mad) [FB] ; [2017] 202 Comp Cas 226 (Mad) [FB], Writ Petition No. 2675 of 2011 decided on November 10, 2016.

5.10 In the last, Mr. Sheth submitted that the respondents cannot proceed against the purchasers of the properties in satisfaction of the charge. In other words, according to Mr. Sheth, the respondents cannot chase the purchasers of the properties for enforcement of the charge since if the purchasers are held to be liable for the secondary charge, then the same would deflate the sale value of the properties when put to auction by the bank, thereby directly encroaching over the statutory first charge of the bank.

5.11 In such circumstance, referred to above, Mr. Sheth prays that there being merit in this writ application, the same be allowed and the reliefs, as prayed for, be granted.

6 *Submissions on behalf of the respondents :*

6.1 Ms. Mehta, the learned Assistant Government Pleader appearing for the respondents, while vehemently opposing this writ application, submitted that section 26E of the SARFAESI Act is not notified by the Central Government in the Official Gazette and, therefore, it has not come into force. She submitted that, therefore, section 26E of the SARFAESI Act would not have any applicability in the case on hand and that the State Government would have the first charge over the property of M/s. M. M. Traders in view of section 48 of the GVAT Act, 2003. Ms. Mehta also submitted that section 26E, which the writ applicants are relying upon, is falling within section 18 of the Amendment Act No. 44 of 2016 which has not given effect to which is evident from the appointed dates prescribed by the Government, bringing the Amendment Act No. 44 of 2016 into effect. Ms. Mehta submitted that to be precise, the said clarification issued by the Central Government clearly mentions that sections 22 to 31 of the Amendment Act No. 44 of 2016 refers to the following sections of the SARFAESI Act and of the Debts Due to Banks and Financial Institutions Act, 1993. The details of the same are as under :

	Amendment Act No. 44 of 2016	
Sections	22	31 SARFAESI Act
	23	31(A) SARFAESI Act

Sections	24	32 SARFAESI Act
	25	38 SARFAESI Act
	26	2 of Debts Due to banks and Financial Institutions Act, 1993
	27	4 of Debts Due to Banks and Financial Institutions Act, 1993
	28	6 of Debts Due to banks and Financial Institutions Act, 1993
	29	8 of Debts Due to banks and Financial Institutions Act, 1993
	30	11 of Debts Due to Banks and Financial Institutions Act, 1993
	31	of Debts Due to Banks and Financial Institutions Act, 1993

6.2 Ms. Mehta further submitted that, even otherwise, section 26(E) had not come into force at the relevant point of time and it has no retrospective applicability. She also submitted that assuming for the moment that the same had come into force, still the charge of the State Government cannot be nullified.

6.3 Ms. Mehta further submitted that the dues of the State Government could be said to have accrued from the year 2012 onwards and prior to 2016. She submitted that where the statute (VAT Act) creates a first charge over the property of a dealer, the said charge shall have the precedence over the other existing mortgages. Ms. Mehta submitted that the word "charge" is wider than a mortgage, and, therefore, would cover within its ambit, a mortgage too. She submitted that the said aspect of a statutory first charge having the precedence over a mortgage has been considered by the Supreme Court in the case of *State Bank of Bikaner & Jaipur* v. *National Iron & Steel Rolling Corporation* [1995] 96 STC 612 (SC) ; [1995] 212 ITR 428 (SC) ; [1995] 82 Comp Cas 551 (SC) ; [1995] 2 SCC 19, wherein the apex court has observed that when a first charge is created by operation of law over any property, that charge will have the precedence over an existing mortgage.

6.4 Ms. Mehta further submitted that the Supreme Court, in the case of *Employees Provident Fund Commissioner* v. *Official Liquidator of Esskay Pharmaceuticals Ltd.* reported in [2011] 168 Comp Cas 206 (SC) ; [2011] 5 GLR 3739, upon considering the SARFAESI Act, 2002 vis-a-vis the E. P. F. Act has held that if there is a specific provision in the State enactment creating first charge if the Parliament has not made any such provisions in its own enactments, then the first charge created by the State legislation on the property of the dealer cannot be destroyed or diluted by implication or inference, notwithstanding the fact that banks fall in the category of secured creditors.

6.5 Ms. Mehta submitted that the Supreme Court, in the case of *Dena Bank* v. *Bhikhabhai Prabhudas Parekh & Co.* reported in [2000] 120 STC

610 (SC) ; [2001] 247 ITR 165 (SC) ; [2001] 107 Comp Cas 157 (SC) ; [2000] 5 SCC 694, has considered the doctrine of priority of the State debts as a rule of necessity and public policy. The basic justification for the claim of priority of the State debts rest on the well recognized principle that the State is entitled to raise money by taxation because unless adequate revenue is received by the State, it would not be able to function as a sovereign government.

6.6 She also submitted that the SARFAESI Act, 2003 falls within the subject "banking" in the Schedule VII, List I, entry 45 read with entry 95 by virtue of article 246 of the Constitution of India.

6.7 Ms. Mehta also submitted that the apex court, in the case of *State of Maharashtra* v. *Bharat Shanti Lal Shah* reported in [2008] 13 SCC 5, has held that where a challenge is made to the constitutional validity of a particular State Act with reference to a subject mentioned in any entry in List I, the court should look into the substance of the State Act. If it is found that it falls under an entry in the State List but there is only an incidental encroachment on the subjects in the Union List, the State Act would not become invalid merely because there is incidental encroachment on any of the subjects in the Union List. It is further held by the apex court that if it could be shown that the area and subject of the legislation is also covered within the purview of the entry of the State List and the Concurrent List, in that event, incidental encroachment to an entry in the Union List will not make a law invalid.

6.8 Ms. Mehta further submitted that the aspect of conflict between the Central legislation vis-a-vis the State legislation and the non obstante clause in the State legislation by way of first charge and its overriding effect over section 35 of the Securitization Act has been dealt by the Supreme Court in *Central Bank of India* v. *State of Kerala* reported in [2009] 21 VST 505 (SC) ; [2010] 153 Comp Cas 497 (SC) ; [2009] 4 SCC 94, whereby the Supreme Court has held that the sales tax dues shall prevail over any other charge being the charge created under the provisions of the Kerala General Sales Tax Act being the statutory first charge. The Supreme Court while dealing with the aspect of legislative competence and repugnancy has held that the question of repugnancy between the law made by the Parliament and a law made by the State Legislature may arise only in cases when both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List. In the present case, there is no such overlapping which would make the Gujarat Value Added Tax Act, 2003 redundant in operation. The core issue herein in the present case is that the Gujarat Value Added Tax Act, 2003 is enacted having its legislation

competence falling within the term "banking" which find its place in List I, Schedule VII, entries 45 and 94 hence both the said enactments operate in different areas and, therefore, there is no question of repugnancy between the State enactment and the Central legislation.

6.9 Ms. Mehta also submitted that this High Court, in the Special Civil Application No. 3372 of 2012, decided on July 23, 2012 had held that the first charge over the property shall be of the Department/Government under section 48 of the GVAT Act, 2003.

6.10 In support of the aforesaid submissions, Ms. Mehta has placed strong reliance on the following decisions :

(1) *State Bank of Bikaner & Jaipur* v. *National Iron & Steel Rolling Corporation* [1995] 96 STC 612 (SC) ; [1995] 212 ITR 428 (SC) ; [1995] 82 Comp Cas 551 (SC) ; [1995] 2 SCC 19 ;

(2) *Nisar* v. *State of U. P.* [1995] 2 SCC 23 ;

(3) *State of Madhya Pradesh* v. *State Bank of Indore* [2002] 126 STC 1 (SC) ; [2002] 108 Comp Cas 622 (SC) ; [2002] 10 SCC 441 ;

(4) *Assistant Collector of Central Excises* v. *Kashyap Engineering & Metallurgicals (P) Ltd.* [2002] 10 SCC 443 ;

(5) *Employees Provident Fund Commissioner* v. *Official Liquidator of Esskay Pharmaceuticals Ltd.* reported in [2011] 168 Comp Cas 206 (SC) ; [2011] 10 SCC 727 ;

(6) *Laxman alias Laxman Mourya* v. *Divisional Manager, Oriental Insurance Company Limited* [2011] 10 SCC 756 ;

(7) *Dena Bank* v. *Bhikhabhai Prabhudas Parekh & Co.* [2000] 120 STC 610 (SC) ; [2001] 247 ITR 165 (SC) ; [2001] 107 Comp Cas 157 (SC) ; [2000] 5 SCC 694 ;

(8) *State of Maharashtra* v. *Bharat Shantilal Shah* [2008] 13 SCC 5 ;

(9) *Central Bank of India* v. *State of Kerala* [2009] 21 VST 505 (SC) ; [2010] 153 Comp Cas 497 (SC) ; [2009] 4 SCC 94 .

6.11 In such circumstances, referred to above, Ms. Mehta prays that there being no merit in this writ application, the same may be rejected and the amount fetched in the auction conducted by the writ applicant bank may be directed to be transferred to the State Government.

Analysis

Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is, whether the Central legislation would prevail over section 48 of the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as, 7

"the VAT Act"). To put it in other words, whether the bank will have the first priority to recover its dues being a secured creditor in view of section 26E of the SARFAESI Act or the State will have the first priority by virtue of section 48 of the VAT Act.

8 Before adverting to the rival submissions canvassed on either side, it is necessary to look into few relevant provisions of the statutes.

9 The Value Added Tax Act, 2003, came into force from April 1, 2006 in the State of Gujarat. The Act was enacted to consolidate and amend the laws relating to the levy and collection of tax on the value added basis in respect of the sale of goods in the State of Gujarat. Section 48 of the Act, 2003, is with regard to the charge on the property. Section 48 reads as under :

> "48. *Tax to be first charge on property*.—Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person on account of tax, interest or penalty for which he is liable to pay to the Government shall be a first charge on the property of such dealer, or as the case may be, such person."

10 Section 46 of the VAT Act is with regard to the special powers of the tax authorities for recovery of tax as arrears of land revenue. Section 46 of the VAT Act reads as under :

> "46. *Special powers of tax authorities for recovery of tax as arrears of land revenue*.—(1) For the purpose of effecting recovery of the amount of tax, penalty or interest due from any dealer or other person by or under the provisions of this Act or under any earlier law, as arrears of land revenue,—
>
> (i) The Commissioner, the special Commissioner, Additional Commissioner and the joint Commissioners shall have and exercise all the powers and perform all the duties of the Collector under the Bombay Land Revenue Code, 1879.
>
> (ii) The Deputy Commissioners and Assistant Commissioner shall have and exercise all the powers (except the powers of arrest and confinement of a defaulter in a civil jail) and perform all the duties of the Assistant Collector or Deputy Collector under the said Code.
>
> (iii) The Commercial Tax Officers shall have and exercise all the powers (except the powers of arrest and confinement of a defaulter in a civil jail) and perform all the duties of the Mamlatdar under the said Code.

(2) Every order passed in exercise of the powers conferred by sub-section (1) shall, for the purpose of sections 73, 75, 78, 79, or 94, be deemed to be an order passed under this Act."

11 Sections 31B and 34 of the Recovery of Debts and Bankruptcy Act, 1993, read as under :

"31B. *Priority to secured creditors*.—Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

Explanation.—For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code. . . . .

34. *Act to have over-riding effect*.—(1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)."

12 Sections 26E, 35 and 37 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, read as under :

"26E. *Priority to secured creditors*.—Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

Explanation.—For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.

35. *The provisions of this Act to override other laws*.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

37. *Application of other laws not barred*.—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."

13 The Statement of Objects and Reasons for the two enactments read as under :

"*The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002*

(*Act No. 54 of 2002*)

STATEMENT OF OBJECTS AND REASONS

The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices, there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central

Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These Committees, inter alia, have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court. Acting on these suggestions, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on the June 21, 2002 to regulate securitisition and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The provisions of the Ordinance would enable the banks and financial institutions to realize long-term assets, manage problem of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction.

It is now proposed to replace the Ordinance by a Bill, which, inter alia, contains provisions of the Ordinance to provide for—

(a) Registration and regulation of securitisation companies or reconstruction companies by the Reserve Bank of India ;

(b) Facilitating securitisation of financial assets of banks and financial institutions with or without the benefit of underlying securities ;

(c) Facilitating easy transferability of financial assets by the securitisation company or reconstruction company to acquire financial assets of banks and financial institutions by issue of debentures or bonds or any other security in the nature of a debenture ;

(d) Empowering securitisation companies or reconstruction companies to raise funds by issue of security receipts to qualified institutional buyers ;

(e) Facilitating reconstruction of financial assets acquired by exercising powers of enforcement of securities or change of management or other powers which are proposed to be conferred on the banks and financial institutions ;

(f) Declaration of any securitisation company or reconstruction company registered with the Reserve Bank of India as a public financial institution for the purpose of section 4A of the Companies Act, 1956 ;

(g) Defining "security interest" as any type of security including mortgage and change on immovable properties given for due repayment of any financial assistance given by any bank or financial institution ;

(h) Empowering banks and financial institutions to take possession of securities given for financial assistance and sell or lease the same or takeover management in the event of default, i.e., classification of the borrower's account as non-performing asset in accordance with the directions given or under guidelines issued by the Reserve Bank of India from time to time ;

(i) The rights of a secured creditor to be exercised by one or more of its officers authorized in this behalf in accordance with the rules made by the Central Government ;

(j) An appeal against the action of any bank or financial institution to the concerned Debts Recovery Tribunal and a second appeal to the Appellate Debts Recovery Tribunal ;

(k) Setting up or causing to be set up a Central Registry by the Central Government for the purpose of registration of transactions relating to securitisation, asset reconstruction and creation of security interest ;

(l) Application of the proposed legislation initially to banks and financial institutions and empowerment of the Central Government to extend the application of the proposed legislation to non-banking financial companies and other entities ;

(m) Non-application of the proposed legislation to security interests in agricultural lands, loans not exceeding rupees one lakh and cases where eighty per cent, of the loans are repaid by the borrower.

The Bill seeks to achieve the above objects."

14 We may also quote the statement of objects and reasons specified in The Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The same read thus ;

"The Recovery of Debts Due to Banks and Financial Institutions Act, 1993

STATEMENT OF OBJECTS AND REASONS

Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates

with the passage of time. The committee on the financial system headed by Shri M. Narasimham has considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realized without delay. In 1981, a Committee under the Chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by the banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfil a long-felt need, but also will be an important step in the implementation of the Report of Narasimham Committee. Whereas on September 30, 1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs. 5,622 crores in dues of public sector banks and about Rs. 391 crores of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilization and recycling of the funds for the development of the country. The Bill seeks to provide for the establishment of Tribunal and Appellate Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions. Notes on clauses explain in detail the provisions of the Bill.

Act 51 of 1993 :

The Recovery of Debts Due to Banks and Financial Institutions Bill having been passed by both the Houses of Parliament received the assent of the President on August 27, 1993. It came on the *statute book as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)"*.

The plain reading of section 48 of the VAT Act indicates that it starts **15**
with a non obstante clause "notwithstanding anything to the contrary contained in any law for the time being in force". Section 48 of the VAT Act creates first charge on the property. The issue as regards the claim of priority of the secured creditor vis-a-vis the first charge of the property under the State legislation was considered by the Supreme Court in the case of *Central Bank of India* v. *State of Kerala* reported in [2009] 21 VST 505 (SC) ; [2010] 153 Comp Cas 497 (SC) ; [2009] 4 SCC 94. The Supreme

Court, in the said decision took the view that if the State Act creates first charge on the property, then the secured creditors cannot have the claim against the statutory provision. The Supreme Court also took into consideration section 100 of the Transfer of Property Act, 1882. The relevant paras of the judgment in the case of *Central Bank of India* [2009] 21 VST 505 (SC) ; [2010] 153 Comp Cas 497 (SC) ; [2009] 4 SCC 94 are quoted hereunder for ready reference (paras 36, 37, 44 and 45, pages 543-545, 551 and 552 in 21 VST) :

> "111. However, what is most significant to be noted is that there is no provision in either of these enactments by which first charge has been created in favour of banks, financial institutions or secured creditors qua the property of the borrower.
>
> 112. Under section 13(1) of the Securitisation Act, limited primacy has been given to the right of a secured creditor to enforce security interest vis-a-vis section 69 or section 69A of the Transfer of Property Act. In terms of that sub-section, secured creditor can enforce security interest without intervention of the court or Tribunal and if the borrower has created any mortgage of the secured asset, the mortgagee or any person acting on his behalf cannot sell the mortgaged property or appoint a receiver of the income of the mortgaged property or any part thereof in a manner which may defeat the right of the secured creditor to enforce security interest. This provision was enacted in the backdrop of Chapter VIII of Narasimham Committee's 2nd Report in which specific reference was made to the provisions relating to mortgages under the *Transfer of Property Act*.
>
> 113. In an apparent bid to overcome the likely difficulty faced by the secured creditor which may include a bank or a financial institution, Parliament incorporated the non obstante clause in *section 13* and gave primacy to the right of secured creditor vis-a-vis other mortgagees who could exercise rights under *sections 69* or *69A of the Transfer of Property Act*. However, this primacy has not been extended to other provisions like section 38C of the Bombay Act and section 26B of the Kerala Act by which first charge has been created in favour of the State over the property of the dealer or any person liable to pay the dues of sales tax, etc., sub-section (7) of *section 13* which envisages application of the money received by the secured creditor by adopting any of the measures specified under sub-section (4) merely regulates distribution of money received by the secured creditor. It does not create first charge in favour of the secured creditor . . . .

116. The non obstante clauses contained in *section 34(1)* of the DRT Act and section 35 of the Securitisation Act give overriding effect to the provisions of those Acts only if there is anything inconsistent contained in any other law or instrument having effect by virtue of any other law. In other words, if there is no provision in the other enactments which are inconsistent with the *DRT Act* or Securitisation Act, the provisions contained in those Acts cannot override other legislations. Section 38C of the Bombay Act and section 26B of the Kerala Act also contain non obstante clauses and give statutory recognition to the priority of State's charge over other debts, which was recognized by Indian High Courts even before 1950. In other words, these sections and similar provisions contained in other State legislations not only create first charge on the property of the dealer or any other person liable to pay sales tax, etc., but also give them overriding effect over other laws. . . . .

126. *While enacting the DRT Act and Securitisation Act, Parliament was aware of the law laid down by this court wherein priority of the State dues was recognized. If Parliament intended to create first charge in favour of banks, financial institutions or other secured creditors on the property of the borrower, then it would have incorporated a provision like section 529A of the Companies Act or section 11(2) of the EPF Act and ensured that notwithstanding a series of judicial pronouncements, dues of banks, financial institutions and other secured creditors should have priority over the State's statutory first charge in the matter of recovery of the dues of sales tax, etc. However, the fact of the matter is that no such provision has been incorporated in either of these enactments despite conferment of extraordinary power upon the secured creditors to take possession and dispose of the secured assets without the intervention of the court or Tribunal. The reason for this omission appears to be that the new legal regime envisages transfer of secured assets to private companies. . . . . .*

129. If Parliament intended to give priority to the dues of banks, financial institutions and other secured creditors over the first charge created under State legislations then provisions similar to those contained in *section 14A* of the Workmen's *Compensation Act, 1923, section 11(2)* of the EPF Act, *section 74(1)* of the Estate Duty Act, 1953, *section 25(2)* of the Mines and Minerals (Development and *Regulation) Act, 1957, section 30 of* the Gift Tax Act, and *section 529A* of the Companies Act, 1956 would have been incorporated in the *DRT Act* and the Securitisation Act.

130. Undisputedly, the two enactments do not contain provision similar to Workmen's *Compensation Act*, etc. In the absence of any specific provision to that effect, it is not possible to read any conflict or inconsistency or overlapping between the provisions of the *DRT Act* and Securitisation Act on the one hand and section 38C of the Bombay Act and section 26B of the Kerala Act on the other and the non obstante clauses contained in *section 34(1)* of the DRT Act and section 35 of the Securitisation Act cannot be invoked for declaring that the first charge created under the State legislation will not operate qua or affect the proceedings initiated by banks, financial institutions and other secured creditors for recovery of their dues or enforcement of security interest, as the case may be.

131. The court could have given effect to the non obstante clauses contained in *section 34(1)* of the DRT Act and section 35 of the Securitisation Act vis-a-vis section 38C of the Bombay Act and section 26B of the Kerala Act and similar other State legislations only if there was a specific provision in the two enactments creating first charge in favour of the banks, financial institutions and other secured creditors but as the Parliament has not made any such provision in either of the enactments, the first charge created by the State legislations on the property of the dealer or any other person, liable to pay sales tax, etc., cannot be destroyed by implication or inference, notwithstanding the fact that banks, etc., fall in the category of secured creditors. . . ."

16 Indisputably, the judgment of the apex court in the case of *Central Bank of India* [2009] 21 VST 505 (SC) ; [2010] 153 Comp Cas 497 (SC) ; [2009] 4 SCC 94 was prior to the amendment in the Act, 2002 and 1993, respectively. However, what is important are the observations of the Supreme Court as contained in para 126 of this decision quoted above. The Supreme Court observed that while enacting the DRT Act, the Parliament was aware of the law laid down by the Supreme Court, wherein priority of the State dues was recognized. If the Parliament intended to create the first charge in favour of the banks, Financial Institutions or other secured creditors on the property of the borrower, then it would have incorporated a provision like section 529A of the Companies Act or section 11(2) of the EPF Act and ensured that notwithstanding the series of judicial pronouncements, the dues of banks, financial institutions and other secured creditors should have priority over the State's statutory first charge in the matter of recovery of the dues of sales tax, etc. The Supreme Court proceeded to observe that the fact of the matter was that no such provision had been incorporated in either of those enactments despite conferment of extraordinary power

upon the secured creditors to take possession and dispose of the secured assets without the intervention of the court or Tribunal.

In our prima facie opinion, such observations probably might have **17** weighed with the Parliament which ultimately might have led to the introduction of section 31B in the RDB Act, 1993 and 26E in the SARFAESI Act, 2002.

Section 31B of the RDB Act also starts with a non obstante clause "notwithstanding anything contained in any other law for the time being in **18** force".

Section 26E of the SARFAESI Act also starts with a non obstante clause **19** "notwithstanding anything contained in any other law for the time being in force".

As regards the non obstante clause, this court deems it fit to consider **20** few decisions :

(i) In *State of West Bengal* v. *Union of India* AIR 1963 SC 1241, it is observed as under :

> ". . . The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute ; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs . . . . ."

(ii) In *Union of India* v. *Maj I. C. Lala*, AIR 1973 SC 2204, the Supreme Court held that non obstante clause does not mean that the whole of the said provision of law has to be made applicable or the whole of the other law has to be made inapplicable. It is the duty of the court to avoid the conflict and construe the provisions to that they are harmonious.

(iii) In *Union of India* v. *G. M. Kokil*, AIR 1984 SC 1022, the Supreme Court, at paragraph 10, held as follows :

> ". . . It is well-known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. . . ."

(iv) In *Chandavarkar Sita Ratna Rao* v. *Ashalata S. Guram* [1986] 4 SCC 447, at paragraph 67, the Supreme Court held as follows :

> "67. A clause beginning with the expression 'notwithstanding any thing contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is more often than not appended to a section in the

beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this court in *South India Corporation (P.) Ltd.* v. *Secretary, Board of Revenue, Trivandrum* [1964] 15 STC 74 (SC) ; [1964] AIR 1964 SC 207 ; [1964] 4 SCR 280."

(v) In *Vishin N. Kanchandani* v. *Vidya Lachmandas Khanchandani* [2000] 102 Comp Cas 340 (SC) ; AIR 2000 SC 2747, at paragraph 11, the Supreme Court held that (page 348 in 102 Comp Cas) :

". . . There is no doubt that by non obstante clauses the Legislature devices means which are usually applied to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other statute. In other words such a clause is used to avoid the operation and effect of all contrary provisions. The phrase is equivalent to showing that the Act shall be no impediment to the measure intended. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made has to be kept in mind."

(vi) In *ICICI Bank Ltd.* v. *SIDCO Leathers Ltd.* [2006] 131 Comp Cas 451 (SC) ; [2006] 67 SCL 383 (SC), the Supreme Court, at paragraphs 34, 36 and 37, held as follows (paras 36, 38 and 39, pages 467 and 468 in 131 Comp Cas) :

"34. Section 529A of the Companies Act no doubt contains a non-obstante clause but in construing the provisions thereof, it is necessary to determine the purport and object for which the same was enacted. . . .

36. The non obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy. . .

37. A non obstante clause must be given effect to, to the extent the Parliament intended and not beyond the same."

(vii) The Supreme Court, in the case of *Central Bank of India* v. *State of Kerala* reported in [2009] 21 VST 505 (SC) ; [2010] 153 Comp Cas 497

(SC) ; [2009] 4 SCC 94, at paragraphs 103 to 107, considered many cases on non obstate clause, which are extracted (paras 32-35, pages 541-543 in 21 VST) :

"103. A non obstante clause is generally incorporated in a statute to give overriding effect to a particular section or the statute as a whole. While interpreting non obstante clause, the court is required to find out the extent to which the Legislature intended to do so and the context in which the non obstante clause is used. This rule of interpretation has been applied in several decisions.

104. In *State of West Bengal* v. *Union of India* [1964] 1 SCR 371, it was observed that :

'68. . . . the court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute ; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs.'

105. In *Madhav Rao Jivaji Rao Scindia* v. *Union of India* [1971] 1 SCC 85, Hidayatullah, C.J. observed that the non obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but 'for that reason alone we must determine the scope' of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. A search has, therefore, to be made with a view to determining which provision answers the description and which does not.

106. In *R. S. Raghunath* v. *State of Karnataka* [1992] 1 SCC 335, a three-Judge Bench referred to the earlier judgments in *Aswini Kumar Ghose* v. *Arabinda Bose*, AIR 1952 SC 369, *Dominion of India* v. *Shrinbai A. Irani*, AIR 1954 SC 596, *Union of India* v. *G. M. Kokil* [1984] (Supp.) SCC 196, *Chandravarkar Sita Ratna Rao* v. *Ashalata S. Guram* [1986] 4 SCC 447 and observed :

'. . . The non obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict. But the non obstante clause need not necessarily and always be coextensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non

obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules.'

107. In *A. G. Varadarajulu* v. *State of Tamil Nadu* [1998] 4 SCC 231, this court relied on *Aswini Kumar Ghose's* case AIR 1952 SC 369. The court while interpreting non obstante clause contained in section 21A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 held :

'It is well-settled that while dealing with a non obstante clause under which the Legislature wants to give overriding effect to a section, the court must try to find out the extent to which the Legislature had intended to give one provision overriding effect over another provision. Such intention of the Legislature in this behalf is to be gathered from the enacting part of the section. In *Aswini Kumar Ghose* v. *Arabinda Bose*, AIR 1952 SC 369, Patanjali Sastri, J. observed :

"The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously ;" '."

21 A non obstante clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the non obstante clause. It is equivalent to saying that inspite of the provisions or Act mentioned in the non obstante clause, the provision following it will have its full operation or the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment or the provision in which the non obstante clause occurs. (See "*Principles of Statutory Interpretation*", 9th Edition, by Justice G. P. Singh, Chapter V, Synopsis IV at pages 318 and 319).

22 When two or more laws or provisions operate in the same field and each contains a non obstante clause stating that its provision will override those of any other provisions or law, stimulating and intricate problems of interpretation arise. In resolving such problems of interpretation, no settled principles can be applied except to refer to the object and purpose of each of the two provisions, containing a non obstante clause. Two provisions in same Act each containing a non obstante clause, requires a harmonious interpretation of the two seemingly conflicting provisions in the same Act. In this difficult exercise, there are involved proper consideration of giving

effect to the object and purpose of two provisions and the language employed in each. (See for relevant discussion in para 20 in *Shri Swaran Singh* v. *Shri Kasturi Lal* [1977] 1 SCC 750).

Normally the use of the phrase by the Legislature in a statutory provision like "not withstanding anything to the contrary contained in this Act" is equivalent to saying that the Act shall be no impediment to the measure (See *Law Lexicon* words "notwithstanding anything in this Act to the contrary"). Use of such expression is another way of saying that the provision in which the non obstante clause occurs usually would prevail over the other provisions in the Act. Thus, the non obstante clauses are not always to be regarded as repealing clauses nor as clauses which expressly or completely supersede any other provision of the law, but merely as clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of the principle enacting provision to which the non obstante clause is attached. (See *Bipathumma* v. *Mariam Bibi* [1966] (1) Mysore Law Journal page 162, at page 165) **23**

Having regard to the nature of the controversy which I am called upon to resolve, I would like to look into two decisions of the Supreme Court ; one, in the case of *Kumaon Motor Owners' Union Ltd.* v. *State of U. P.* reported in AIR 1966 SC 785, and another, in the case of *Solidaire India Ltd.* v. *Fairgrowth Financial Services Ltd.* reported in [2001] 104 Comp Cas 569 (SC) ; [2001] 3 SCC 71. Although the ratio of the two decisions referred to above may not be directly applicable to the case on hand, yet having regard to certain principles of law enunciated, I would like to follow and apply the same for the purpose of resolving the controversy as regards section 48 of the VAT Act, section 31B of the RDB Act and section 26E of the SARFAESI Act. **24**

In *Kumaon Motor Owners' Union Ltd.* v. *State of Uttar Pradesh*, AIR 1966 SC 785, the Supreme Court had the occasion to resolve the conflict between the provisions of the Defence of India Act (No. 51 of 1962) and the Motor Vehicles Act. The Supreme Court noticed that there was an apparent conflict between section 43 of the Defence of India Act on the one hand and section 68B of the Motor Vehicles Act, 1939 read with section 6(4) of the Act on the other. The Supreme Court resolved the conflict by holding that the provisions of section 43 of the Act would prevail over the provisions of section 68B of the Motor Vehicles Act for the following reasons : **25**

(1) Section 43 appears in an Act which is later than the Motor Vehicles Act and, therefore, unless there is anything repugnant, the provisions in the later Act must prevail.

(2) If the object behind the two statutes is to be looked into, namely, the Act and the Motor Vehicles Act, the Act which was passed to meet an emergency arising out of the Chinese invasion of India in 1962 must prevail over the provisions contained in Chapter IV-A of the Motor Vehicles Act which were meant to meet a situation arising out of the taking over of the motor transport by a State.

(3) The language of section 43 was found to be more emphatic than the language of section 68B. The Supreme Court took notice of the fact that section 43 provided that the provisions of the Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act. This, according to the Supreme Court, was indicative of the intention of the Legislature that the Act shall prevail over the other statutes.

26 The observations made in para 12 of the judgment are relevant. The observations are as under :

> "12. This argument is met on behalf of the State by reference to section 43 of the Act which lays down that 'the provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act'. It does appear that there is some apparent conflict between section 43 on the one hand and section 68B of the Motor Vehicles Act read with section 6(4) of the Act on the other, and that conflict has to be resolved. The only way to do it is to decide whether in such a situation, section 43 of the Act will prevail or section 68B of the Motor Vehicles Act will prevail. We are of opinion that section 43 of the Act must prevail. In the first place, section 43 appears in an Act which is later than the Motor Vehicles Act and, therefore, in such a situation unless there is anything repugnant, the provisions in the later Act must prevail. Secondly, if we look at the object behind the two statutes, namely, the Act and the Motor Vehicles Act, there can be no doubt that the Act, which was passed to meet an emergency arising out of the Chinese Invasion of India in 1962, must prevail over the provisions contained in Chapter IV-A of the Motor Vehicles Act which were meant to meet a situation arising out of the taking over of motor transport by the State. Thirdly, if we compare the language of section 43 of the Act with section 68B of the Motor Vehicles Act we find that the language of section 43 is more emphatic than the language of section 68B. Section 43 provides that the provisions of the Act or any rule made

thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act. This would show that the intention of the Legislature was that the Act shall prevail over other statutes. But we do not find the same emphatic language in section 68B which lays down that the provisions in Chapter IV-A would prevail notwithstanding anything inconsistent therewith contained in Chapter IV of the Motor Vehicles Act or in any other law for the time being in force. The intention seems to be clear in view of the collocation of the words 'in Chapter IV of this Act' with the words 'in any other law for the time being in force' that Chapter IV-A was to prevail over Chapter IV of the Motor Vehicles Act or over any other law of the same kind dealing with motor vehicles or for compensation. On the other hand section 43 of the Act emphatically says that the Act will prevail over any enactment other than the Act, and this suggests that the Legislature intended that the emergency legislation in the Act will be paramount if there is any inconsistency between it and any other provision of any other law whatsoever. Such a provision is understandable in view of the emergency which led to the passing of the Act."

27 The principles discernible from the decision of the Supreme Court in the case of *Kumaon Motor Owners' Union Ltd.*, AIR 1966 SC 785 are that, if there is a conflict between the provisions of the two Acts and if there is nothing repugnant, the provisions in the later Act would prevail. The second principle discernible is that, while resolving the conflict, the court must look into the object behind the two statutes. To put it in other words, what necessitated the Legislature to enact a particular provision, later in point of time, which may be in conflict with the provisions of the other Acts. The third principle discernible is that the court must look into the language of the provisions. If the language of a particular provision is found to be more emphatic, the same would be indicative of the intention of the Legislature that the Act shall prevail over the other statutes.

28 The Supreme Court, in the case of *Solidaire India Ltd.* [2001] 104 Comp Cas 569 (SC) ; [2001] 3 SCC 71, had the occasion to consider the effect of conflict between two special Acts. In the case before the Supreme Court, the conflict was between the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 with the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. The Supreme Court took the view that the later one would prevail. I may quote the relevant observations thus (pages 571-573 in 104 Comp Cas) :

"7. Coming to the second question, there is no doubt that the 1985 Act is a special Act. Section 32(1) of the said Act reads as follows :

'32. *Effect of the Act on other laws.*—(1) The provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) for the time being in force or in the memorandum or articles of association of an industrial company or in any other instrument having effect by virtue of any law other than this Act.'

8. The effect of this provision is that the said Act will have effect notwithstanding anything inconsistent therewith contained in any other law except to the provisions of the Foreign Exchange Regulation Act, 1973, and the Urban Land (Ceiling and Regulation) Act, 1976. A similar non obstante provision is contained in section 13 of the Special Court Act which reads as follows :

'13. *Act to have overriding effect.*—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than, this Act, or in any decree or order of any court, Tribunal or other authority.'

9. It is clear that both these Acts are special Acts. This court has laid down in no uncertain terms that in such an event it is the later Act which must prevail. The decisions cited in the above context are as follows : *Maharashtra Tubes Ltd.* v. *State Industrial & Investment Corporation of Maharashtra Ltd.* [1993] 78 Comp Cas 803 (SC) ; [1993] 2 SCC 144, *Sarwan Singh* v. *Kasturi Lal* [1977] 2 SCR 421, *Allahabad Bank* v. *Canara Bank* [2000] 101 Comp Cas 64 (SC) ; [2000] 4 SCC 406 and *Shri Ram Narain* v. *Simla Banking and Industrial Co. Limited* [1956] 26 Comp Cas 280 (SC) ; [1956] SCR 603.

10. We may notice that the special court had in another case dealt with a similar contention. In *Bhoruka Steel Ltd.* v. *Fairgrowth Financial Services Ltd.* [1997] 89 Comp Cas 547 (Bom), it had been contended that recovery proceedings under the Special Court Act should be stayed in view of the provisions of the 1985 Act. Rejecting this contention, the special court had come to the conclusion that the Special Court Act being a later enactment would prevail. The head note which brings out succinctly the ratio of the said decision is as follows :

'Where there are two special statutes which contain non obstante clauses the later statute must prevail. This is because at the time of

enactment of the later statute, the Legislature was aware of the earlier legislation and its non obstante clause. If the Legislature still confers the later enactment with a non obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply.

The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, provides in section 13, that its provisions are to prevail over any other Act. Being a later enactment, it would prevail over the Sick Industrial Companies (Special Provisions) Act, 1985. Had the Legislature wanted to exclude the provisions of the Sick Companies Act from the ambit of the said Act, the Legislature would have specifically so provided. The fact that the Legislature did not specifically so provide necessarily means that the Legislature intended that the provisions of the said Act were to prevail even over the provisions of the Sick Companies Act.

Under section 3 of the 1992 Act, all property of notified persons is to stand attached. Under section 3(4), it is only the special court which can give directions to the custodian in respect of property of the notified party. Similarly, under section 11(1), the special court can give directions regarding property of a notified party. Under section 11(2), the special court is to distribute the assets of the notified party in the manner set out thereunder. Monies payable to the notified parties are assets of the notified party and are, therefore, assets which stand attached. These are assets which have to be collected by the special court for the purposes of distribution under section 11(2). The distribution can only take place provided the assets are first collected. The whole aim of these provisions is to ensure that monies which are siphoned off from banks and financial institutions into private pockets are returned to the banks and financial institutions. The time and manner of distribution is to be decided by the Special Court only. Under section 22 of the 1985 Act, recovery proceedings can only be with the consent of the Board for Industrial and Financial Reconstruction or the Appellate Authority under that Act. The Legislature being aware of the provisions of section 22 under the 1985 Act still empowered only the special court under the 1992 Act to give directions to recover and to distribute the assets of the notified persons in the manner set down under section 11(2) of the 1992 Act. This can only mean that the Legislature wanted the provisions of section 11(2)

of the 1992 Act to prevail over the provisions of any other law including those of the Sick Industrial Companies (Special Provisions) Act, 1985.

It is a settled rule of interpretation that if one construction leads to a conflict, whereas on another construction, two Acts can be harmoniously constructed then the latter must be adopted. If an interpretation is given that the Sick Industrial Companies (Special Provisions) Act, 1985, is to prevail then there would be a clear conflict. However, there would be no conflict if it is held that the 1992 Act is to prevail. On such an interpretation the objects of both would be fulfilled and there would be no conflict. It is clear that the Legislature intended that public monies should be recovered first even from sick companies. Provided the sick company was in a position to first pay back the public money, there would be no difficulty in reconstruction. The Board for Industrial and Financial Reconstruction whilst considering a scheme for reconstruction has to keep in mind the fact that it is to be paid off or directed by the special court. The Special Court can, if it is convinced, grant time or instalments. . . .'

11. We are in agreement with the aforesaid decision of the case, more so when we find that whenever the Legislature wishes to do so it makes appropriate provisions in the Act in that behalf. Mr. Shiraz Rustomjee has drawn our attention to section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 wherein after giving an overriding effect to the 1993 Act it is specifically provided that the said Act will be in addition to and not in derogation of a number of other Acts including the 1985 Act. Similarly under section 32 of the 1985 Act the applicability of the Foreign Exchange Regulation Act and the Urban Land Ceiling Act is not excluded. It is clear that in the instant case there was no intention of the Legislature to permit the 1985 Act to apply notwithstanding the fact that proceedings in respect of a company may be going on before the B. I. F. R. The 1992 Act is to have an overriding effect notwithstanding any provision to the contrary in another Act."

29 The principles of law discernible from the decision of the Supreme Court in the case of *Solidaire India Ltd.* [2001] 104 Comp Cas 569 (SC) ; [2001] 3 SCC 71 are that, if there is a conflict between the two special Acts, the later Act must prevail. To put it in other words, when there are two special statutes which contain the non obstante clauses, the later statute must prevail. This is because at the time of enactment of the later statute, the Legislature could be said to be aware of the earlier legislation and its non

obstante clause. If the Legislature still confers the later enactment with a non obstante clause, it means that the Legislature wanted that enactment to prevail.

We are conscious of the fact that in the case on hand there is no conflict **30** between two special statutes enacted by the Parliament. The conflict is with the State Act and the Central Act. We are trying to understand the true purport and effect of section 26E of the SARFAESI Act which came to be enacted later in point of time and also the effect of section 31B of the RDB Act which came to be enacted later in point of time. In other words, what necessitated the introduction of the two provisions in the two enactments and what object the two provisions would subserve.

We may, at the outset, clarify that the Government of India, Ministry of **31** Finance, notified the provisions of section 26(E) on 1st September, 2016. The copy of the notification issued by the Government of India, published in the Official Gazette, Part II, section 3, at Serial No. 2142, dated September 1, 2016 has been placed on record. The notification reads as under :

"*Ministry of Finance*

(Department of Financial Services)

Notification

New Delhi, the 1st September, 2016

S. O. 2831 (E).—In exercise of the powers conferred by sub-section (2) of section 1 of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (44 of 2016), the Central Government hereby appoints the 1st day of September, 2016 as the date on which the following provisions of the said Act shall come into force, namely :—

Sl. No.	*Sections*
1	Sections 2 and 3 (both inclusive) ;
2	Section 4 (except clause (xiii)) ;
3	Sections 5 and 6 (both inclusive) ;
4	Sections 8 to 16 (both inclusive) ;
5	Sections 22 to 31 (both inclusive) ;
6	Sections 33 to 44 (both inclusive).

[F. No. 3/5/2016–DRT]

ANANDRAO VISHNU PATIL, Jt. Secy."

Section 31B has been inserted in the Recovery of Debts and Bankruptcy **32** Act, 1993 (hereinafter referred to as "the RDB Act") by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provi-

sions (Amendment) Act, 2016, with effect from September 1, 2016, which contains a non obstante clause and which expressly provides that the secured debts shall be paid in priority over all other debts and Government dues including the State taxes.

33 Apart from the fact that section 31B of the RDB Act is a later enactment, the language of the said provision also clearly indicates the intention of the Parliament to give precedence even over the Government dues notwithstanding anything to the contrary in any other law.

34 We are sure of one thing that there exists no repugnancy in the two legislations. The intention of the Parliament could not be said to nullify the State enactment providing the first charge on the property. The legislations have been made by the Central Government and the State respectively under entries I and II of the Schedule and not of the Concurrent List. The amendment made by the Parliament is to give priority to the secured creditors vis-a-vis the State dues without speaking about the first charge. This aspect was duly considered by the Supreme Court in the case of *Central Bank of India* [2009] 21 VST 505 (SC) ; [2010] 153 Comp Cas 497 (SC) ; [2009] 4 SCC 94. The amended provision, i.e., section 26E of the SARFAESI Act and section 31B of the RDB Act, would have been different as indicated by the apex court in the case of *Central Bank of India* [2009] 21 VST 505 (SC) ; [2010] 153 Comp Cas 497 (SC) ; [2009] 4 SCC 94.

35 While it is true that the bank has taken over the possession of the assets of the defaulter under the SARFAESI Act and not under the RDB Act, section 31B of the RDB Act, being a substantive provision giving priority to the "secured creditors", the same will be applicable irrespective of the procedure through which the recovery is sought to be made. This is particularly because section 2(la) of the RDB Act defines the phrase "secured creditors" to have the same meaning as assigned to it under the SARFAESI Act. Moreover, section 37 of the SARFAESI Act clearly provides that the provisions of the SARFAESI Act shall be in addition to, and not in derogation of inter alia the RDB Act. As such, the SARFAESI Act was enacted only with the intention of allowing faster recovery of debts to the secured creditors without intervention of the court. This is apparent from the Statement of Objects and Reasons of the SARFAESI Act. Thus, an interpretation that, while the secured creditors will have priority in case they proceed under the RDB Act they will not have such priority if they proceed under the SARFAESI Act, will lead to an absurd situation and, in fact, would frustrate the object of the SARFAESI Act which is to enable fast recovery to the secured creditors.

The insertion of section 31B of the RDB Act will give priority to the secured creditors even over the subsisting charges under other laws on the date of the implementation of the new provision, i. e., September 1, 2016. The Supreme Court, in the case of *State of Madhya Pradesh* v. *State Bank of Indore* [2002] 126 STC 1 (SC) ; [2002] 108 Comp Cas 622 (SC), has held that a provision creating first charge over the property would operate over all charges that may be in force. The following observations made in para 5 of the said judgment are relevant (page 3 in 126 STC) : **36**

> "5. Section 33C creates a statutory first charge that prevails over any charge that may be in existence. Therefore, the charge thereby created in favour of the State in respect of the sales tax dues of the second respondent prevailed over the charge created in favour of the bank in respect of the loan taken by the second respondent. There is no question of retrospectivity here, as, on the date when it was introduced, section 33C operated in respect of all charges that where then in force and gave sales tax dues precedence over them. . ."

The Rajasthan High Court, in the case of *G. M. C. Engineers & Contractor Pvt. Ltd.* v. *State (Finance Department)* S.B. Civil Writ Petition No. 6872 of 2017 decided on5th July, 2017), has taken the view as under : **37**

> "The first issue for my consideration is as to whether amended provisions of section 26E of the Act of 2002 and section 31B of the Act of 1993 would apply to the present case. It is for the reason that both the provisions were inserted in the year 2016, whereas, attachment of the property in question to recover the dues was made by the respondent-Department in the year 2014 itself. It is not the case of either of the parties that amended provision is retrospective and otherwise perusal of amended provision does not show it thus would apply prospectively. The property already attached towards recovery of State dues cannot be nullified by the subsequent legislation when it has not been given retrospective effect. If argument of the learned counsel for the petitioner about priority rights of the secured creditors vis-a-vis Government dues is accepted, it would apply from the date of amendment, whereas, attachment of the property was made in the year 2014, thus it was not free for auction. The enforcement of statutory first charge by attachment cannot be nullified by subsequent auction when no priority right was existing in favour of the secured creditors at the relevant time. Section 47 of the Act of 2003 is relevant for it, thus quoted hereunder for ready reference :
>
> '47. *Liability under this Act to be the first charge.*—Notwithstanding anything to the contrary contained in any law for the time being

in force, any amount of tax and any other sum payable by a dealer or any other person under this Act, shall be the first charge on the property of such dealer or person.'

Section 47 of the Act of 2003 starts with non obstante clause and creates first charge on the property. The issue about priority claim of the secured creditor vis-a-vis first charge on the property under the State legislation was considered by the Supreme Court in the case of *Central Bank of India* [2009] 21 VST 505 (SC) ; [2010] 153 Comp Cas 497 (SC) ; [2009] 4 SCC 94. If State Act creates first charge on the property then secured creditors cannot have claim against the statutory provision. Therein, consideration was also made even in reference to section 100 of the Act of 1882. . . . .

It is submitted that judgment of the apex court in the case of *Central Bank of India* [2009] 21 VST 505 (SC) ; [2010] 153 Comp Cas 497 (SC) ; [2009] 4 SCC 94 was prior to the amendment in the Act of 2002 and 1993 thus would not apply to the cases governed by the amended provisions. In the case in hand, the attachment of property by the State is prior to the amendment thus amended provision would not apply. Section 47 of the Act of 2003 was invoked prior to the amendment.

We are yet considering the effect of the amended provision. The apex court has made analysis of a provision of first charge vis-a-vis secured creditor in the case of *Central Bank of India* [2009] 21 VST 505 (SC) ; [2010] 153 Comp Cas 497 (SC) ; [2009] 4 SCC 94. The first charge was given supremacy than rights under mortgagee or to a secured creditor. *The distinction between 'first charge and secured creditor' is necessary to analyse scope of section 26E of the Act of 2002 and section 31B of the Act of 1993. The amended provisions are having overriding effect and give priority to the secured creditors vis-a-vis State dues. It does not, however, nullify the effect of first charge created on the property under the State Act. If intention of Parliament would have been to nullify the effect of first charge, the language of section 26E of the Act of 2002 and section 31B of the Act of 1993 would have been different as indicated by the apex court in the case of* Central Bank of India [2009] 21 VST 505 (SC) ; [2010] 153 Comp Cas 497 (SC) ; [2009] 4 SCC 94. *It should have been with non obstante clause and that secured creditors would have priority over the first charge created under a State legislation. The amendment made by Parliament is to give priority to the secured creditors vis-a-vis State dues without speaking about the first charge."*

The Madhya Pradesh High Court, in the case of *Bank of Baroda* v. *Commissioner of Sales Tax, M. P.* reported in [2018] 55 GSTR 210 (MP), had the occasion to consider identical issue. The Madhya Pradesh High Court took cognizance of the notice of sale by the Commercial Department. The notice of sale was issued on July 19, 2017. The High Court took notice of the fact that section 31B came into force with effect from September 1, 2016, and by virtue of the said amendment, the right of the secured creditors to realize the secured dues and debts dues, which are payable to the secured creditors by sale of assets over which security has been created, has priority over all other debts and Government dues including revenue, taxes, cesses and rates due to the Central Government, State Government and local authorities. The relevant observations are as under (pages 212 and 213 in 55 GSTR) : **38**

"8. In the present case, undisputedly a notice of sale by the respondent/Commercial Department has been issued on July 19, 2017. The Amendment Act, 2016, which incorporates section 31B reads as under :

'31B. Notwithstanding anything contained in any law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all the other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

Explanation.—For the purpose of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.'

9. Thus, the aforesaid statute makes it very clear that the dues of the bank are to be recovered at the first instance. Section 33 of the MP VAT Act, 2002 reads as under :

'33. *Tax to be first charge*.—(1) Notwithstanding anything to the contrary, contained in any law for the time being in force and subject to the provisions of section 530 of the Companies Act, 1956 (No. 1 of 1956), any amount of tax and/or penalty or interest, if any, payable by a dealer or other person under this Act shall be first charge on the property of the dealer or such person.

(2) Notwithstanding anything contained in this Act, where a dealer or person is in default or is deemed to be in default under clause (a) of sub-section (11) of section 24 and whose property is being sold by a bank or financial institution for recovery of its loan, the Commissioner may forgo the right of first charge as mentioned in sub-section (1) against the property sold on the following conditions :

(a) if the arrears of tax, penalty, interest or part thereof or any other amounts is up to 25 per cent. of the total auction value, the arrears shall be paid in full by the bank or financial institution ;

(b) if the arrears of tax, penalty, interest or part thereof or any other amount is more than 25 per cent. of the total auction value, the 25 per cent. of the total auction value and the amount in the same proportion of the remaining auction value as the remaining arrears bear to the total dues of the bank or financial institution, shall be paid by the bank or financial institution.'

In the considered opinion of this court, the Enforcement of Security Interest and Recovery of Debts and Loans and Miscellaneous Provisions (Amendment) Act, 2016 came into force with effect from September 1, 2016 and by virtue of the said amendment, the right of secured creditors to realise the secured dues and debts dues, which are payable to the secured creditors by sale of assets over which security has been created, is having priority over all other debts and Government dues including revenue, taxes, cesses and rates due to Central Government, State Government and local authorities.

Not only this, it is having overriding effect over all other enactment including the provisions of the MP VAT Act, Central Sales Tax Act, Entry Tax Act and any other Tax Act. Though, an attempt has been made by the State Government to demonstrate before this court that the amendment will not disentitle to recover the dues by them as the dues are outstanding since 2012. Nothing prevented the State Government to recover the dues since 2012 and the State Government woke up from plumber only after the amendment has come into force and by virtue of the amendment in the Central Act, this court is of the considered opinion that by no stretch of imagination, the State Government can be permitted to auction the property in question as the Bank of Baroda is having priority in the matter in light of the amendment which has been quoted above."

39 The Full Bench of the Madras High Court, in the case of *Assistant Commissioner (CT), Anna Salai-III Assessment Circle, Chennai* v. *Indian Overseas Bank* [2017] 99 VST 222 (Mad) [FB] ; [2017] 202 Comp Cas 226

(Mad) [FB] ; AIR 2017 Mad 67 [FB], was called upon to answer the following two questions (page 223 in 99 VST) :

"(i) As to whether the financial institution, which is a secured creditor, or the Department of the Government concerned, would have the 'priority of charge' over the mortgaged property in question, with regard to the tax and other dues, and

(ii) As to the status and the rights of a third party purchaser of the mortgaged property in question."

Sanjay Kishan Kaul, CJ. (as His Lordship then was) observed as under **40**
(paras 2-6, pages 223 and 224 in 99 VST) :

"We are of the view that if there was at all any doubt, the same stands resolved by view of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, section 41 of the same seeking to introduce section 31B in the Principal Act, which reads as under :

'31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

Explanation.—For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.'

2. There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with 'notwithstanding' clause and has come into force from September 1, 2016.

3. The law having now come into force, naturally it would govern the rights of the parties in respect of even a lis pending.

4. The aforesaid would, thus, answer question (a) in favour of the financial institution, which is a secured creditor having the benefit of the mortgaged property.

5. In so far as question (b) is concerned, the same is stated to relate only to auction sales, which may be carried out in pursuance of the rights exercised by the secured creditor having a mortgage of the property. This aspect is also covered by the introduction of section 31B, as it includes 'secured debts due and payable to them by sale of assets over which security interest is created'."

41 The Full Bench decision of the Madras High Court referred to above has been referred to and relied upon by a Division Bench of the Bombay High Court in the case of *Punjab National Bank, Bandra (E), Mumbai* v. *Maa Banbhori Steel Industry Pvt. Ltd.* (Writ Petition No. 11018 of 2018, decided on 29th October 2018).

42 The Division Bench was dealing with section 37 of the Maharashtra Value Added Tax Act, 2002 (for short, "the MVAT Act"). We have noticed that there is a vast difference between section 37 of the MVAT Act, 2002 and section 48 of the GVAT Act, 2003. Section 37 of the MVAT Act, 2002 is much more comprehensive compared to section 37 of the GVAT Act, 2003. Section 37 of the MVAT Act, 2002 reads as under :

"37. *Liability under this Act to be the first charge*.—Notwithstanding anything contained in any contract to the contrary, but subject to any provision regarding creation of first charge in any Central Act for the time being in force, any amount of tax, penalty, interest, sum forfeited, fine or any other sum payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer or, as the case may be, person.

(2) The first charge as mentioned in sub-section (1) shall be deemed to have been created on the expiry of the period specified in sub-section (4) of section 32, for the payment of tax, penalty, interest, sum forfeited, fine or any other amount."

43 Thus, section 37 of the MVAT Act, 2002, although starts with a non obstance clause "notwithstanding anything contained in any contract to the contrary", yet it clarifies that the same shall be subject to any provision regarding creation of the first charge in any Central Act, any amount of tax, penalty, interest, sum forfeited or any other sum payable by a dealer or any other person under the Act shall be the first charge on the property of the dealer. Clause (2) proceeds to explain the term "first charge". The first charge is deemed to have been created on the expiry of the period specified in sub-section (4) of section 32, for the payment of tax, penalty, interest, sum forfeited, fine or any other amount. This is further suggestive of the fact that the first charge would be deemed to be created only after the tax, penalty, interest is determined in the assessment proceedings. Section 48

of the GVAT Act, 2003 is quite general and substantially differs from section 37 of the MVAT Act, 2002, although both the provisions are with regard to first charge on the property of the dealer.

The Division Bench observed as under : **44**

"A Division Bench of this court in Writ Petition No. 1796 of 2015 in the case of *Axis Bank Ltd.* v. *State of Maharashtra* [2017] 202 Comp Cas 228 (Bom) decided on March 7, 2017 had an occasion to consider the import of legislative change, in view of introduction of section 26E of the SARFAESI Act. This court had, inter alia, observed in paragraph 22 as under :

'22. Though the learned counsel appearing for the respondent-State is justified in contending in normal circumstances in view of the provisions of the SARFAESI Act (unamended) primacy can be extended to the provisions like section 38C of the Bombay Sales Tax Act or section 37 of the MVAT Act. Section 13 envisages application of money received by the secured creditor and by adopting any of the measures specified in section 13(4) merely regulates distribution of money received by the secured creditor and it does not create first charge in favour of the secured creditor. Though in normal course in view of section 35 of the SARFAESI Act, 2002 no priority can be claimed by the bank or financial institutions over the State's statutory first charge in the matter of recovery of dues of sales tax, etc. However, in respect of company under liquidation, in view of the provisions of section 529A of the Companies Act, a distinction has to be made and as has been laid down by the Division Bench of this court in the matter of *SICOM Ltd.* v. *State of Maharashtra* [2010] 6 Bom. CR 537, which view has been upheld by the Supreme Court, the claim of the secured creditor in respect of the company being under liquidation shall have the priority in view of the language applied in section 529A of the Companies Act, 1956. It also must be taken note of that there is statutory recognition of priority claim of the secured creditor in view of the amendment brought into effect by virtue of Act No. 44 of 2016 thereby introducing section 26E providing for priority to secured creditor over all other debts and all taxes, cess and other rates payable to Central Government or the State Government or the Local Authority. The applicability of the provisions of section 31B of the RDB Act which is pari materia to section 26E of the SARFAESI Act was the subject-matter for consideration before the Full Bench of the Madras High Court in the matter of *Assistant Commissioner (CT)* v. *Indian Overseas Bank* [2017] 99 VST 222 (Mad) [FB] ; [2017] 202

Comp Cas 226 (Mad) [FB] decided on November 11, 2016 and the Full Bench has observed in paragraph 4 of the judgment that "the law having now been come into force naturally it would govern the rights of the parties in respect of even lis pendence." We do not propose to analyse the Full Bench judgment delivered by the Madras High Court'."

45 The Madras High Court (Madurai Bench), in the case of *Indian Overseas Bank* v. *Sub Registrar, Tuticorin Keelur, Tuticorin District* (Writ Petition No. 14618 of 2018, decided on 18th December 2018), had the occasion to consider section 31B of the RDB Act. The Division Bench of the Madras High Court observed as under :

"Similar issue came up for consideration before this court in W. P. (MD) No. 10724 of 2018, dated December 6, 2018, *Central Bank of India* v. *Joint Sub-Registrar No. 1*, wherein this court has held as follows :

'7. In *Assistant Commissioner (CT)* v. *Indian Overseas Bank* reported in [2017] 99 VST 222 (Mad) [FB] ; [2017] 202 Comp Cas 226 (Mad) [FB] ; [2016] 6 CTC 769, the Full Bench of this court has held as under :

"2. We are of the view that if there was at all any doubt, the same stands resolved by view of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, section 41 of the same seeking to introduce section 31B in the Principal Act, which reads as under :

'31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

Explanation.—For the purpose of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.'

3. There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which

security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with 'notwithstanding' clause and has come into force from September 1, 2016.

4. The law having now come into force, naturally it would govern the rights of the parties in respect of even a lis pending".'"

In the course of the hearing of this matter, two judgments, one of the **46**
Supreme Court, and another, of the Bombay High Court, were also discussed. The Supreme Court decision is in the case of *Dena Bank* v. *Bhikhabhai Prabhudas Parekh & Co.* reported in [2000] 120 STC 610 (SC) ; [2001] 247 ITR 165 (SC) ; [2001] 107 Comp Cas 157 (SC) ; [2000] 5 SCC 694 and the Bombay High Court decision is in the case of *Stock Exchange, Bombay* v. *V. S. Kandalgaonkar* reported in [2014] 368 ITR 296 (SC) ; [2014] 51 taxmann.com 246 (SC). In the case of *Dena Bank* [2000] 120 STC 610 (SC) ; [2001] 247 ITR 165 (SC) ; [2001] 107 Comp Cas 157 (SC) ; [2000] 5 SCC 694, it was held that :

"The Crown's preferential right to recovery of debts, over other creditors is confined to ordinary or unsecured creditors. The Common Law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right for recovery of its debts over a mortgagee or pledgee of goods or a secured creditor. It is only in cases where the Crown's right and that of the subject meet at one and the same time that the Crown is in general preferred. Where the right of the subject is complete and perfect before that the King commences, the rule does not apply, for there is no point of time at which the two rights are at conflict, nor can there be a question which of the two ought to prevail in a case where one, that of the subject, has prevailed already. Section 158(1) of the Karnataka Land Revenue Act specifically provides that the claim of the State Government to any moneys recoverable under the provisions of Chapter XVI shall have precedence over any other debts, demand or claim whatsoever including in respect of mortgage. Section 158 of the Karnataka Land Revenue Act not only gives a statutory recognition to the doctrine of State's priority for recovery of debts but also extends its applicability over private debts forming subject matter of mortgage, judgment-decree, execution or attachment and the like.—*Builders Supply Corporation* v. *Union of India* [1965] 56 ITR 91 (SC) ; AIR 1965 SC 1061 relied on ; *Collector of Aurangabad* v. *Central Bank of India* [1968] 21 STC 10 (SC) ; AIR 1967 SC 1831

distinguished. A legislation may be made to commence from a back date, i. e., from a date previous to the date of its enactment. To make a law governing a past period on a subject is retrospectivity. A Legislature is competent to enact such a law. The ordinary rule is that a legislative enactment comes into operation only on its enactment. Retrospectivity is not to be inferred unless expressed or necessarily implied in the legislation, specially those dealing with substantive rights and obligations. It is a misnomer to say that sub-section (2A) of section 15 of the Karnataka Sales Tax Act is being given retrospective operation. Determining the obligation of the partners to pay the tax assessed against the firm by making them personally liable is not the same thing as giving the amendment a retrospective operation. Principle of section 25 of the Partnership Act cannot be stretched and extended to such situations in which the firm is deemed to be a person and hence a legal entity for certain purpose. The Karnataka Sales Tax Act also gives the firm a legal status by treating it as a dealer and hence a person for the limited purpose of assessing under the Sales Tax Act.—*Commissioner of Sales Tax* v. *Radhakishan* [1979] 43 STC 4 (SC) ; AIR 1979 SC 1588 and *Third Income-tax Officer* v. *Arunagiri Chettiar* [1996] 220 ITR 232 (SC) ; [1996] 134 CTR (SC) 167 relied on. The counsel for the appellant is right in submitting that on the day on which the State of Karnataka proceeded to attach and sell the property of the partners of the firm mortgaged with the bank, it could not have appropriated the sale proceeds to sales tax arrears payable by the firm and defeating the bank's security in view of the law as laid down by this court in *Commissioner of Sales Tax* v. *Radhakishan* [1979] 43 STC 4 (SC) ; AIR 1979 SC 1588. However, still in the facts and circumstances of the case, the appellant bank cannot be allowed any relief. Section 15(2A) of the Karnataka Sales Tax Act had come into force on December 18, 1983 while the decree in favour of the bank was passed on August 3, 1992 and is yet to be executed. The claim of the appellant-bank is still outstanding. Even if the sale held by the State is set aside, it will merely revive the arrears outstanding on account of sales tax to which further interest and penalty shall have to be added. The amended section 15(2A) of the Karnataka Sales Tax Act shall apply. The State shall have a preferential right to recover its dues over the rights of the appellant-bank and the property of the partners shall also be liable to be proceeded against. No useful purpose would therefore, be served by allowing the appeal which will only further complicate the controversy.—*Commissioner of*

Sales Tax v. *Radhakishan* [1979] 43 STC 4 (SC) ; AIR 1979 SC 1588 distinguished. State had preferential right to recover sales tax dues over the rights of bank and property of the partners could also be liable to be proceeded against for the dues of the firm."

47 Thus, the dictum of law as laid by the Supreme Court in the aforesaid decision is that the State's preferential right to the recovery of debts over other creditors is confined to ordinary or unsecured creditors. The Supreme Court took the view that the Common Law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right for the recovery of its debts over a mortgagee or pledgee of the goods or a secured creditor. It is true that ultimately the bank was not granted any relief, but the same was not granted in the peculiar facts of the case. Otherwise, the principle of law as explained is very clear. In no uncertain terms, the Supreme Court held that the appellant, i.e., the bank, was right in submitting that on the date on which the State of Karnataka proceeded to attach and sell the property of the partners of the firm mortgaged with the bank, it could not have appropriated the sale proceeds to the sales tax arrears payable by the firm, thereby defeating the bank's security. In taking such view, the Supreme Court relied on its earlier decision in the case of *Commissioner of Sales Tax* v. *Radhakishan* [1979] 43 STC 4 (SC) ; AIR 1979 SC 1588.

48 In the case of *Stock Exchange, Bombay* v. *V. S. Kandalgaonkar* reported in [2014] 368 ITR 296 (SC) ; [2014] 51 taxmann.com 246 (SC), it was held by the Bombay High Court that, "By virtue of lien on securities under rule 43 of the Bombay Stock Exchange Rules, BSE being secured creditor of defaulting member would have priority over dues of Income–tax Department." While dealing with the tax recovery under section 226 of the Income-tax Act, 1961, read with sections 8 and 9 of the Securities Contracts (Regulation) Act, 1956, it was held by the apex court that collection and recovery of tax has to be based on proper appreciation of facts of the case. While deciding other modes of recovery (priority over debts), the apex court duly considered the power of Central Government to direct rules to be made or to make rules and observed that a membership card is only a personal permission from stock exchange to exercise rights and privileges that may be given subject to Rules, bye-laws and regulations of exchange and moment a member is declared a defaulter, his right of nomination shall cease and vest in exchange because even personal privilege given is at that point taken away from defaulting member. It therefore held that by virtue of rule 43 of the Bombay Stock Exchange Rules security provided by a member shall be a first and paramount lien for any sum due to stock

exchange. Thus, Bombay Stock Exchange being secured creditor would have priority over Government dues and if a member of BSE was declared a defaulter, Income-tax Department would not have priority over all debts owned by defaulter member. The first thing to be noticed is that the Income -tax Act does not provide for any paramountancy of dues by way of income-tax. This is why the court in the case of *Dena Bank* v. *Bhikhabhai Prabhudas Parekh & Co.* reported in [2000] 120 STC 610 (SC) ; [2001] 247 ITR 165 (SC) ; [2001] 107 Comp Cas 157 (SC) ; [2000] 5 SCC 694 (para 19) held that Government dues only have priority over unsecured debts and in so holding the court referred to a judgment in *Giles* v. *Grover* [1832] 131 English Reports 563 in which it has been held that the Crown has no precedence over a pledgee of goods. In the present case, the common law of England qua Crown debts became applicable by virtue of article 372 of the Constitution which states that all laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force until altered or repealed by a competent Legislature or other competent authority. In fact, in *Collector of Aurangabad* v. *Central Bank of India* [1968] 21 STC 10 (SC) ; [1967] 3 SCR 855 after referring to various authorities held that the claim of the Government to priority for arrears of income-tax dues stems from the English common law doctrine of priority of Crown debts and has been given judicial recognition in British India prior to 1950 and was therefore "law in force" in the territory of India before the Constitution and was continued by article 372 of the Constitution (at pages 861, 862). In the present case, as has been noted above, the lien possessed by the stock exchange makes it a secured creditor. That being the case, it is clear that whether the lien under rule 43 is a statutory lien or is a lien arising out of agreement does not make much of a difference as the stock exchange, being a secured creditor, would have priority over Government dues.

49 The two decisions referred to above, one of the Supreme Court and another of the Bombay High Court, as such may not be helpful to the bank because the principal issue in the case on hand is with regard to the statutory charge which is created by the State enactment. The Bombay High Court was dealing with a matter under the Income-tax Act and under the Income-tax Act, there is no provision analogous to section 48 of the VAT Act which creates a statutory charge.

50 There is one another important argument of Mr. Sheth which is quite appealing and we are at one with Mr. Sheth on the same. Indisputably, the bank put forward its claim over the secured assets of the bank for the first time on October 1, 2016 and that too by way of provisional attachment of

the properties under section 45 of the VAT Act, keeping in mind the dues that may be determined in future. It is not in dispute that there were no crystallized dues as on October 1, 2016 and, therefore, there was no question of there being any charge under section 48 of the VAT Act which could only be in respect of the actual dues. It is also not in dispute that prior to the dues being crystallized in the case of the defaulting dealer, the bank had already taken over the possession of the properties of the dealer, and by that time, section 31B of the RDB Act had already been enforced by the Central Government. It is preposterous to suggest that the charge over the property under section 48 of the State Act would come into force from the assessment of the earlier financial years and what is relevant in the present case is that the dues and resultantly the charge under section 48 of the VAT Act came into existence after the implementation of section 31B of the RDB Act.

Section 48 of the VAT Act would come into play only when the liability **51**
is finally assessed and the amount becomes due and payable. It is only thereafter if there is any charge, the same would operate. The authority under the VAT Act passed the assessment order later in point of time.

The language of section 48 of the VAT Act is plain and simple and the **52**
phrase "any amount payable by a dealer or any other person on account of tax, interest or penalty" therein assumes significance. The amount could be said to be payable by a dealer on account of tax, interest or penalty once the same is assessed in the assessment proceedings and the amount is determined accordingly by the authority concerned. Without any assessment proceedings, the amount cannot be determined, and if the amount is yet to be determined, then prior to such determination there cannot be any application of section 48 of the VAT Act. We may also refer to section 47 of the VAT Act. Section 47 of the VAT Act is with respect to transfer of property by the dealer to defraud the Revenue. According to section 47, if a dealer creates a charge over his property by way of sale, mortgage, exchange or any other mode of transfer after the tax has become due, then such transfer would be a void transfer. The reason why we are referring to section 47 is that the phrase therein "after any tax has become due from him" assumes significance. The same is suggestive of the fact that before the assessment proceedings, or, to put it in other words, before a particular amount is determined and becomes due to be payable if there is any transfer of property of the dealer, such transfer would not be a void transfer. Therefore, the condition precedent is that the tax should become due and such tax which has become due shall be payable by a dealer. Once this part is over, then section 48 of the VAT Act would come into play.

53 One of us, J. B. Pardiwala, J., sitting as a single judge, had the occasion to consider this issue in the case of *Bank of Baroda, Through its Assistant General Manager Prem Narayan Sharma* v. *State of Gujarat* Special Civil Application No. 12995 of 2018, decided on September 16, 2019. We may quote the relevant observations made in the said judgment :

> "It is preposterous to suggest in the case on hand that as the assessment year was 2012-13, section 48 could be said to apply from 2012-13 itself. Even in the absence of section 26E of the SARFAESI Act or section 31B of the RDB Act, section 48 of the VAT Act would come into play only after the determination of the tax, interest or penalty liable to be paid to the Government. Only thereafter it could be said that the Government shall have the first charge on the property of the dealer."

54 In view of the aforesaid discussion, we have no hesitation in coming to the conclusion that the first priority over the secured assets shall be of the bank and not of the State Government by virtue of section 48 of the VAT Act, 2003.

55 In the result, this writ application succeeds and is hereby allowed. The impugned attachment notice dated January 22, 2018 (annexure A) and the impugned communication dated April 19, 2018 (annexure B) issued by respondent No. 2 is hereby quashed and set aside. It is hereby declared that the bank has the first charge over the properties mortgaged from M/s. M. M. Traders by virtue of section 26E of the SARFAESI Act.

56 It is further clarified that the excess, if any, shall be adjusted towards the dues of the State under the VAT Act. It is further declared that the respondents cannot proceed against the purchasers of the properties sold under the SARFAESI Act.

[2020] 75 GSTR 471 (Chhattisgarh)

[IN THE CHHATTISGARH HIGH COURT]

JINDAL STEEL & POWER LIMITED AND ANOTHER

v.

STATE OF CHHATTISGARH AND OTHERS

P. R. RAMACHANDRA MENON C. J. and **PARTH PRATEEM SAHU** J.

January 21, 2020.

HF ▸ Department

ENERGY DEVELOPMENT CESS—VALIDITY—LEVY OF CESS ON "DISTRIBUTORS" OF ELECTRICITY AS WELL AS ON "PRODUCERS" OF ELECTRICITY—RATE COMMON—NO UNREASONABLE CLASSIFICATION—STATUTE PROVIDING COMPLETE MECHANISM AS TO QUANTUM OF LIABILITY, DUTY TO SUBMIT RETURN, PERIOD WITHIN WHICH TAX TO BE PAID AND LIABILITY TO INTEREST ON DELAY—ASSESSEE, A DISTRIBUTOR, NOT COMPLYING WITH REQUIREMENTS BY PAYING CESS OR FILING RETURN—CONTENTION THAT LEVY UNCONSTITUTIONAL FOR LACK OF MECHANISM NOT BONA FIDE—PURPOSE OF LEVY TO RENDER SERVICE BY UTILISING COLLECTIONS IN CONNECTION WITH GENERATION, TRANSMISSION, DISTRIBUTION AND UTILIZATION OF ENERGY—ASSESSEE AS DISTRIBUTOR BOUND TO FILE RETURN AFTER PAYMENT OF DUTY—NO PROVISION FOR ISSUANCE OF NOTICE FOR FIXATION OF LIABILITY—NO CASE OF VIOLATION OF PRINCIPLES OF NATURAL JUSTICE—ASSESSEE PERMITTED BUT FAILING TO COLLECT CESS FROM CONSUMERS—NOT GROUND FOR RELIEF—ASSESSEE HOLDING DISTRIBUTOR LICENCES SINCE 2005 WHEN LEVY WAS IN FORCE—CHALLENGE TO PROVISION RAISED FOR FIRST TIME IN 2014—INTEREST FOR DELAY IN PAYING WORKED OUT AT VARYING RATES FROM 15 TO 24 PER CENT. IN CONFORMITY WITH NOTIFICATION ISSUED UNDER RULES—LEVY OF CESS AND DEMANDS PROPER—CHHATTISGARH UPKAR ADHINIYAM, 1981, S. 3(1)—MADHYA PRADESH ELECTRICITY DUTY RULES, 1949, R. 5(2)—NOTIFICATION NO. 2698-3752-XIII, DATED THE JULY 22, 1975.

The assessee was engaged in the business of manufacture of steel at its plant in the Raigarh District. The assessee obtained a "distribution licence" from the Chhattisgarh State Electricity Regulatory Commission for distribution of electricity in an industrial park to 70 industrial consumers in villages in Raigarh District. Pursuant to the licence, the assessee supplied or sold electrical energy to the industrial units in its capacity as a "distribution licensee". Under section 3(1) of the Chhattisgarh Upkar Adhiniyam, 1981, energy development cess was leviable upon every "distributor" of electrical energy,

at the rate of 10 paise per unit. Pursuant to insertion of section 3(1-a), whereby cess was levied upon every "producer" of electrical energy as well, at the rate of 10 paise per unit, various captive power producers challenged the constitutional validity of section 3(1-a) of the 1981 Act whereupon, the court declared section 3(1-a) unconstitutional and quashed the bills raised in this regard. On a special leave petition before the Supreme Court, the court passed an interim order on November 2, 2007 granting liberty to the State to raise the bills demanding energy development cess, but restraining any coercive steps for recovery. Proceedings were issued against the assessee by the competent authority on June 19, 2014 raising a demand to satisfy a sum of Rs. 30,14,49,071 towards the energy development cess under section 3(1) of the 1981 Act with interest for the period from October, 2007 to January, 2014. On a writ petition, challenging the vires of section 3(1) of the 1981 Act and seeking an order quashing the orders and demand notices :

Held, *dismissing the petition, (i) that though the statute originally intended to collect energy development cess only from "distributors" of electricity as given under section 3(1) of the 1981 Act, section 3(1-a) was introduced in similar terms, demanding cess from the "producers" of electricity as well. The rate was common and there was no unreasonable classification. The validity of section 3(1-a) of the 1981 Act was still pending consideration before the Supreme Court. There was no pleading in the writ petition that the assessee was a "producer" of electricity in any capacity and that the rights of the assessee in this regard were adversely affected because of any unreasonable classification with reference to independent power producers and captive power producers, as the case might be.*

(ii) That the Act was a self-contained statute. The statute provided a complete mechanism as to the quantum of liability to be satisfied, the burden to submit the return, the period within which the payment had to be effected, liability to satisfy interest on delay, the power of the electrical inspector to fix the quantum when there was a failure on the part of the distributor, the rate of interest payable in respect of delay and also for settlement of disputes. The assessee had no case that it had complied with the requirements by effecting payment of "cess" in terms of rule 3 of the Madhya Pradesh Electricity Duty, 1949, that it had filed any return in terms of rule 7(i), that there was no fault or delay in satisfying the statutory requirement or further that it had raised any dispute before any of the competent authorities as to the liability or quantum. This being the position, the assessee's contention that the taxation was unconstitutional because there was no mechanism for issuing any prior notice, hearing, assessment, appeal, etc., with regard to the fixation of liabi-

lity, that there was no quasi-judicial forum which the assessee could approach and that the absence of any machinery or mechanism therefor, was without bona fides.

(iii) That the purpose of the levy was discernible from sub-section (3) of section 3 of the 1981 Act and sub-section (2) of section 3 of the 1981 Act dealt with the fate of the cess collected and under sub-section (1) the purpose of collection of energy development cess and its utilisation clearly reflected the "service" that was being rendered by utilising the amounts in connection with the field of generation, transmission, distribution and utilization of energy, research, development, survey and such other programmes, also involving transfer of technology in the field of energy. The contention of the assessee as to the lack of any service was misconceived.

(iv) That the fixation of liability towards the energy development cess was clear and certain, by virtue of the rate or quantum mentioned under section 3(1) of the 1981 Act. The liability of the distributor to satisfy the cess at the prescribed rate with respect to the number of units and the necessity to file return under rule 7(1) of the 1949 Rules before the electrical inspector were also clear and definite. Since the number of units sold, supplied or used by the distributor was clearly within the knowledge of the distributor and since the "rate per unit" was also clearly stipulated in the statute itself, it was for the assessee as distributor to show the relevant figures in the return to be filed before the electrical inspector after satisfaction of the duty in terms of rule 3 of the 1949 Rules. There was no ambiguity or obscurity in any manner and the statute did not envisage issuance of any notice as to the fixation of liability. The contention of violation of the principles of natural justice with reference to non-issuance of notice or opportunity of hearing was not sustainable.

(v) That the fact that the assessee was aware of the situation was clearly discernible from a copy of the agreement executed between the assessee and the consumers. The assessee admitted that it had been raising bills to its consumers for the electricity supplied to them. If the assessee did not raise any demand in respect for energy development cess in the bills raised to consumers for the period from October 2007 to January 2014, nobody else could be blamed in this regard. This was more so, since section 4 of the Madhya Pradesh Electricity Duty Act, 1949 which was adopted and made applicable to the State of Chhattisgarh started with a non obstante clause and said that a distributor of electrical energy, subject to the limitations and conditions, if any, could recover from a consumer, by way of surcharge, the whole or part of the duty payable by such distribution of electrical energy under section 3 in respect of all consumption of electrical energy. The interim order passed by

the Supreme Court was in respect of demand under section 3(1-a) of the 1981 Act, fixing the liability of the "producer" of electrical energy. Even before and after, section 3(1) which dealt with liability of the "distributor" to satisfy the energy development cess was intact.

(vi) That nowhere in the writ petition, had the assessee stated anything as to the collection of energy development cess from consumers. The assessee had obtained a "distributor licence" in the year 2005. The statute was very much in existence then. The challenge against the statutory provision was raised for the first time only in the present writ petition in the year 2014. The assertion that the assessee had not demanded cess from the consumers was made for the first time in the application in 2019 for accepting additional documents. It was not necessary to go into the relative rights and liberties between the assessee and the consumers ; this was pending consideration before the single judge of the court in a writ petition.

(vii) That the rate of interest of 24 per cent. had not been imposed as a matter of penal measure, as discernible from the rule and the relevant notification issued in this regard. Rule 5 of the 1949 Rules said that interest was payable, if the duty was not paid within the period specified under rule 3 and rule 5(2) said that the rate of interest payable under sub-rule (1) should be as notified by the Government from time to time, subject to a maximum of 24 per cent. per annum. Notification dated July 22, 1975 had been issued by the Government in exercise of the powers conferred by sub-rule (2) of rule 5 of the 1949 Rules prescribing the rates of interest payable for various periods of delay. The assessee had not satisfied the energy development cess in respect of the period from October 2007 to January 2014. The delay being of more than 12 months, for the period from October 2007 to April, 2013, 24 per cent. interest had been charged. In respect of the period from May 2013 to October 2013, the delay was more than six months, but within twelve months and hence, interest was charged at 20 per cent. In respect of the period from November 2013 to January 2014, the delay was more than three months but within six months and the interest payable was at 15 per cent. In other words, the interest had been worked out at the varying rates from 15 to 24 per cent., strictly in conformity with the Notification issued under rule 5(2) of the 1949 Rules. The contention raised by the assessee that the rate of interest adopted was onerous, questionable and penal in nature, was not sustainable.

(viii) That therefore, the assessee had failed to establish a case with regard to the alleged ultra vires nature of section 3(1) of the 1981 Act, nor to substantiate the case to dispute the liability towards the energy development cess and interest.

Cases referred to :

Aashirvad Films *v.* Union of India [2007] 6 SCC 624 (para 14)

Chandrakant Krishnarao Pradhan *v.* Jasjit Singh, Collector of Customs [1962] AIR 1962 SC 204 (para 21)

Commissioner, Hindu Religious Endowments *v.* Sri Lakshmindra Tirtha, Swamiar of Sri Shirur Mutt [1954] AIR 1954 SC 282 (para 21)

Dutta (S. K.), Income-tax Officer *v.* Lawarence Singh Ingty [1968] 68 ITR 272 (SC) (para 14)

Jaora Sugar Mills (P) Ltd. *v.* State of Madhya Pradesh [1966] AIR 1966 SC 416 (para 21)

Kesar Enterprises Ltd. *v.* State of U. P. [2011] 10 GSTR 279 (SC) ; (para 25)

Kothari Filaments *v.* Commissioner of Customs [2010] 2 GSTR 28 (SC) (para 25)

Kunnathat Thathunni Moopil Nair *v.* State of Kerala [1961] AIR 1961 SC 552 (paras 14, 16)

Municipal Committee, Hosiarpur *v.* Punjab State Electricity Board [2010] 13 SCC 216 (para 25)

Om Prakash Agarwal *v.* Giri Raj Kishore [1986] AIR 1986 SC 726 (para 21)

Ram Prasad Narain Sahi *v.* State of Bihar [1953] AIR 1953 SC 215 (para 14)

State of Andhra Pradesh *v.* Nalla Raja Reddy [1967] 3 SCR 28 (paras 14, 16)

State of Kerala *v.* Haji K. Kutty Naha [1969] AIR 1969 SC 378 (para 14)

Swadeshi Cotton Mills Co. Ltd. *v.* Union of India [1981] 51 Comp Cas 210 (SC) (para 25)

Writ Petition (T) No. 140 of 2014.

Naveen Kumar, Ashish Shrivastava, Manish Kharbanda, Ms. Priya Singh and *Aman Pandey* for the petitioners.

Siddharth Dubey, Deputy Government, Advocate, for the respondents.

JUDGMENT

The judgment of the court was delivered by

P. R. RAMACHANDRA MENON C. J.—The constitutional validity of section 13(1) of the Chhattisgarh Upkar Adhiniyam, 1981 (for short, "*the 1981 Act*") is challenged in this writ petition. There is also a challenge against 1

the demand notices dated June 19, 2014 and July 112014 whereby a total sum of Rs. 49,47,27,587 is demanded towards the arrears of energy development cess (for short, "*the EDC*") and interest payable for the period from October, 2007 to January, 2014.

2 We heard Shri Naveen Kumar, the learned counsel for the petitioner-company supported by Shri Ashish Shrivastava, and Shri Siddharth Dubey, the learned Deputy Government Advocate representing the State/respondents.

3 The sequence of events is as follows : The Madhya Pradesh Upkar Adhiniyam, 1981 obtained the assent of the President on December 16, 1981 and it was published in the Madhya Pradesh Gazette (Extraordinary) dated January 12, 1982 ; by virtue of which the said enactment was given life as Act No. 1 of 1982 in the erstwhile undivided State of Madhya Pradesh, from which the State of Chhattisgarh was carved out in the month of November, 2000. After formation of the State as above, the Madhya Pradesh Upkar Adhiniyam, 1981 and the Madhya Pradesh Electricity Duty Act, 1949 (for short, "*the Act, 1949*") came to be adopted by this State and necessary notification has been issued bringing the above Acts into force, insofar as the State is concerned.

4 The petitioner-company is engaged in the business of manufacture of steel at its plant in the Raigarh District. The petitioner-company obtained "*distribution licence*" from the Chhattisgarh State Electricity Regulatory Commission as per annexure P/4 dated November 29, 2005 for distribution of electricity in the Jindal Industrial Park Limited to 70 industrial consumers with a maximum demand not exceeding 299 MW in the village Tumidih and Punjipathra of Gharghoda Tahsil in Raigarh District. Pursuant to the said licence, it is stated that the petitioner-company has been supplying/selling electrical energy to the above industrial units in its capacity as a "*distribution licensee*" (paragraphs 8.1 to 8.4 of the writ petition).

5 The Chhattisgarh Upkar Adhiniyam, 1981 virtually consists of five different parts. Part I deals with the "energy development cess", Part II deals with "urban development cess", Part III deals with "cess on transfer of vacant land and land used for the purpose of agriculture", and Part V deals in respect of the head "Miscellaneous", which contains section 13, dealing with the power to make rules and section 14 as to the power to remove difficulties. As per the original scheme of the Act, under Part I, the liability to satisfy the energy development cess was cast upon every "*distributor*" of electrical energy, subject to the exceptions specified in section 4, which was to be satisfied at the rate of 10 paise per unit (as per CG Amendment Act 19 of 2010). Initially, it was 1 paise per unit, which came to be enhanced to

5 paise per unit, as per the CG Act No. 28 of 2004 and subsequently, it came to be enhanced to 10 paise per unit, as per the CG Act No. 19 of 2010. As per the CG Act 28 of 2004, simultaneous to enhancement of the cess from one paise to five paise, mentioned in section 3(1) of the 1981 Act, a new provision was also inserted as section 3(1-a), whereby liability was cast upon every "*producer*" of electrical energy as well, to satisfy the cess at the rate of 10 paise per unit on the electrical energy sold or supplied to a consumer or consumed by himself or his employees by his captive power unit or diesel or other generator set of more than 100 KW capacity during any month, subject to the exceptions carved out as given in the proviso. Similar exception was already there in respect of section 3(1) of the 1981 Act, whereby the liability was cast upon the "*distributor*" of the electrical energy as mentioned in the proviso thereunder.

Though there was no challenge from the part of the distributors of electrical energy, who are required to satisfy such cess as borne by the charging section 3(1) of the 1981 Act, the insertion of a new provision by way of section 3(1-a) bringing the "producers" of electrical energy as well within the "tax net" made various captive power producers to challenge the constitutional validity of section 3(1-a) of the 1981 Act before this court. The writ petition filed by the petitioner (W. P. No. 2384 of 2006) came to be finalised by Division Bench of this court as per the judgment dated December 15, 2006, whereby section 2(2) of the CG Act No. 28 of 2004 inserting section 3(1-a) in the 1981 Act, was declared as unconstitutional. The respondents were restrained from levying and collecting EDC from the petitioners under section 3(1-a) of the 1981 Act and the bills raised in this regard were quashed. The verdict passed by a Division Bench of this court declared the provisions as invalid, as per judgment dated December 15, 2006, whereby section 2(2) of the CG Act No. 28 of 2004 inserting section 3(1-a) in the 1981 Act was declared unconstitutional. The respondents were restrained from levying and collecting EDC from the petitioners under section 3(1-a) of the 1981 Act and the bills raised in this regard were quashed. The verdict passed by the Division Bench of this court declaring the provisions as invalid was sought to be challenged by the State by filing a special leave petition before the apex court. An interim order was passed by the apex court on November 2, 2007 granting liberty to the State to raise the bills demanding EDC, however, restraining any coercive steps for recovery of the said amount. It is stated that the matter is still pending before the apex court. **6**

While so, observing that the statutory requirement in paying the cess by the petitioner, in the capacity as a "*distributor*" of electrical energy in terms of section 3(1) of the 1981 Act, based on the "*distributor licence*" given by **7**

the State Electricity Regulatory Commission in the year 2005 was not being satisfied, annexure P/2 proceedings were issued by the competent authority on June 19, 2014 raising a demand to satisfy a sum of Rs. 30,14,49,071 towards the EDC under section 3(1) of the 1981 Act along with interest at the rate of 24 per cent. per annum amounting to Rs. 19,32,78,516 for the period from October, 2007 to January, 2014 (to be effected by June 30, 2014). As part of the said proceedings, particulars of the energy used, the cess payable, the delay involved and the interest payable were separately given in the form of a table showing the total amount payable, both towards the principal portion and the interest portion.

8 On receipt of annexure P/2, the petitioners submitted a letter dated June 30, 2014 requesting for a period of two weeks for making a proper assessment of the levy made and for taking further steps. Annexure P/3 notice was issued on July 11, 2014 by the second respondent referring to the letter dated June 30, 2014 (annexure P/5). Since the payment was not effected, the demand was reiterated as per annexure P/3 dated July 11, 2014 referring to annexure P/1 issued already. In response to this, the petitioners contend that a request was made on July 14, 2014 (annexure P/6) to provide for a further period of two weeks to evaluate the facts and figures as to the levy made by the second respondent and for taking further steps. Shortly thereafter, the petitioners approached this court by filing a writ petition on July 28, 2014, challenging the vires of section 3(1) of the 1981 Act and seeking to quash annexures P/1 and P/3 orders/demand notices. On August 14, 2014, it was submitted before this court that, the validity of the Act, 1981 was pending consideration before the apex court and hence, the petitioner had no objection in depositing the cess determined under the Act, under protest, however, pressing the objection towards the interest charged thereupon. In the said circumstance, an interim order was passed by this court granting stay in respect of the cess amount provided the petitioners deposited the entire amount before the second respondent within one month and continue to deposit the future cess as and when they fell due. The petitioners were also required to furnish bank guarantee for interest portion to the second respondent within the same period. Pursuant to the said direction, it is stated that deposit of the entire cess amount has been satisfied and the bank guarantee to the requisite extent towards the interest payable is also stated as furnished, which is stated a kept/renewed as valid throughout.

9 A return has been filed on behalf of the respondents rebutting the pleadings and opposing the prayers. The contentions raised by the petitioners that annexure P/1 order came to be issued all of a sudden demanding the

arrears and interest for nearly seven or eight years, has been sought to be rebutted by pointing out that the proceedings issued were only in respect of the statutory duty to satisfy the amount prescribed by the Act and the Rules and further that the petitioner-company was very much aware of the position who had alerted the petitioner's consumers as well, as to their liability to satisfy the cess. A copy of the specimen agreement executed between the petitioner-company and its consumers containing the aforesaid clause/stipulation has been produced as annexure R/1.

10 The petitioners have filed a compliance report with supporting affidavit dated December 14, 2014 as to the satisfaction of the deposit of cess and furnishing of the bank guarantee ordered by this court on August 14, 2014, also producing copies of the relevant documents. Thereafter, the writ petition was sought to be amended (as per IA No. 3 of 2015) by incorporating some other grounds as grounds N to P, raising a plea of limitation ; and as to the arbitrary and unreasonable exercise of the purported power to raise the demand of levy. On allowing the said IA, additional reply dated July 24, 2015 has been filed by the respondents.

11 The subsequent developments have been brought on record by the petitioners by filing IA No. 4 of 2019, also producing copies of the relevant documents. It is pointed out that, pursuant to the interim order passed by this court on August 14, 2014 and the deposit made by the petitioners, Document No. D/1 letter dated August 26, 2014 was issued to the petitioners' consumers ; particulars of whom have been given in Document No. D/2 demanding the "cess" already deposited by the petitioners. The consumers sought to challenge the same by approaching the consumer grievance redressal forum constituted under section 42 of the Electricity Act, 2003, where the relief was declined vide order dated June 27, 2015 (Document D/3), holding that the consumers were liable to pay the Electricity Duty Cess (EDC). The consumers then moved a representation before the electricity ombudsman constituted under section 42(6) of the Electricity Act, 2003. The learned Ombudsman, vide order dated October 7, 2015 (Document No. D/4) partly allowed the appeal of the consumers and held that the petitioner-company was not entitled to recover any amount towards "EDC" for the period beyond two years prior to its demand letter dated August 26, 2014. This has been sought to be challenged by the petitioners before the learned Single Bench of this court by filing Writ Petition (C) No. 2308 of 2015, wherein an interim order has been granted on December 22, 2015 and the matter is still pending.

12 Altogether, 16 grounds have been raised by the petitioners, 13 at the time of filing of the writ petition and the remaining 3 by way of amend-

ment. Among those grounds, (A) to (G) are in respect of validity of section 3(1) of the 1981 Act—stated as in conflict with the constitutional mandate and the remaining grounds are in respect of the correctness of the proceedings finalised by the second respondent in issuing annexure P/1 order, the subsequent demands, the quantification of the amount, denial of opportunity of hearing and the excessive/maximum rate of "interest" (24 per cent.) stated as penal in character. The additional grounds (N) to (P) brought in as per the amendment are in respect to the alleged bar of limitation and the unreasonable delay of eight years in issuing annexure P/1 and the demands, claiming the cess and interest from October 2007 to January 2014. Reference to the above grounds is made only to mention that *no ground has been raised by the petitioners with reference to "section 3(1-a)"* of the 1981 Act which is in respect of the "cess" payable in the capacity as a "producer" of electricity ; which presumably may be for the reason that validity of the said provision is pending consideration before the apex court, where the petitioner-company is also stated as a party. In other words, the entire pleadings and prayers are raised with reference to the liability of the petitioners to satisfy the EDC and interest *only in the capacity as a "distributor"* envisaged *under "section 3(1)"* of the Act, based on annexure P/4 distribution licence issued by the Chhattisgarh State Electricity Regulatory Commission. The submissions made by the learned counsel by placing reliance on various judgments have to be analysed and understood in the above background.

13 The learned counsel for the petitioner addressed the court as to the constitutionality of the impugned provision, mainly contending that it is violative of article 14 of the Constitution ; inasmuch as it is discriminatory qua distributors, as the "cess" is imposed only on the supply/sale of electricity by the distributor. This is with reference to the submission that sale by the independent power producer/captive power producer is exempted from the levy of cess as per the order of the apex court, passed on November 2, 2007. The order passed by the apex court on November 2, 2007 in the Special Leave Petition (Civil) No. 3853 of 2007 filed by the State, against the common judgment dated December 15, 2006 whereby section 3(1-a) of the 1981 Act was set aside, declaring it unconstitutional, is only to the following effect :

> "In SLP (C) No. 3853 of 2007 :
>
> Leave granted.
>
> Hearing expedited.
>
> Liberty to move honourable the Chief Justice of India for a fixed date of hearing.

Pending the hearing and final disposal of the civil appeal, the Department may raise the bills so that the claim does not become time-barred. However, no coercive steps shall be taken by the State to recover the dues till further orders. At the same time, the assessee will not press for refund on the basis of the impugned judgment during the pendency of the case.

In SLP (C) Nos. 19370 and 19371 of 2007 :

Leave granted.

Hearing expedited.

To be tagged with Civil Appeal arising out of SLP (C) No. 3853/ 2007.

In the meantime, pending the hearing and final disposal of the appeal, the Department may raise the bills but they shall not take coercive steps to recover the dues till further orders.

In SLP (C) No. 11870 of 2007 :

Leave granted.

Hearing expedited.

To be tagged with civil appeal arising out of SLP (C) No. 3853 of 2007."

14 As mentioned already, though the statute originally intended to collect EDC only from the "*distributors*" of electricity as given under *section 3(1)* of the 1981 Act, as per the CG Act No. 28 of 2014, section 3(1-a) was introduced in similar terms, demanding cess from the "*producers*" of electricity as well. The rate is also common, as on date, by virtue of the CG Act No. 10 of 2010. This being the position, there is no unreasonable classification and both the "producers" and the "distributors" are required to satisfy the EDC to the requisite extent, though the matter is still pending consideration before the apex court in respect of the validity of section 3(1-a) of the 1981 Act. As it stands so, the reliance sought to be placed by the apex court in *Ram Prasad Narain Sahi* v. *State of Bihar*, AIR 1953 SC 215, paragraphs 15 and 18, *Kunnathat Thathunni Moopil Nair* v. *State of Kerala*, AIR 1961 SC 552, paragraphs 8 to 10, *S. K. Dutta, Income-tax Officer* v. *Lawarence Singh Ingty* [1968] 68 ITR 272 (SC) ; AIR 1968 SC 658, paragraphs 8, 10 and 15, *State of Kerala* v. *Haji K. Kutty Naha*, AIR 1969 SC 378, paragraph 5, *Aashirvad Films* v. *Union of India* [2007] 6 SCC 624, paragraphs 12 to 15, 18, 25 and 27 and *State of Andhra Pradesh* v. *Nalla Raja Reddy* [1967] 3 SCR 28, paragraphs 21 and 25 asserting the necessity to have a rational classification and the existence of discriminatory provisions, are not attracted to the case in hand.

15 During the course of arguments, the learned counsel for the petitioners referred to various provisions of the Electricity Act and the Rules thereunder, to demonstrate that as per the Act of 2003 and the Rules 2005, other entities like the independent power producers (IPP) and captive power producers (CPP) are entitled to effect sale and supply of electricity to their respective consumers under non-discriminatory mechanism. As pointed out already, the entire case is moulded with reference to the nature of business being performed by the petitioners in the capacity as a "*distributor*" of electricity, coming within the purview of "section 3(1)" of the 1981 Act and not with reference to the liability as a "producer" of electricity, separately coming within the purview of "section 3(1-a)" of the 1981 Act (which issue is pending before the Supreme Court). There is no pleading in the writ petition that the petitioner-company is a "producer" of electricity in any capacity and the rights of the petitioners in this regard are adversely affected because of any unreasonable classification with reference to IPP and CPP, as the case may be. Since the above arguments advanced do not have any basis as contained in the pleadings, it is not liable to be acted upon.

16 It was further contended by the learned counsel for the petitioners that the enactment is unreasonable and arbitrary, inasmuch as there is no mechanism for issuing any prior notice, hearing, assessment, appeal, etc., with regard to the fixation of liability. It is also pointed out that there is no quasi-judicial forum before which the person facing the demand of such kind can approach. The absence of any machinery or mechanism as above will make the taxation unconstitutional. Support is sought to be drawn by the verdict passed by the apex court in *Kunnathat Thathunni Moopil Nair*, AIR 1961 SC 552 (para 9) and *Nalla Raja Reddy* [1967] 3 SCR 28 (paras 22 and 23) wherein the apex court held that, if a taxing statute does not provide for redressal, i.e., notice, opportunity of hearing, taxing authority, procedure for assessment, redressal mechanism, then, such statute is unconstitutional.

17 Coming to the Act, 1981, it is a self-contained statute. Section 3(1) clearly stipulates the extent of liability for payment of EDC at the rate of 10 paise per unit and the total units of electrical energy sold or supplied to the consumers or consumed by him or his employees during any month, subject to the exceptions mentioned in the proviso. Section 4 of the above Act clearly stipulates that the provisions of sections 4 to 9 (both inclusive) of the Act, 1949 and the Rules made thereunder shall mutatis mutandis apply to cess under the Act, 1981 as they shall apply to levy of duty on sale or consumption of electrical energy under that Act and for that purpose, reference to

"duty" or "electricity duty" in the said Act or the Rules made thereunder, as the case may be, shall be construed as reference to "cess". Rule 3 of the Madhya Pradesh Electricity Duty Rules, 1949 (for short, "*the Rules, 1949*") reads as follows :

> "3. *Time and manner of payment*.—Every distributor of electrical energy and every producer shall pay the electricity duty in respect of each month before the expiry of the following month into a Government treasury to the credit or Government under the head 'XII-Other taxes and duties–Receipts from electricity duties–Other receipts–Receipts from Electricity Duty, 1949' and send the treasury receipt to the Electric Inspector within fifteen days from the date of such credit."

18 From the above, it is clear that every "distributor" of electrical energy shall pay the electricity duty in respect of each month before expiry of the following month into the Government treasury under the head as mentioned therein and send "treasury receipt" to the electrical inspector within 15 days from the date of such credit. *Rule 7(i)* of the Rules, 1949 mandates that, every "distributor" of electrical energy shall submit to the Electrical Inspector a return for each month in form G along with the treasury receipt sent under rule 3. If the duty is not paid within the period specified under rule 3, the liability to satisfy interest is specified under rule 5(1) and the rate of interest is given under sub-rule (2) of rule 5. Settlement of disputes is taken care of by rule 13, which is to the following effect :

> "13. *Settlement of disputes*.—If any question arises between the distributor of electrical energy or the producer and an electric inspector as to the quantity of energy which is liable to electricity duty, the provincial Government may on application of such distributor or producer or of the electric inspector refer the question to such authority as the provincial Government may appoint and the decision of such authority shall be final."

19 If there is a failure on the part of the "distributor" in submitting the treasury receipt under rule 3 and return mentioned in rule 7(i) of the Rules, 1949, the course of action to be pursued enabling the electrical inspector to determine the amount of electricity duty by way of best of his judgment method and the subsequent issuance of a notice of demand requiring to satisfy the amount due pointing out that the amount so assessed shall be deemed to be the duty payable under section 3 of the Act, 1949, are clearly mentioned in rule 15(1) of the Rules, 1949. The liability to satisfy interest under such circumstance, in addition to the duty, is clearly given in sub-rule (2) of rule 15. Rule 16 of the Rules, 1949 speaks about the penalty to be mulcted upon a person who commits breach of any of the Rules. From this,

it is clear that the *statute provides a complete mechanism* as to the quantum of liability to be satisfied, the burden to submit the return, the period within which the payment has to be effected, liability to satisfy interest on delay, the power of the electrical inspector to fix the quantum when there is a failure on the part of the distributor, the rate of interest payable in respect of delay and also for settlement of disputes.

20 There is no case for the petitioners that they had complied with the requirements by effecting the payment of "cess" in terms of rule 3 of the Rules, 1949 ; that they have filed any return in terms of rule 7(i) ; that there was no fault or delay in satisfying the statutory requirement or further that they had raised any dispute before any of the competent authorities as to the liability or quantum. This being the position, the contention raised by the petitioners in this regard is absolutely without any merit or bona fides.

21 There is a contention for the petitioners that the levy of cess is virtually a tax in disguise and that no tax can be levied without any authority of law, by virtue of mandate under article 265 of the Constitution of India. There is also a contention that in case of any cess, there must be co-relation between levy and the services rendered (cess or fee) revealing the "quid-pro quo". The verdicts passed by the apex court in *Commissioner, Hindu Religious Endowments* v. *Sri Lakshmindra Tirtha, Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282, paras 44 to 51, *Jaora Sugar Mills (P) Ltd.* v. *State of Madhya Pradesh*, AIR 1966 SC 416, para 19, *Om Prakash Agarwal* v. *Giri Raj Kishore*, AIR 1986 SC 726, paras 7, 10 to 12 and *Chandrakant Krishnarao Pradhan* v. *Jasjit Singh, Collector of Customs, Bombay*, AIR 1962 SC 204, para 13 are sought to be pressed into service in this regard.

22 There cannot be any dispute with regard to the legal position made clear by the apex court in the above context. The purpose of levy is discernible from sub-section (3) of section 3 of the 1981 Act which mentions the utilisation, also involving "research and development" in the field of energy. The said provision is extracted below :

> "3. *Levy of energy development cess*.—(1) and (2) . . .
>
> (3) The amount in the credit of the fund shall, at the discretion of the State Government be utilized for,—
>
> (a) research and development in the field of energy including electrical energy as well as other conventional and non-conventional sources of energy ;
>
> (b) improving the efficiency of generation, transmission, distribution and utilization of energy including reduction of losses in transmission and distribution ;

(c) research in design, construction, maintenance, operation and materials of the equipment used in the field of energy with a view to achieve optimum efficiency, continuity and safety ;

(d) survey of energy sources including non-perennial sources to alleviate energy shortage ;

(e) energy conservation programmes ;

(f) extending such facilities and services to the consumers as may be deemed necessary ;

(g) creation of a laboratory and testing facilities for testing of electrical appliances and equipments and other equipments used in the field of energy ;

(h) programmes of training conducive to achieve any of the above objectives ;

(i) transfer of technology in the field of energy ;

(ii) any purpose connected with safety of electrical installations; and

(j) any other purposes connected with improvement of generation, transmission, distribution or utilization of electrical and other forms of energy, as the State Government may, by notification, specify.

Explanation.—In this sub-section, 'energy' includes all conventional and non-conventional forms of energy."

Sub-section (2) of section 3 of the 1981 Act deals with the fate of the cess **23** collected and under sub-section (1) which is to the following effect :

"(2) The proceeds of the cess under sub-section (1) shall first be credited to the consolidated fund of the State and the State Government may, at the commencement of each financial year, after due appropriation has been made by law, withdraw from the consolidated fund of the State an amount equivalent to the proceeds of cess realized by the State Government in the preceding financial year and shall place it to the credit of a separate fund to be called the energy development fund and such credit to the said fund shall be an expenditure charged on the consolidated fund of the State Government of Madhya Pradesh."

Sub-section (4) of section 3 says that if any question arises as to whether the purpose for which the fund is being utilised is a purpose falling under sub-section (3) of section 3 or not, the decision of the State Government therein shall be final and conclusive.

24 A conjoint reading of the above provisions clearly reveals the purpose of collection of EDC and its utilization, which clearly reflects the "service" that is being rendered by utilising the amounts in connection with the field of generation, transmission, distribution and utilization of energy, research, development, survey and such other programmes, also involving transfer of technology in the field of energy. As it stands so, the idea and understanding of the petitioners as to the lack of any service is quite wrong and misconceived.

25 The petitioners attack annexure P/1 order referring to the violation of the principles of natural justice as well, in so far as no notice or opportunity of hearing was given ; nor any assessment was made as to the determination of the quantum of liability, unlike in the case of assessment of tax under various statutes. The fixation of liability towards the EDC is clear and certain, by virtue of the rate/quantum mentioned under section 3(1) of the 1981 Act. The liability of the distributor to satisfy the cess at the above rate with respect to number of units and the necessity to file return under rule 7(1) of the Rules, 1949 before the electrical inspector are also clear and definite. Since the number of units sold/supplied/used by the distributor is clearly within the knowledge of the distributor and since the "rate per unit" is also clearly stipulated in the statute itself, the rest is for the petitioner/distributor to show the relevant figures in the return to be filed before the electrical inspector after satisfaction of the duty in terms of rule 3 of the Rules, 1949. There is no ambiguity/obscurity in any manner and the statute does not envisage issuance of any notice as to the fixation of liability. This is something like the satisfaction of the tax payable in respect of motor vehicles under the Motor Vehicles Taxation Act and such other similar statutes. When the statute is a "self-contained" one as to the rate and the manner of satisfaction, fixing the extent of liability upon the distributor, the alleged violation of the principles of natural justice with reference to non-issuance of notice or opportunity of hearing is not correct or sustainable and is unfounded. This being the position, the reliance sought to be placed on *Kothari Filaments* v. *Commissioner of Customs* [2010] 2 GSTR 28 (SC) ; [2009] 2 SCC 192 paragraph 15, *Municipal Committee, Hosiarpur* v. *Punjab State Electricity Board* [2010] 13 SCC 216, paragraphs 31 to 36, *Kesar Enterprises Ltd.* v. *State of U. P.* [2011] 10 GSTR 279 (SC) ; [2011] 13 SCC 733, paragraphs 23, 30 to 36 and *Swadeshi Cotton Mills Co. Ltd.* v. *Union of India* [1981] 51 Comp Cas 210 (SC) ; [1981] 1 SCC 664, paragraphs 21 to 45, in respect of the violation of principles of natural justice is quite out of context and is not applicable.

The knowledge of the petitioner/distributor as to the liability to satisfy **26** the EDC in terms of section 3 and the relevant Rules is revealed from the materials on record. Even otherwise, there cannot be any defence with reference to the ignorance of law ; as it is not an excuse. The fact that the petitioner/distributor was aware of the situation is clearly discernible from a copy of the agreement executed between the petitioner-company and one of the consumers, produced as annexure R-1 along with the reply filed by the respondents. The relevant portion of the said agreement dated February 10, 2006, which is in continuation of the agreement dated March 12, 2005, is extracted below :

"The charges for energy payable shall be on two part basis as under :

Monthly fixed charges = Contract demand in MVA × 1000 × 720 hours × 0.9 PLF × 30 paise.

Actual energy consumed charges = Unit of energy consumed in KWH during the month is Rs. 2.15 paise (including cess 10 paise per unit is applicable as on date.) The other terms and conditions for additional supply of 3000 KVA electrical energy shall be as per the terms and condition, specified in the agreement dated March 12 2005."

Paragraph 20 of the agreement, as to the amount to be satisfied by the **27** consumers, is to the following effect :

"20.(a) The consumer shall pay JSPL every month charges for electrical energy supplied to consumer as per this agreement made on the sale of power to the consumer and the charges for energy consumed by consumer during the said month will be on the following basis.

(b) The charges for energy payable shall be on two part basis consisting of monthly fixed charges based on contract demand and actual energy charges based on total energy consumed during the month.

Total energy charges = Monthly fixed charges + Actual energy charges.

Monthly fixed charges = Contract demand in MVA × 1000 × 720 hours × 0.9 PLF × 30 paise

Actual energy consumed charges = Unit of energy consumed in KWH during the month × Rs. 2.05 paise.

The above energy charges have been calculated based on existing rate of royalty on coal, electricity duty applicable on generation and sale of power and other levies and duties. The rates of actual energy charges shall be revised in the event of any change in the rate of

royalty on coal by Government of India and/or by State Government of Chhattisgarh, revision in the levies, duties, etc., on generation and sale of energy.

(c) The maximum contract demand recorded during the month shall be evaluated based on 30 minutes average of the maximum power drawn during the month. If recorded demand during the month exceeds the contract demand up to 10 per cent. once in a while, in that event the amount of total energy charges payable during the month shall be calculated as per clause 20(b) above.

If recorded demand exceeds the contract demand up to 10 per cent. continuously for three months, the consumer shall increase his contract demand accordingly and also should pay additional monthly fixed charges from the date of initial exceeded M. D., recorded. If recorded demand exceeds the contract demand beyond 10 per cent. in the event the amount of total energy charges payable during the month shall be calculated proportionately for contract demand at normal rates of total energy charges as given in clause 20(b) above and for extra MD recorded at 1.5 times of the normal tariff."

28 Paragraph 25 of the agreement clearly says that the tariff set out in the schedule vide paragraph 20 does not include any tax, duty or other charges which is applicable for consumption of electrical energy that may be payable in accordance with any law in force and that such charges shall be payable by the consumer in addition to the tariff charges. The said clause is also reproduced below :

"25(a). The tariff set out in the schedule vide para 20 does not include any tax, duty or other charges, which is applicable on consumption of electrical energy that may be payable in accordance with any law in force. Such charges will be payable by the Consumer in addition to JSPL tariff charges."

29 The petitioner-company admits in the writ petition that it has been raising bills to its consumers for the electricity supplied to them. If the petitioners were not raising any demand in respect of EDC in the bills raised to such consumers for the period from October 2007 to January 2014, it can only be the fault of the petitioners and nobody else can be blamed in this regard. This is more so, since section 4 of the Madhya Pradesh Electricity Duty Act, 1949 which is adopted and made applicable to the State of Chhattisgarh starts with a "non obstante clause" and it says that a distributor of electrical energy, subject to the limitations and conditions, if any, can recover from a consumer, by way of surcharge, the whole or part of the duty payable by such distribution of electrical energy under section 3 in

respect of all consumption of electrical energy. The petitioners contend that it was not raised or demanded from the consumers because of the interim order passed by the Supreme Court on November 2, 2007, whereby the bills were permitted to be raised, however interdicting the recovery by way of coercive proceedings. The said order does not come to the rescue of the petitioners in any manner, insofar as it was in respect of demand under *section 3(1-a)* of the 1981 Act, fixing the liability of the "*producer*" of electrical energy and in the challenge raised before the apex court *by the State* against the verdict passed by a Division Bench of this court setting aside the amending provision (CG Act No. 28 of 2004) whereby section 3(1-a) was introduced. *Even before and after, section 3(1) was and is standing intact ; which deals with liability of the "distributor" to satisfy the EDC.* If the petitioners had not satisfied the EDC in terms of rule 3 and had not filed any return in terms of rule 7(i) or had not demanded the consumers to reimburse it in terms of section 4 of the Act, 1949, it can only be the fault of the petitioners and nobody else.

There is a contention for the petitioners that the annexure P/1 has been **30**
issued all of a sudden, demanding arrears for about 7/8 years and as such, there is a faulty exercise of power by the second respondent and hence the liability cannot be shifted to the shoulders of the petitioners in respect of "interest" to be satisfied for the delay. There is also a contention that the interest is excessive, as the "maximum rate of 24 per cent." has been imposed and it is penal in nature. Such extent of interest is stated as imposed under a wrong impression that the petitioners had actually collected the cess from the consumers, but had not deposited ; as contended by the second respondent. We find it difficult to agree. It is true that the respondents have mentioned in their reply that the petitioners had collected the amounts (cess) from the consumers and the same has not been deposited in the Government treasury under the relevant head in terms of rule 3 ; nor have they filed any return before the electrical inspector in terms of rule 7(i) and as such, interest is liable to be paid in terms of the relevant provisions of the Act/Rules. Here, it has to be noted that, nowhere in the writ petition, have the petitioners stated anything as to the collection of EDC from the consumers. The petitioner-company obtained "distributor licence" vide annexure P/4 from respondent No. 1 in the year 2005. The statute was very much in existence then. The challenge against the statutory provision was raised for the first time only by filing the present writ petition in the year 2014. The assertion that the petitioners have not demanded cess from the consumers comes up for the first time only as per IA No. 4 of 2014, dated August 19, 2019 (for accepting additio-

nal documents by this court). A specimen copy of the bill dated March 31, 2013 has been filed by the petitioners as document D-7 along with the said IA, wherein a "note" has been given in the following terms :

"*Note* :

(1) The case is pending with honourable Supreme Court of India but demand is to raised as per S. C. order dated No. SLP No. 3853 dated November 2, 2007.

(2) On receipt of final outcome of appeals pending with Supreme Court the same will be passed on to you as per note on reverse side of this demand note."

We do not find it necessary to go into the relative rights and liberties between the petitioners and the consumers ; which is pending consideration before the learned Single Bench of this court by way of Writ Petition (C) No. 2308 of 2015.

31 The only question is with regard to the "rate of interest" adopted by the second respondent, i. e., 24 per cent. which is the maximum as per the relevant Rules. The question is whether the said rate of interest of 24 per cent. has been imposed by the second respondent as a matter of penal measure, for the reason that the petitioners, after collecting the cess from the consumers has not remitted and has misappropriated it or not. The answer can only be in the "negative", as discernible from the rule and the relevant notification issued in this regard.

32 Rule 5 of the Rules, 1949 reads as follows :

"5. *Recovery of duty and interest.*—(1) Where the duty due is not paid within the period specified under rule 3, the same shall be paid thereafter with interest thereon at the rate prevailing in accordance with sub-rule (2). For the purpose of calculating the interest part of a month shall be treated as equal to a month.

(2) The rate of interest payable under sub-rule (1) shall be such as may be fixed by the provincial Government by notification from time to time subject to a maximum of 24 per cent. per annum."

Sub-rule (1) of rule 5 of the Rules, 1949 says that interest is payable, if the duty is not paid within the period specified under rule 3 and *it shall be at the rate prevailing in accordance with sub-rule (2).* Sub-rule (2) says that the rate of interest payable under sub-rule (1) shall be *as notified* by the Government from time to time, subject to a maximum of 24 per cent. per annum. The question is whether the Government has issued any notification and if "yes", what is the interest payable as per the said notification.

It is relevant to note that notification dated July 22, 1975 has been issued **33**
by the Government in exercise of the powers conferred by sub-rule (2) of rule 5 of the Rules, 1949, which is in supersession of all previous orders in this regard. The same reads as follows :

"NOTIFICATION

Notification No. 2698-3752-XIII, dated July 22, 1975.

In exercise of the powers conferred by sub-rule (2) of rule 5 of the Madhya Pradesh Electricity Duty Rules, 1949 and in supersession of the previous orders in this respect, the State Government directs that the interest under sub-rule (1) of rule 5 shall be payable at the following rates. This notification will be effective from August 1, 1975.

Rate of interest

After the prescribed period :

(i)	on payment made within three months	@ 12% p.a.
(ii)	on payment made after three months but within six months	@ 15% p.a.
(iii)	on payment made after six months but within 12 months	@ 20% p.a.
(iv)	on payment made after 12 months	@ 24% p.a.

(Published in MP Rajpatra, Part I, dated 12-3-76, page 473)."

From the above, it is explicitly clear that, if the payment is made after the prescribed period but within three months, interest payable shall be 12 per cent. per annum, whereas it will be at the rate of 15 per cent. per annum if it is effected after three months but within six months. Once the payment is effected after six months but within 12 months, interest has to be satisfied at the rate of 20 per cent. per annum and if the payment is made beyond the period of 12 months, interest has to be satisfied at the rate of 24 per cent. per annum.

Coming back to the case in hand, it is to be noted that the petitioner- **34**
company has no case that it has satisfied the EDC in respect of the period from October 2007 to January 2014 at any point of time. The delay obviously is of more than 12 months, for the period from October 2007 to April, 2013 and hence, 24 per cent. interest has been charged, as reflected from the facts and figures given in the table forming part of annexure P/2. In respect of the period from May 2013 to October 2013, the delay is more than six months, but within six months and hence, interest charged is only at the rate of 20 per cent. In respect of the period from November 2013 to January 2014, the delay is only more than three months but within six months and hence, the interest payable only at the rate of 15 per cent. alone has been reckoned for the purpose of computing the liability. In other words, the entire amount due is not taken together, applying a

uniform rate of interest of 24 per cent. ; but it has been worked out at the varying rates from 15 to 24 per cent., strictly in conformity with the notification issued under rule 5(2) of the Rules, 1949. Admittedly, the rule is not under challenge. As it stands so, the contention raised by the petitioners that the rate of interest adopted by the second respondent is onerous, questionable and penal in nature, is without any pith or substance.

35 In the above facts and circumstances, this court finds that the petitioners have failed in establishing a case before this court with regard to the alleged ultra vires nature of section 3(1) of the 1981 Act, nor have they succeeded in substantiating the case to dispute the liability towards the electricity duty cess and interest.

36 The writ petition fails. It is dismissed accordingly.

[2020] 75 GSTR 492 (Raj)

[IN THE RAJASTHAN HIGH COURT]

TAX BAR ASSOCIATION

v.

UNION OF INDIA AND OTHERS

INDRAJIT MAHANTY C. J. and **DR. PUSHPENDRA SINGH BHATI** J.

February 5, 2020.

HF ▸ Directions

GOODS AND SERVICES TAX—TRANSITION PERIOD—LAST DATE FOR FILING RETURNS IN STATE FOR FINANCIAL YEAR 2017-18 FEBRUARY 5, 2020—PETITION SUBMITTING ASSESSEES UNABLE TO UPLOAD RETURNS GSTR-9 AND GSTR-9C DUE TO NON-FUNCTIONALITY OF RESPONDENT'S PORTAL—WRIT COURT—WEBSITE HAVING TECHNICAL BOTTLENECKS, LIMITING OPPORTUNITY OF ASSESSEE FROM UPLOADING FORM—DIRECTION THAT NO LATE FEE WOULD BE CHARGED TILL 12TH FEBRUARY, 2020 FOR UPLOADING—UNION OF INDIA GRANTED TIME TILL FEBRUARY 12, 2020 TO FILE A DETAILED REPLY/AFFIDAVIT—MATTER LISTED ON FEBRUARY 12, 2020—RAJASTHAN GOODS AND SERVICES TAX ACT (9 OF 2017), S. 44—RAJASTHAN GOODS AND SERVICES TAX RULES, 2017, R. 80.

In view of the fact that the respondent's portal www.gst.gov.in was having problems, the respondents issued a notification dated February 3, 2020 requiring the assessees to furnish their returns under section 44 of the Goods and Services Tax Act read with rule 80 of the Rules for the financial year 2017-18 by February 5, 2020 (Rajasthan). A "tweet" had been issued by the

Central Board of Indirect Taxes and Customs (CBIC) on January 31, 2020 at 10:30 PM indicating that the last date had been extended in a staggered manner ending on 3rd, 5th and 7th February, 2020. Consequently, all remaining tax payers were clubbed into two dates, i. e., 5th and 7th February, 2020. The Tax Bar Association filed a petition raising the issue about non-functionality of the respondent's portal, as a consequence of which, various assessees were unable to upload their returns both GSTR-9 and GSTR-9C. Placing reliance on the selfsame documents and statistics contained therein it was submitted that even if an average of 2 lakhs forms/returns per day were accepted by the system, the said fact would indicate that, even if this system operated at full strength, it would require a minimum 15 days time for accepting the uploading of the returns for remaining assessees :

[*The court granted the Union of India time till February 12, 2020 to file a detailed reply/affidavit. The court directed that the petitioner-association and the assessee, for whom they represented, might keep uploading their returns at the earliest possible and that no late fee would be charged till 12th of February, 2020 for uploading. It was also directed that the Union of India might file an affidavit by the portal operators regarding the status of its working and the magnitude or the ability of such portal or system for accepting a requisite number of returns/forms and that if necessary, the Union of India might also direct the service provider to enhance its capacity to accept returns/forms. The matter was listed on February 12, 2020.*]

D. B. Civil Writ Petition No. 1805 of 2020.

Sanjay Jhanwar, *Rahul Lakhwani* and *Prateek Gattani* for the petitioner.

Vipul Singhvi, Anil Bhansali and *Dixit Panwar* for the respondents.

ORDER

The name of Shri Sanjay Jhanwar as learned counsel for the petitioner be read in the earlier order passed by this court today in the morning. 1

The learned counsel for the petitioner was directed to implead the service provider, who operates the GSTN portal, as party respondent. The name and address of the service provider shall be provided by the learned counsel for the Union of India. 2

The present petition has been filed by the Tax Bar Association raising the issue about non-functionality of the respondent's portal, i.e., *www.gst.gov.in*, as a consequence of which, various assessees are unable to upload their returns both GSTR-9 and GSTR-9C. In view of the fact that the portal was having problems, the respondents issued a notification vide 3

annexure 6 dated February 3, 2020 at page 52, requiring the assessees to furnish their returns under section 44 of the GST Act read with rule 80 of the Rules for the financial year 2017-18 by February 5, 2020 (Rajasthan).

4 The learned counsel for the petitioner-Association drew our attention to annexure 4 seeks to show that when an assessee attempted to upload the returns/forms in GSTR-9 and GSTR-9C on January 31, 2020 at 5:09 p.m., the website of the Government noted as follows :

> "Dear taxpayer
>
> 1,50,000 taxpayers are already submitting their returns at this moment. . .
>
> Please wait for your turn in a few minutes. . .
>
> Thank you for your patience."

5 Similarly attempts were made thereafter on the self-same date at 6:58 p.m. as well as 7:50 p.m. with the same result. It may be borne in mind that the last date fixed for filing of returns originally fixed to 31st of January, 2020.

6 Although a "tweet" was issued by the Central Board of Indirect Taxes and Customs (CBIC) on January 31, 2020 at 10:30 pm indicating that the last date has been extended in a staggered manner ending on 3rd, 5th and 7th February, 2020 yet in accordance with the notification that was issued thereunder, came to be issued on February 3, 2020. Consequently, all remaining taxpayers were clubbed into two dates, i. e., 5th and 7th February, 2020. It is essential to note that last date for filing returns in the State of Rajasthan was February 5, 2020.

7 The learned counsel for the petitioner also drew our attention to the subsequent attempts made by the advocates/tax consultants to upload the assessees' returns on February 3 as well as February 4, 2020. In spite of several such attempts, they have not been able to upload the same. He has further drawn our attention that although time has been extended up to February 5, 2020 yet in the evening of February 4, 2020 at 8:03 p.m. attempt was made to upload the return, but such return required mandatory deposit of "late fee". In other words, the software portal had not been updated at least till that date, even though the notification dated February 3, 2020 was already issued by the Government.

8 The learned counsel for the petitioner fairly submits that on verification of the portal today, it appears that software glitch requiring the assessee to deposit "late fee" has been corrected and attempts are being made by various assessees within the State to upload their returns/forms in course of the day.

We have, by the order passed this morning, called upon learned counsel for the Union of India/CBIC to take instructions on the issue of the serious uploading problems being faced by the assessees. In the said order, we had directed Mr. Vipul Singhvi, learned counsel for the Union of India, to seek instructions from the appropriate authorities about the technical difficulties being faced by the assessees in uploading their returns/forms and further, to consider the request of the assessees for extending the time for uploading the returns. We called upon the learned counsel for Union of India to intimate this court at 2 p.m. the response of the concerned officers. 9

At 2 p.m. when the matter was taken by this court, Mr. Singhvi drew our attention to the fact that the last date for filing of returns for the financial year 2017-18 was originally fixed as January 31, 2020 and the assessees had opportunity to file the same on or before the said date. Apart from this, he submits that the suggestion made by the petitioner to allow the assessees to upload their returns on an e-mail address of any specific officer was not acceptable to the Union of India, on account of the fact that every return is required to be uploaded in the main GST portal for taking input credit and therefore the Union of India is required to resort to auto-ported data. Thus, the request of the petitioner to submit their returns in any other mode other than the GST portal cannot be accepted. 10

Apart from the above, he drew our attention to certain documents indicating that out of 64,17,471 the assessees who were required to file return in GSTR-9, a total of 39,45,439 have filed the returns at 1:30 p.m. of February 5, 2020. Similarly, out of 12,42,238 assessees, who were required to submit their returns in GSTR-9C returns/forms, a total of 7,76,999 have uploaded their returns till 1:30 p.m. today. He further submitted a chart to indicate the number of returns uploaded till date. 11

On an analysis of the documents submitted by learned counsel for the Union of India, it appears therefrom that the highest number of returns were uploaded on 31st of January, 2020, i. e., 2,19,417 in GSTR-9 and 1,33,027 in GSTR-9C. We further take note of the fact that on 1st, 2nd and February 3, 2020, a total 10,914, 36,643 and 1,06,568 GSTR-9 returns were uploaded and for returns of GSTR-9C forms, a total of 92,13, 24,096 and 67,773 returns respectively were uploaded on the aforesaid dates. 12

The learned counsel for the Union of India submits that this would indicate that the site in question was in operation during the period prior to the last date of filing returns, i. e., January 31, 2020 as well as in operation till today, i. e., January 5, 2020. 13

The learned counsel for the petitioner placed reliance on the selfsame documents and statistics contained therein to show that on no single day 14

has more than two lacs forms/returns ever been uploaded on the GST portal. Amongst the figures provided by the Union of India, it appears that at 1:30 p.m. today, 24,72,032 for GSTR-9 and 4,65,219 for GSTR-9C are yet remaining pending uploading. Therefore, he submits that even if an average of 2 lakhs forms/returns per day are accepted by the system, the said fact would indicate that, even if this system operated at full strength, it would require a minimum 15 days time for accepting the uploading of the returns for remaining assessees.

15 The learned counsel for the Union of India, on the other hand, submits that the Union of India after considering the aforesaid problems which the assessees are facing, had extended the period up to February 5, 2020 (in so far as the Rajasthan is concerned) and no further extension ought to be permitted since the body which is deciding the issue is a constitutional body. Mr. Singhvi further drew our attention to the figures relevant to the State of Rajasthan which are noted hereunder :

GSTR 9	Eligible	-	5,66,381
	Filed	-	2,71,224
GSTR 9C	Eligible	-	64,187
	Filed	-	48,153

16 On consideration of the facts situation, since the respondents are yet to obtain any instruction to effectively resolve the matter, we deem it appropriate to grant the Union of India time till February 12, 2020 to file a detailed reply/affidavit.

17 However, keeping the aforesaid situation being faced by assessee in view, we are of the considered opinion that an interim order needs to be passed in light of the fact that the GST portal of the Government of India has not been effectively functioning and clearly there appears to be a physical limit, to which extent returns/forms can be uploaded on any one day (apart from admitted intermittent technical shutdowns).

18 We are prima facie satisfied that even if an assessees is ready and willing to comply with the statutory duty, so far as filing of returns are concerned, the website appears to be having technical bottlenecks, which appears to limit the opportunity of an assessee from uploading the forms. We also keep in view the fact that the option suggested by the petitioner for submitting their returns on e-mail of a responsible officer has also been turned down by the Union of India.

19 Consequently, we hereby direct that the petitioner-association and the assessee, for whom they represent, may keep uploading their returns at the earliest possible and we direct that no late fee shall be charged till 12th of

Council, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 4/2019-Integrated Tax, dated the 30th September, 2019[1], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide No. G. S. R. 748(E), dated September 30, 2019, namely :—

In the said notification, in Table A, after serial number (1) and the entries relating thereto, the following serial number and entry shall be *inserted*, namely :—

(1)	(2)	(3)
"2	Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business.	The place of supply of services shall be the location of the recipient of service."

2. This notification shall come into force with effect from the 1st day of April, 2020.

[F. No. 354/32/2020-TRU]

Merged Union territory of Daman and Diu and Dadra and Nagar Haveli—Special procedure for certain dealers (Central)

Notification No. 10/2020-Central Tax, dated 21st March, 2020[2]

G. S. R. 193(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[3] (hereinafter referred to as the said Act), the Government, on the recommendations of the Council, hereby notifies those persons whose principal place of business or place of business was in the erstwhile Union territory of Daman and Diu or in the erstwhile Union territory of Dadra and Nagar Haveli till the 26th day of January, 2020 ; and is in the merged Union territory of Daman and Diu and Dadra and Nagar Haveli from the 27th day of January, 2020 onwards, as the class of persons who shall, except as respects things done or omitted to be done before the notification, follow the following special procedure till the 31st day of May, 2020 (hereinafter referred to as the transition date) as mentioned below :

2. The said registered person shall,—

(i) ascertain the tax period as per sub-clause (106) of section 2 of the said Act for the purposes of any of the provisions of the said Act for the month of January, 2020 and February, 2020 as below :

1. See [2019] 70 GSTR (St.) 184.
2. Gazette of India, Extry. No. 166, Part II, sec. 3(i), dated 21-3-2020, page 2.
3. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.

(a) January, 2020 : 1st January, 2020 to 25th January, 2020 ;

(b) February, 2020 : 26th January, 2020 to 29th February, 2020 ;

(ii) irrespective of the particulars of tax charged in the invoices, or in other like documents, raised from the 26th January, 2020 till the transition date, pay the appropriate applicable tax in the return under section 39 of the said Act ;

(iii) who have registered Goods and Services Tax Identification Number (GSTIN) in the erstwhile Union territory of Daman and Diu and the erstwhile Union territory of Dadra and Nagar Haveli till the 25th day of January, 2019 have an option to transfer the balance of input tax credit (ITC) after the filing of the return for January, 2020, from the registered Goods and Services Tax Identification Number (GSTIN) in the erstwhile Union territory of Daman and Diu to the registered GSTIN in the new Union territory of Daman and Diu and Dadra and Nagar Haveli by following the procedure as below :

(a) the said class of persons shall intimate the jurisdictional tax officer of the transferor and the transferee regarding the transfer of ITC, within one month of obtaining new registration ;

(b) the ITC shall be transferred on the basis of the balance in the electronic credit ledger upon filing of the return in the erstwhile Union territory of Daman and Diu, for the tax period immediately before the transition date ;

(c) the transfer of ITC shall be carried out through the return under section 39 of the said Act for the tax period immediately before the transition date and the transferor GSTIN shall debit the said ITC from its electronic credit ledger in table 4(B)(2) of *Form GSTR-3B* and the transferee GSTIN shall credit the equal amount of ITC in its electronic credit ledger in table 4(A)(5) of *Form GSTR-3B*.

3. The balance of Union territory taxes in electronic credit ledger of the said class of persons, whose principal place of business lies in the Union territory of Daman and Diu, as on the 25th day of January, 2020, shall be transferred as balance of Union territory tax in the electronic credit ledger.

[F. No. 20/06/03/2020-GST]

Corporate debtors undergoing corporate insolvency resolution process—Special procedure (Central)

Notification No. 11/2020-Central Tax, dated 21st March, 2020[1]

G. S. R. 194(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[2] (hereinafter referred to as the said Act), the Government, on the recommendations of the Council, hereby notifies those registered persons (hereinafter referred to as the erstwhile registered person), who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP), as the class of persons who shall follow the following special procedure, from the date of the appointment of the IRP/RP till the period they undergo the corporate insolvency resolution process, as mentioned below.

2. *Registration.*—The said class of persons shall, with effect from the date of appointment of IRP/RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP :

Provided that in cases where the IRP/RP has been appointed prior to the date of this notification, he shall take registration within thirty days from the commencement of this notification, with effect from date of his appointment as IRP/RP.

3. *Return.*—The said class of persons shall, after obtaining registration file the first return under section 40 of the said Act, from the date on which he becomes liable to registration till the date on which registration has been granted.

4. *Input tax credit.*—(1) The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since his appointment as IRP/RP but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the said Act and the rules made thereunder, except the provisions of sub-section (4) of section 16 of the said Act and sub-rule (4) of rule 36 of the Central Goods and Service Tax Rules, 2017[3] (hereinafter referred to as the said Rules).

1. Gazette of India, Extry. No. 166, Part II, sec. 3(i), dated 21-3-2020, page 4.
2. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
3. See [2017] 45 GSTR (St.) 402.

(2) Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP/RP till the date of registration as required in this notification or thirty days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the said Act and the rules made thereunder, except the provisions of sub-rule (4) of rule 36 of the said rules.

(5) Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP/RP to the date of registration in terms of this notification shall be available for refund to the erstwhile registration.

Explanation.—For the purposes of this notification, the terms "corporate debtor", "corporate insolvency resolution professional", "interim resolution professional" and "resolution professional" shall have the same meaning as assigned to them in the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

[F. No. 20/06/03/2020-GST]

Class of registered persons who should follow the special procedure for furnishing of return and payment of tax—Amendment (Central)

Notification No. 12/2020-Central Tax, dated 21st March, 2020[1]

G. S. R. 195(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[2], the Central Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2019-Central Tax, dated the 23rd April, 2019[3], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 322(E), dated the 23rd April, 2019, namely :—

In the said notification, in paragraph 2, the following proviso shall be *inserted*, namely :—

"Provided that the said persons who have, instead of furnishing the statement containing the details of payment of self-assessed tax in Form

1. Gazette of India, Extry. No. 166, Part II, sec. 3(i), dated 21-3-2020, page 6.
2. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
3. See [2019] 65 GSTR (St.) 38.

GST CMP-08 have furnished a return in Form GSTR-3B under the Central Goods and Services Tax Rules, 2017[1] (hereinafter referred to as the said rules) for the tax periods in the financial year 2019-20, such taxpayers shall not be required to furnish the statement in outward supply of goods or services or both in *Form GSTR-1* of the said rules or the statement containing the details of payment of self-assessed tax in Form GST CMP-08 for all the tax periods in the financial year 2019-20."

[F. No. 20/06/03/2020-GST]

Note : The principal Notification No. 21/2019-Central Tax, dated the 23rd April, 2019[2], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 322(E), dated the 23rd April, 2019.

Class of registered person who shall prepare invoice and other prescribed documents in respect of supply of goods or services or both to a registered person (Central)

Notification No. 13/2020-Central Tax, dated 21st March, 2020[3]

G. S. R. 196(E).—In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017[4] (hereinafter referred as said rules), the Government on the recommendations of the Council, and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 70/2019–Central Tax, dated the 13th December, 2019[5], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 926(E), dated the 13th December, 2019, except as respects things done or omitted to be done before such supersession, hereby notifies registered person, other than those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of the said Rules, whose aggregate turnover in a financial year exceeds one hundred crore rupees, as a class of registered person who shall prepare invoice and other prescribed documents, in terms of sub-rule (4) of rule 48 of the said rules in respect of supply of goods or services or both to a registered person.

2. This notification shall come into force from the 1st October, 2020.

[F. No. 20/06/03/2020-GST]

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1. See [2017] 45 GSTR (St.) 402.
2. See [2019] 65 GSTR (St.) 38.
3. Gazette of India, Extry. No. 166, Part II, sec. 3(i), dated 21-3-2020, page 7.
4. See [2017] 45 GSTR (St.) 402.
5. See [2020] 72 GSTR (St.) 71.

Dynamic Quick Response Code in respect of invoice issued by specified registered person to an unregistered person (Central)

Notification No. 14/2020-Central Tax, dated 21st March, 2020[1]

G. S. R. 197(E).—In exercise of the powers conferred by the sixth proviso to rule 46 of the Central Goods and Services Tax Rules, 2017[2] (hereinafter referred to as the said rules), the Government, on the recommendations of the Council, and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 72/2019–Central Tax, dated the 13th December, 2019[3], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R 928(E), dated the 13th December, 2019, except as respects things done or omitted to be done before such supersession, hereby notifies that an invoice issued by a registered person, whose aggregate turnover in a financial year exceeds five hundred crore rupees, other than those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of said Rules, and registered person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017, to an unregistered person (hereinafter referred to as B2C invoice), shall have Dynamic Quick Response (QR) Code :

Provided that where such registered person makes a Dynamic Quick Response (QR) Code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) Code, shall be deemed to be having Quick Response (QR) Code.

2. This notification shall come into force from the 1st day of October, 2020.

[F. No. 20/06/03/2020-GST]

Furnishing of e-annual return through common portal— Extension of time-limit (Central)

Notification No. 15/2020-Central Tax, dated 23rd March, 2020[4]

G. S. R. 198(E).—In exercise of the powers conferred by sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[5] (hereafter in this notification referred to as the said Act), read with rule 80 of the Central Goods and Services Tax Rules, 2017[2] (hereafter in this noti-

1. Gazette of India, Extry. No. 166, Part II, sec. 3(i), dated 21-3-2020, page 8.
2. See [2017] 45 GSTR (St.) 402.
3. See [2020] 72 GSTR (St.) 72.
4. Gazette of India, Extry. No. 167, Part II, sec. 3(i), dated 23-3-2020, page 2.
5. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.

fication referred to as the said Rules), the Commissioner, on the recommendations of the Council, hereby extends the time-limit for furnishing of the annual return specified under section 44 of the said Act read with rule 80 of the said Rules, electronically through the common portal, for the financial year 2018-2019 till June 30, 2020.

[F. No. CBEC-20/06/04/2020-GST]

THE CENTRAL GOODS AND SERVICES TAX (THIRD AMENDMENT) RULES, 2020

Notification No. 16/2020-Central Tax, dated 23rd March, 2020[1]

G. S. R. 199(E).— In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[2], the Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017[3], namely :—

1. (1) These rules may be called the **Central Goods and Services Tax (Third Amendment) Rules, 2020**.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 8, after sub-rule (4), the following sub-rule shall be *inserted*, namely :—

"(4A) The applicant shall, while submitting an application under sub-rule (4), with effect from April 1, 2020, undergo authentication of Aadhaar number for grant of registration.".

3. In the said rules, in rule 9, in sub-rule (1), with effect from 01.04.2020, the following sub-rule shall be *inserted*, namely :—

"Provided that where a person, other than those notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, then the registration shall be granted only after physical verification of the principle place of business in the presence of the said person, not later than sixty days from the date of application, in the manner provided under rule 25 and the provisions of sub-rule (5) shall not be applicable in such cases.".

4. In the said rules, for rule 25, the following rule shall be *substituted*, namely :—

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1. Gazette of India, Extry. No. 167, Part II, sec. 3(i), dated 23-3-2020, page 5.
2. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
3. See [2017] 45 GSTR (St.) 402.

"*Physical verification of business premises in certain cases*.—Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in *Form GST REG-30* on the common portal within a period of fifteen working days following the date of such verification.".

5. In the said Rules, in rule 43, in sub-rule (1) with effect from the 1st April, 2020,—

(a) for clause (c), the following clause shall be *substituted*, namely :—

"(c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', being the amount of tax as reflected on the invoice, shall credit directly to the electronic credit ledger and the validity of the useful life of such goods shall extend up to five years from the date of the invoice for such goods :

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, input tax in respect of such capital goods denoted as 'A' shall be credited to the electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such capital goods were covered by clause (a), denoted as 'T_{ie}', shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed :

Provided further that the amount 'T_{ie}' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in Form GSTR-3B.

Explanation.—*An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause*."

(b) for clause (d), the following clause shall be *substituted*, namely :—

"the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as 'T_c', shall be the common credit in respect of such capital goods :

Provided that where any capital goods earlier covered under clause (b) are subsequently covered under clause (c), the input tax credit claimed

in respect of such capital good(s) shall be added to arrive at the aggregate value 'T_c' ;" ;

(c) in clause (e), the following *Explanation* shall be *inserted*, namely :—

"*Explanation*.— For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods." ;

(d) clause (f) shall be *omitted*.

6. In the said Rules, in rule 80, in sub-clause (3), the following proviso shall be *inserted*, namely :—

"Provided that every registered person whose aggregate turnover during the financial year 2018-2019 exceeds five crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in *Form GSTR-9C* for the financial year 2018-2019, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.".

7. In the said Rules, in rule 86, after sub-rule (4), the following sub-rule shall be *inserted*, namely :—

"(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in *Form GST PMT-03.*".

8. In the said Rules, in rule 89, in sub-rule (4), for clause (C), the following clause shall be *substituted*, namely :—

'(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both ;'.

9. In the said Rules, in rule 92,—

(a) after sub-rule (1), the following sub-rule shall be *inserted*, namely :—

"(1A)Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he

shall make an order in *Form RFD-06* sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue *Form GST PMT-03* re-crediting the said amount as input tax credit in electronic credit ledger." ;

(b) in sub-rule (4), after the words, brackets and figure "amount refundable under sub-rule (1)", the words, brackets, figure and letter "or sub-rule (1A)", shall be *inserted* ;

(c) in sub-rule (5), after the words, brackets and figure "amount refundable under sub-rule (1)", the words, figures and letter "or sub-rule (1A)", shall be *inserted*.

10. In the said Rules, in rule 96, in sub-rule (10),in clause (b) with effect from the 23rd October, 2017, the following *Explanation* shall be *inserted*, namely :—

"*Explanation*.—For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.".

11. In the said Rules, after rule 96A, the following rule shall be *inserted*, namely :—

"96B. *Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised*.—(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50 :

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.".

12. In the said Rules, in rule 141, in sub-rule (2), for the word "Commissioner", the words "proper officer" shall be *substituted*.

13. In the said Rules, in *Form GST RFD-01*, after the declaration under rule 89(2)(g), the following undertaking shall be *inserted*, namely :—

"Undertaking

I hereby undertake to deposit to the Government the amount of refund sanctioned along with interest in case of non-receipt of foreign exchange remittances as per the proviso to section 16 of the IGST Act, 2017 read with rule 96B of the CGST Rules, 2017.

Signature :

Name :

Designation/Status".

[F. No. CBEC-20/06/04/2020-GST]

Note : The principal Rules were published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide Notification No. 3/2017-Central Tax, dated the 19th June, 2017[1], vide No. G. S. R. 610(E), dated the 19th June, 2017 and last amended vide Notification No. 8/2020-Central Tax, dated the 2nd March, 2020[2], published vide No. G. S. R. 147(E), dated the 2nd March, 2020.

1. See [2017] 45 GSTR (St.) 402.
2. See [2020] 74 GSTR (St.) 220.

Class of persons on whom sub-section (6B) or (6C) of section 25 not applicable (Central)

Notification No. 17/2020-Central Tax, dated 23rd March, 2020[1]

G. S. R. 200(E).—In exercise of the powers conferred by sub-section (6D) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[2], the Central Government, on the recommendations of the Council, hereby notifies that the provisions of sub-section (6B) or sub-section (6C) of the said Act shall not apply to a person who is not a citizen of India or to a class of persons other than the following class of persons, namely :—

(a) Individual ;

(b) Authorised signatory of all types ;

(c) Managing and authorised partner ; and

(d) Karta of an Hindu undivided family.

2. This notification shall come into effect from the 1st day of April, 2020.

[F. No. CBEC-20/06/04/2020-GST]

Date of coming into force of notification under section 25(6B) (Central)

Notification No. 18/2020-Central Tax, dated 23rd March, 2020[1]

G. S. R. 201(E).—In exercise of the powers conferred by sub-section (6B) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[2], the Central Government, on the recommendations of the Council, hereby notifies the date of coming into force of this notification as the date, from which an individual shall undergo authentication, of Aadhaar number, as specified in rule 8 of the Central Goods and Services Tax Rules, 2017[3] (hereinafter referred to as the said Rules), in order to be eligible for registration :

Provided that if Aadhaar number is not assigned to the said individual, he shall be offered alternate and viable means of identification in the manner specified in rule 9 of the said Rules.

2. This notification shall come into effect from the 1st day of April, 2020.

[F. No. CBEC-20/06/04/2020-GST]

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1. Gazette of India, Extry. No. 167, Part II, sec. 3(i), dated 23-3-2020, page 9.
2. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
3. See [2017] 45 GSTR (St.) 402.

Date of coming into force of notification under section 25(6C) (Central)

Notification No. 19/2020-Central Tax, dated 23rd March, 2020[1]

G. S. R. 202(E).—In exercise of the powers conferred by sub-section (6C) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[2], the Central Government, on the recommendations of the Council, hereby notifies the date of coming into force of this notification as the date, from which the—

(a) authorised signatory of all types ;

(b) Managing and authorised partners of a partnership firm ; and

(c) Karta of an Hindu undivided family,

shall undergo authentication of possession of Aadhaar number, as specified in rule 8 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said Rules), in order to be eligible for registration under GST :

Provided that if Aadhaar number is not assigned to the said persons, they shall be offered alternate and viable means of identification in the manner specified in rule 9 of the said Rules.

2. This notification shall come into effect from the 1st day of April, 2020.

[F. No. CBEC-20/06/04/2020-GST]

Registered person required to deduct tax at source—Extension of time-limit for furnishing return—Amendment (Central)

Notification No. 20/2020-Central Tax, dated the 23rd March, 2020[3]

G. S. R. 203(E).—In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[4] (hereafter in this notification referred to as the said Act), the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 26/2019-Central Tax, dated the 28th June, 2019[5], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 452(E), dated 28th June, 2019, namely :—

1. Gazette of India, Extry. No. 167, Part II, sec. 3(i), dated 23-3-2020, page 10.
2. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
3. Gazette of India, Extry. No. 167, Part II, sec. 3(i), dated 23-3-2020, page 12.
4. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
5. See [2019] 66 GSTR (St.) 349.

In the said notification, in the first paragraph, for the second and third proviso, the following provisos shall be *substituted*, namely :—

"Provided further that the return by a registered person, required to deduct tax at source under the provisions of section 51 of the said Act in FORM GSTR-7 of the Central Goods and Services Tax Rules, 2017[1] under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the months of July, 2019 to October, 2019, whose principal place of business is in the erstwhile State of Jammu and Kashmir shall be furnished electronically through the common portal, on or before the 24th March, 2020 :

Provided also that the return by a registered person, required to deduct tax at source under the provisions of section 51 of the said Act in Form GSTR-7 of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the months of November, 2019 to February, 2020, whose principal place of business is in the Union territory of Jammu and Kashmir or the Union territory of Ladakh shall be furnished electronically through the common portal, on or before the 24th March, 2020."

2. This notification shall be deemed to have come into force with effect from the 20th Day of December, 2019.

[F. No. CBEC-20/06/04/2020-GST]

Note : The principal Notification No. 26/2019-Central Tax, dated the 28th June, 2019[2] was published in the Gazette of India, Extraordinary vide No. G. S. R. 452(E), dated the 28th June, 2019 and was last amended by Notification No. 78/2019-Central Tax, dated the 26th December, 2019[3], published in the Gazette of India, Extraordinary vide No. G. S. R. 957(E), dated the 26th December, 2019.

Class of registered persons who should follow special procedure for furnishing details of outwards supply of goods or services or both—Amendment (Central)

Notification No. 21/2020-Central Tax, dated 23rd March, 2020[4]

G. S. R. 204(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[5] (hereafter in this notification referred to as the said Act), the Central Government, on

1. See [2017] 45 GSTR (St.) 402.
2. See [2019] 66 GSTR (St.) 349.
3. See [2020] 72 GSTR (St.) 256.
4. Gazette of India, Extry. No. 167, Part II, sec. 3(i), dated 23-3-2020, page 13.
5. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.

the recommendations of the Council, hereby makes the following amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 45/2019-Central Tax, dated the 9th October, 2019[1], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide No. G. S. R. 768(E), dated the 9th October, 2019, namely :—

In the said notification, in the second paragraph, the following proviso shall be *inserted*, namely :—

"Provided that for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir or the Union territory of Jammu and Kashmir or the Union territory of Ladakh, shall furnish the details of outward supply of goods or services or both in *Form GSTR-1* under the Central Goods and Services Tax Rules, 2017 effected during the quarter October-December, 2019 till 24th March, 2020.".

2. This notification shall be deemed to come into force with effect from the 31stDay of January, 2020.

[F. No. CBEC-20/06/04/2020-GST]

Note: The principal Notification No. 45/2019–Central Tax, dated the 9th October, 2019 was published in the Gazette of India, Extraordinary vide No. G. S. R. 768(E), dated the 9th October, 2019.

Extension of time-limit for furnishing details of outward supplies in Form GSTR-1—Amendment (Central)

Notification No. 22/2020-Central Tax, dated 23rd March, 2020[2]

G. S. R. 205(E).— In exercise of the powers conferred by second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[3] (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 46/2019–Central Tax, dated the 9th October, 2019[4], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 769(E), dated the 9th October, 2019, namely :—

(i) In the said notification, in the first paragraph, for the first proviso, the following proviso shall be *substituted*, namely :—

1. See [2019] 70 GSTR (St.) 7.
2. Gazette of India, Extry. No. 167, Part II, sec. 3(i), dated 23-3-2020, page 14.
3. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
4. See [2019] 70 GSTR (St.) 8.

"Provided that for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir, the time-limit for furnishing the details of outward supplies in Form GSTR-1 of the Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for the month of October, 2019 till 24th March, 2020.".

(ii) In the said notification, in the first paragraph, after the second proviso, the following proviso shall be *inserted*, namely :—

"Provided that for registered persons whose principal place of business is in the Union territory of Jammu and Kashmir or the Union territory of Ladakh, the time-limit for furnishing the details of outward supplies in Form GSTR-1 of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for the months of November, 2019 to February till 24th March, 2020.".

2. This notification shall be deemed to come into force with effect from the 20th Day of December, 2019.

[F. No. CBEC-20/06/04/2020-GST]

Note : The principal Notification No. 46/2019–Central Tax, dated the 9th October, 2019[1] was published in the Gazette of India, Extraordinary vide No. G. S. R. 769(E), dated the 9thOctober, 2019 and was last amended by Notification No. 76/2019-Central Tax, dated the 26th December, 2019[2], published in the Gazette of India, Extraordinary vide No. G. S. R. 955(E), dated the 26th December, 2019.

Extension of time-limit for furnishing details of outward supplies in Form GSTR-1—Amendment (Central)

Notification No. 23/2020-Central Tax, dated 23rd March, 2020[3]

G. S. R. 206(E).— In exercise of the powers conferred by second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[4] (hereafter in this notification referred to as "the said Act"), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 28/2019–Central Tax, dated the 28th June, 2019[5],

1. See [2019] 70 GSTR (St.) 8.
2. See [2020] 72 GSTR (St.) 254.
3. Gazette of India, Extry. No. 167, Part II, sec. 3(i), dated 23-3-2020, page 16.
4. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
5. See [2019] 66 GSTR (St.) 350.

published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 454(E), dated the 28th June, 2019, namely :—

In the said notification, in the first paragraph, for the first proviso, the following proviso shall be *substituted*, namely :—

"Provided that for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir, the time-limit for furnishing the details of outward supplies in *Form GSTR-1* of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for each of the months from July, 2019 to September, 2019 till 24th March, 2020."

2. This notification shall be deemed to come into force with effect from the 20th day of December, 2019.

[F. No. CBEC-20/06/04/2020-GST]

Note : The principal Notification No. 28/2019-Central Tax, dated the 28th June, 2019[1] was published in the Gazette of India, Extraordinary, vide No. G. S. R. 454(E), dated the 28th June, 2019 and was last amended by Notification No. 63/2019-Central Tax, dated the 12th December, 2019[2], published in the Gazette of India, Extraordinary vide No. G. S. R. 907(E), dated the 12th December, 2019.

Class of registered persons who should follow special procedure for obtaining details of outward supply of goods or services or both—Amendment (Central)

Notification No. 24/2020-Central Tax, dated 23rd March, 2020[3]

G. S. R. 207(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[4] (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby makes the following amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 27/2019-Central Tax, dated the 28th June, 2019[5], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide No. G. S. R. 453(E), dated 28th June, 2019, namely :—

In the said notification, in the second paragraph, for the first proviso, the following proviso shall be *substituted*, namely :—

1. See [2019] 66 GSTR (St.) 350.
2. See [2020] 72 GSTR (St.) 65.
3. Gazette of India, Extry. No. 167, Part II, sec. 3(i), dated 23-3-2020, page 17.
4. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
5. See [2019] 66 GSTR (St.) 349.

"Provided that for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir, shall furnish the details of outward supply of goods or services or both in Form GSTR-1 under the Central Goods and Services Tax Rules, 2017 effected during the quarter July-September, 2019 till 24th March, 2020.".

2. This notification shall be deemed to come into force with effect from the 30th Day of November, 2019.

[F. No. CBEC-20/06/04/2020-GST]

Note : The principal Notification No. 27/2019–Central Tax, dated the 28th June, 2019[1] was published in the Gazette of India, Extraordinary vide No. G. S. R. 453(E), dated the 28th June, 2019 and was last amended by Notification No. 52/2019–Central Tax, dated the 14th November, 2019[2], published in the Gazette of India, Extraordinary vide No. G. S. R. 846(E), dated the 14th November, 2019.

E-filing of Form GSTR-3B—Amendment (Central)

Notification No. 25/2020-Central Tax, dated 23rd March, 2020[3]

G. S. R. 208(E).—In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[4] read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 44/2019–Central Tax, dated the 9th October, 2019[5], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 767(E), dated the 9th October, 2019, namely :—

(i) In the said notification, in the first paragraph, for the first proviso, the following proviso shall be *substituted*, namely :—

"Provided that the return in Form GSTR-3B of the said rules for the months of October, 2019 for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir, shall be furnished electronically through the common portal, on or before the 24th March, 2020."

(ii) In the said notification, in the first paragraph, after the fifth proviso, the following proviso shall be *inserted*, namely :—

1. See [2019] 66 GSTR (St.) 349.
2. See [2019] 71 GSTR (St.) 86.
3. Gazette of India, Extry. No. 167, Part II, sec. 3(i), dated 23-3-2020, page 18.
4. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
5. See [2019] 70 GSTR (St.) 6.

"Provided also that the return in Form GSTR-3B of the said rules for the months of November, 2019 to February, 2020 for registered persons whose principal place of business is in the Union territory of Jammu and Kashmir or the Union territory of Ladakh, shall be furnished electronically through the common portal, on or before the 24th March, 2020."

2. This notification shall be deemed to come into force with effect from the 20thDay of December, 2019.

[F. No. CBEC-20/06/04/2020-GST]

Note : The principal Notification No. 44/2019–Central Tax, dated the 9th October, 2019[1], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 767(E), dated the 9th October, 2019 and was last amended by Notification No. 7/2020–Central Tax, dated the 3rd February, 2020[2], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 83(E), dated the 3rd February, 2020.

E-return in Form GSTR-3B—Amendment (Central)

Notification No. 26/2020-Central Tax, dated 23rd March, 2020[3]

G. S. R. 209(E).—In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[4] read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017[5] (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 29/2019–Central Tax, dated the 28th June, 2019[6], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 455(E), dated the 28th June, 2019, namely :—

In the said notification, in the first paragraph, for the fourth proviso, the following proviso shall be *substituted*, namely :—

"Provided also that the return in Form GSTR-3B of the said rules for the months of July, 2019 to September, 2019 for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir, shall be furnished electronically through the common portal, on or before the 24th March, 2020."

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1. See [2019] 70 GSTR (St.) 6.
2. See [2020] 73 GSTR (St.) 180.
3. Gazette of India, Extry. No. 167, Part II, sec. 3(i), dated 23-3-2020, page 19.
4. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
5. See [2017] 45 GSTR (St.) 402.
6. See [2019] 66 GSTR (St.) 351.

2. This notification shall be deemed to come into force with effect from the 20th Day of December, 2019.

[F. No. CBEC-20/06/04/2020-GST]

Note : The principal Notification No. 29/2019–Central Tax, dated the 28th June, 2019[1] was published in the Gazette of India, Extraordinary vide No. G. S. R. 455(E), dated the 28th June, 2019 and was last amended by Notification No. 66/2019–Central Tax, dated the 12th December, 2019[2] published in the Gazette of India, Extraordinary vide No. G. S. R. 910(E), dated the 12th December, 2019.

Class of registered persons who shall follow certain special procedure for furnishing details of outward supply of goods or services or both (Central)

Notification No. 27/2020-Central Tax, dated 23rd March, 2020[3]

G. S. R. 210(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[4] (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, as the class of registered persons who shall follow the special procedure as mentioned below for furnishing the details of outward supply of goods or services or both.

2. The said registered persons shall furnish the details of outward supply of goods or services or both in Form GSTR-1 under the Central Goods and Services Tax Rules, 2017[5], effected during the quarter as specified in column (2) of the Table below till the time period as specified in the corresponding entry in column (3) of the said Table, namely :—

TABLE

Sl. No.	*Quarter for which details in Form GSTR-1 are furnished*	*Time period for furnishing details in Form GSTR-1*
(1)	*(2)*	*(3)*
1	April, 2020 to June, 2020	31st July, 2020
2	July, 2020 to September, 2020	31st October, 2020

3. The time-limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of April,

1. See [2019] 66 GSTR (St.) 351.
2. See [2020] 72 GSTR (St.) 67.
3. Gazette of India, Extry. No. 167, Part II, sec. 3(i), dated 23-3-2020, page 20.
4. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
5. See [2017] 45 GSTR (St.) 402.

2020 to September, 2020 shall be subsequently notified in the Official Gazette.

[F. No. CBEC-20/06/04/2020-GST]

Furnishing of details of outward supplies in Form GSTR-1 by certain class of registered persons—Extension of time-limit (Central)

Notification No. 28/2020-Central Tax, dated 23rd March, 2020[1]

G. S. R. 211(E).—In exercise of the powers conferred by the second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[2] (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby extends the time-limit for furnishing the details of outward supplies in Form GSTR-1 of the Central Goods and Services Tax Rules, 2017[3], by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for each of the months from April, 2020 to September, 2020 till the eleventh day of the month succeeding such month.

2. The time-limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of April, 2020 to September, 2020 shall be subsequently notified in the Official Gazette.

[F. No. CBEC-20/06/04/2020-GST]

Furnishing of e-return in Form GSTR-3B through common portal (Central)

Notification No. 29/2020-Central Tax, dated 23rd March, 2020[4]

G. S. R. 212(E).—In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[2] (hereafter in this notification referred to as the said Act), read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017[3] (hereafter in this notification referred to as the said Rules), the Commissioner, on the recommendations of the Council, hereby specifies that the return in Form GSTR-3B of the said rules for each of the months from April, 2020 to

1. Gazette of India, Extry. No. 167, Part II, sec. 3(i), dated 23-3-2020, page 21.
2. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
3. See [2017] 45 GSTR (St.) 402.
4. Gazette of India, Extry. No. 167, Part II, sec. 3(i), dated 23-3-2020, page 22.

September, 2020 shall be furnished electronically through the common portal, on or before the twentieth day of the month succeeding such month :

Provided that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in Form GSTR-3B of the said rules for the months of April, 2020 to September, 2020 shall be furnished electronically through the common portal, on or before the twenty-second day of the month succeeding such month :

Provided further that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in Form GSTR-3B of the said rules for the months of April, 2020 to September, 2020 shall be furnished electronically through the common portal, on or before the twenty-fourth day of the month succeeding such month.

2. *Payment of taxes for discharge of tax liability as per Form GSTR-3B*.—Every registered person furnishing the return in *Form GSTR-3B* of the said rules shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax by debiting the electronic cash ledger or electronic credit ledger, as the case may be and his liability towards interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger, not later than the last date, as specified in the first paragraph, on which he is required to furnish the said return.

[F. No. CBEC-20/06/04/2020-GST]

THE CENTRAL GOODS AND SERVICES TAX (FOURTH AMENDMENT) RULES, 2020

Notification No. 30/2020-Central Tax, dated 3rd April, 2020[1]

G. S. R. 230(E).—In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[2], the Central

1. Gazette of India, Extry. No. 180, Part II, sec. 3(i), dated 3-4-2020, page 2.
2. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.

Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017[1], namely :—

1. (1) These rules may be called the **Central Goods and Services Tax (Fourth Amendment) Rules, 2020**.

(2) Save as otherwise provided, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said Rules), with effect from the 31st March, 2020, in sub-rule (3) of rule 3, the following proviso shall be *inserted*, namely :—

"Provided that any registered person who opts to pay tax under section 10 for the financial year 2020-21 shall electronically file an intimation in Form GST CMP-02, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, on or before 30th day of June, 2020 and shall furnish the statement in Form GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 up to the 31st day of July, 2020.".

3. In the said Rules, in sub-rule (4) of rule 36, the following proviso shall be *inserted*, namely :—

"Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in *Form GSTR-3B* for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.".

[F. No. CBEC-20/06/04/2020-GST]

Note : The principal rules were published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide Notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide No. G. S. R. 610(E), dated the 19th June, 2017 and last amended vide Notification No. 16/2020-Central Tax, dated the 23rd March, 2020[2] published vide No. G. S. R. 199(E), dated the 23rd March, 2020.

Rate of interest for specified purposes—Amendment (Central)

Notification No. 31/2020-Central Tax, dated 3rd April, 2020[3]

G. S. R. 231(E).—In exercise of the powers conferred by sub-section (1) of section 50 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[4]

1. See [2017] 45 GSTR (St.) 402.
2. See page 87 *supra*.
3. Gazette of India, Extry. No. 180, Part II, sec. 3(i), dated 3-4-2020, page 4.
4. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.

(hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the Central Government, on the recommendations of the Council, hereby makes the following amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2017–Central Tax, dated the 28th June, 2017[1], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 661(E), dated the 28th June, 2017, namely :—

In the said notification, in the first paragraph, the following provisos shall be *inserted*, namely :—

"Provided that, the rate of interest per annum shall be as specified in column (3) of the Table given below, for the class of registered persons, mentioned in the corresponding entry in column (2) of the said table, who are required to furnish the returns in Form GSTR-3B, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said table by the due date, but furnish the said return according to the condition mentioned in the corresponding entry in column (5) of the said Table, namely :—

TABLE

Sl. No.	*Class of registered persons*	*Rate of interest*	*Tax period*	*Condition*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	Nil for first 15 days from the due date, and 9 per cent thereafter	February, 2020, March 2020, April, 2020	If return in *FORM GSTR-3B* is furnished on or before the 24th day of June, 2020
2	Taxpayers having an aggregate turnover of more than rupees 1.5 crores and up to rupees five crores in the preceding financial year	Nil	February, 2020, March, 2020	If return in *FORM GSTR-3B* is furnished on or before the 29th day of June, 2020
			April, 2020	If return in *FORM GSTR-3B* is furnished on or before the 30th day of June, 2020
3.	Taxpayers having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year	Nil	February, 2020	If return in *FORM GSTR-3B* is furnished on or before the 30th day of June, 2020

1. See [2017] 45 GSTR (St.) 505.

(1)	(2)	(3)	(4)	(5)
			March, 2020	If return in *FORM GSTR-3B* is furnished on or before the 3rd day of July, 2020
			April, 2020	If return in *FORM GSTR-3B* is furnished on or before the 6th day of July, 2020.".

2. This notification shall be deemed to have come into force with effect from the 20th day of March, 2020.

[F. No. CBEC-20/06/04/2020-GST]

Note : The principal Notification No. 13/2017–Central Tax, dated the 28th June, 2017[1], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 661(E), dated the 28th June, 2017.

Waiver of late fee for filing of Form GSTR-3B—Amendment (Central)

Notification No. 32/2020-Central Tax, dated 3rd April, 2020[2]

G. S. R. 232(E).—In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[3] (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 76/2018–Central Tax, dated the 31st December, 2018[4], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 1253(E), dated the 31st December, 2018, namely :—

In the said notification, after the second proviso, the following proviso shall be *inserted*, namely :—

"Provided also that the amount of late fee payable under section 47 shall stand waived for the tax period as specified in column (3) of the table given below, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who fail to furnish the returns in *Form GSTR-3B* by the due date, but furnishes the said return

1. See [2017] 45 GSTR (St.) 505.
2. Gazette of India, Extry. No. 180, Part II, sec. 3(i), dated 3-4-2020, page 6.
3. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
4. See [2019] 61 GSTR (St.) 108.

according to the condition mentioned in the corresponding entry in column (4) of the said table, namely :—

TABLE

Sl. No.	*Class of registered persons*	*Tax period*	*Condition*
(1)	*(2)*	*(3)*	*(4)*
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	February, 2020, March, 2020 and April, 2020	If return in *Form GSTR-3B* is furnished on or before the 24th day of June, 2020
2	Taxpayers having an aggregate turnover of more than rupees 1.5 crores and up to rupees five crores in the preceding financial year	February, 2020 and March, 2020	If return in *Form GSTR-3B* is furnished on or before the 29th day of June, 2020
		April, 2020	If return in *Form GSTR-3B* is furnished on or before the 30th day of June, 2020
3.	Taxpayers having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year	February, 2020	If return in *Form GSTR-3B* is furnished on or before the 30th day of June, 2020
		March, 2020	If return in *Form GSTR-3B* is furnished on or before the 3rd day of July, 2020
		April, 2020	If return in *Form GSTR-3B* is furnished on or before the 6th day of July, 2020.".

2. This notification shall be deemed to have come into force with effect from the 20th day of March, 2020.

[F. No. CBEC-20/06/04/2020-GST]

Note : The principal Notification No. 76/2018-Central Tax, dated 31st December, 2018[1] was published in the Gazette of India, Extraordinary, vide No. G. S. R. 1253(E), dated the 31st December, 2018.

Failure to furnish return in Form GSTR-1—Waiver of late fee—Amendment (Central)

Notification No. 33/2020-Central Tax, dated 3rd April, 2020[2]

G. S. R. 233(E).—In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[3], the Govern-

1. See [2019] 61 GSTR (St.) 108.
2. Gazette of India, Extry. No. 180, Part II, sec. 3(i), dated 3-4-2020, page 7.
3. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.

ment, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 4/2018–Central Tax, dated the 23rd January, 2018[1], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 53(E), dated the 23rd January, 2018, namely :—

In the said notification, after the third proviso, the following proviso shall be *inserted*, namely :—

"Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived for the months of March, 2020, April, 2020 and May, 2020, and for the quarter ending 31st March, 2020, for the registered persons who fail to furnish the details of outward supplies for the said periods in *Form GSTR-1* by the due date, but furnishes the said details in *Form GSTR-1*, on or before the 30th day of June, 2020.".

[F. No. CBEC-20/06/04/2020-GST]

Note : The principal Notification No. 4/2018-Central Tax, dated the 23rd January, 2018, was published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 53(E), dated the 23rd January, 2018 and was last amended by notification No. 4/2020-Central Tax, dated the 10th January, 2020[2], published in the Gazette of India, Extraordinary, vide No. G.S.R. 26(E), dated the 10th January, 2020.

Failure to furnish return in Form GSTR-1—Waiver of late fee—Amendment (Central)

Notification No. 34/2020-Central Tax, dated 3rd April, 2020[3]

G. S. R. 234(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[4], the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 21/2019-Central Tax, dated the 23rd April, 2019[5], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 322(E), dated the 23rd April, 2019, namely :—

In the said notification,—

(i) in the second paragraph, the following proviso shall be *inserted*, namely :—

1. See [2018] 49 GSTR (St.) 15.
2. See [2020] 73 GSTR (St.) 33.
3. Gazette of India, Extry. No. 180, Part II, sec. 3(i), dated 3-4-2020, page 9.
4. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
5. See [2019] 65 GSTR (St.) 38.

"Provided that the said persons shall furnish a statement, containing the details of payment of self-assessed tax in Form GST CMP-08 of the Central Goods and Services Tax Rules, 2017, for the quarter ending 31st March, 2020, till the 7th day of July, 2020." ;

(ii) in the third paragraph, the following proviso shall be *inserted*, namely :—

"Provided that the said persons shall furnish the return in Form GSTR-4 of the Central Goods and Services Tax Rules, 2017, for the financial year ending 31st March, 2020, till the 15th day of July, 2020.".

[F. No. CBEC-20/06/04/2020-GST]

Note : The principal Notification No. 21/2019-Central Tax, dated the 23rd April, 2019[1], published in the Gazette of India, Extraordinary, vide No. G. S. R. 322(E), dated the 23rd April, 2019 and was subsequently amended by Notification No. 74/2019-Central Tax, dated the 26th December, 2019[2], published in the Gazette of India, Extraordinary, vide No. G. S. R. 953(E), dated the 26th December, 2019.

Extension of time-limit for completion or compliance of any action by any authority (Central)

Notification No. 35/2020-Central Tax, dated 3rd April, 2020[3]

G. S. R. 235(E).—In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017)[4] (hereafter in this notification referred to as the said Act), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017)[5], and section 21 of Union Territory Goods and Services Tax Act, 2017 (14 of 2017)[6], in view of the spread of pandemic COVID-19 across many countries of the world including India, the Government, on the recommendations of the Council, hereby notifies, as under :

(i) where, any time-limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action, shall be extended up to the 30th day of June, 2020, including for the purposes of,—

1. See [2019] 65 GSTR (St.) 38.
2. See [2020] 72 GSTR (St.) 251.
3. Gazette of India, Extry. No. 180, Part II, sec. 3(i), dated 3-4-2020, page 10.
4. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
5. See [2017] 44 GSTR (St.) 397 ; [2017] 100 VST (St.) 148.
6. See [2017] 44 GSTR (St.) 420 ; [2017] 100 VST (St.) 171.

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

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

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

(a) Chapter IV ;

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

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

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

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

(ii) where an e-way bill has been generated under rule 138 of the Central Goods and Services Tax Rules, 2017 and its period of validity expires during the period 20th day of March, 2020 to 15th day of April, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 30th day of April, 2020.

2. This notification shall come into force with effect from the 20th day of March, 2020.

[F. No. CBEC-20/06/04/2020-GST]

Furnishing of e-return in Form GSTR-3B through common portal—Amendments (Central)

Notification No. 36/2020-Central Tax, dated 3rd April, 2020[1]

G. S. R. 236(E).—In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[2], read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017[3] (hereafter in this notification referred to as the said Rules), the Commissioner, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 29/2020–Central Tax,

1. Gazette of India, Extry. No. 180, Part II, sec. 3(i), dated 3-4-2020, page 12.
2. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
3. See [2017] 45 GSTR (St.) 402.

dated the 23rd March, 2020[1], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 212(E), dated the 23rd March, 2020, namely :—

In the said notification, in the first paragraph, after the second proviso, the following provisos shall be *inserted*, namely :—

"Provided also that, for taxpayers having an aggregate turnover of more than rupees 5 crore in the previous financial year, the return in Form GSTR-3B of the said rules for the month of May, 2020 shall be furnished electronically through the common portal, on or before the 27th June, 2020 :

Provided also that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in Form GSTR-3B of the said rules for the month of May, 2020 shall be furnished electronically through the common portal, on or before the 12th day of July, 2020 :

Provided also that, for taxpayers having an aggregate turnover of up to rupees five crore in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in Form GSTR-3B of the said Rules for the month of May, 2020 shall be furnished electronically through the common portal, on or before the 14th day of July, 2020.".

[F. No. CBEC-20/06/04/2020-GST]

Note : The principal Notification No. 29/2020–Central Tax, dated the 23rd March, 2020, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 212(E), dated the 23rd March, 2020.

1. See page 101 *supra*.

Date of coming into force on Central Goods and Services Tax (Fourth Amendment) Rules, 2019

Notification No. 37/2020-Central Tax, dated 28th April, 2020[1]

G. S. R. 266(E).—In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[2] read with clause (c) of rule 9 and rule 25 of the Central Goods and Services Tax (Fourth Amendment) Rules, 2019 (hereinafter referred to as the rules), made vide Notification No. 31/2019–Central Tax, dated the 28th June, 2019[3], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide No. G. S. R 457(E), dated the 28th June, 2019, the Government, hereby appoints the 21st day of April, 2020, as the date from which the said provisions of the rules, shall come into force.

[F. No. CBEC-20/06/09/2019-GST]

THE CENTRAL GOODS AND SERVICES TAX (FIFTH AMENDMENT) RULES, 2020

Notification No. 38/2020-Central Tax, dated 5th May, 2020[4]

G. S. R. 272(E).—In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[2], the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017[5], namely :—

1. (1) These rules may be called the **Central Goods and Services Tax (Fifth Amendment) Rules, 2020**.

(2) Save as otherwise provided, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said Rules), with effect from the 21st April, 2020, in rule 26 in sub-rule (1), after the proviso, following proviso shall be *inserted*, namely :—

"Provided further that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 21st day of April, 2020 to the 30th day of June, 2020, also be allowed to furnish the return under section 39 in FORM GSTR-3B verified through Electronic Verification Code (EVC).".

1. Gazette of India, Extry. No. 207, Part II, sec. 3(i), dated 28-4-2020, page 2.
2. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
3. See [2019] 67 GSTR (St.) 1.
4. Gazette of India, Extry. No. 212, Part II, sec. 3(i), dated 5-5-2020, page 2.
5. See [2017] 45 GSTR (St.) 402.

3. In the said rules, after rule 67, with effect from a date to be notified later, the following rule shall be *inserted*, namely :—

"67A. *Manner of furnishing of return by short messaging service facility*.—Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in Form GSTR-3B for a tax period, any reference to electronic furnishing shall include furnishing of the said return through a short messaging service using the registered mobile number and the said return shall be verified by a registered mobile number based One Time Password facility.

Explanation.—For the purpose of this rule, a Nil return shall mean a return under section 39 for a tax period that has nil or no entry in all the tables in form *GSTR-3B*.".

[F. No. CBEC-20/06/04/2020-GST]

Note : The principal Rules were published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide Notification No. 3/2017-Central Tax, dated the 19th June, 2017[1], published vide No. G. S. R. 610(E), dated the 19th June, 2017 and last amended vide Notification No. 30/2020-Central Tax, dated the 3rd April, 2020[2], published vide No. G. S. R. 230(E), dated the 3rd April, 2020.

Corporate debtors undergoing corporate insolvency resolution process—Special procedure—Amendments (Central)

Notification No. 39/2020-Central Tax, dated 5th May, 2020[3]

G. S. R. 273(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[4], the Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 11/2020-Central Tax, dated the 21st March, 2020[5], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide No. G. S. R. 194(E), dated the 21st March, 2020, namely :—

In the said notification,—

(i) in the first paragraph, the following proviso shall be *inserted*, namely :—

"Provided that the said class of persons shall not include those corporate debtors who have furnished the statements under section 37 and

1. See [2017] 45 GSTR (St.) 402.
2. See page 102 *supra*.
3. Gazette of India, Extry. No. 212, Part II, sec. 3(i), dated 5-5-2020, page 3.
4. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
5. See page 83 *supra*.