IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION AND

WRIT PETITION NO.2883 OF 2018
ALONG WITH
NOTICE OF MOTION NO.521 OF 2018
IN
WRIT PETITION NO.2883 OF 2018

United Projects)
Through its Partner)
Nisar Fateh Mohd. Khatri,)
Age 53 years, Indian Inhabitant)
Having Officer at :-
202, Pearl Heights, 105,)
TPS-III, 8th Floor, Khar (West))
Mumbai – 400 052.) .. Petitioner

Versus

1. The State of Maharashtra through)
The Commissioner of Sales Tax,)
Maharashtra State, Having his office at)
8th Floor, GST Bhavan, Nesbit Road,)
Mazgaon, Mumbai - 400 010.)

2. The Joint Commissioner of State Tax,)
(Appeals) -II, Mumbai City Division,)
8/D/13, GST Bhavan, Mazgaon,)
Mumbai – 400 010.) .. Respondents

ALONG WITH
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.11589 OF 2021

Mahyco Monsanto Biotech Pvt. Ltd. a Company)
incorporated under the provisions of the)
Companies Act, 1956 , and having its office at)
Bayer House, Central Avenue,)
Mumbai – 400 607.) .. Petitioner

Versus

1. The State of Maharashtra)
Through the Government Pleader)
High Court, Mumbai.)

2. The Commissioner of Sales Tax,)
8th Floor, Vikrikar Bhavan, Mazgaon,)
Mumbai - 400 010.)

3. The Deputy Commissioner of Sales Tax)
E-706, Nodal Division-7,)
GST Bhavan, Mazgaon,)
Mumbai - 400 010.)

4. The State Tax Officer)
C-704, Nodal Division-7,)
GST Bhavan, Mazgaon,)
Mumbai - 400 010.) .. Respondents

ALONG WITH
WRIT PETITION NO.13754 OF 2018

Larsen and Tourbo Ltd., a Company)
incorporated under the provisions of the)
Companies act, 2013, and having its office at)
Powai Campus, Gate No.1, Ambedkar Garden,)
Saki Vihar Road,)
Mumbai) .. Petitioner

Versus

1. The State of Maharashtra)
Through the Government Pleader)
High Court, Mumbai.)

2. The Commissioner of Sales Tax,)
8th Floor, Vikrikar Bhavan, Mazgaon,)
Mumbai - 400 010.)

3. The Joint Commissioner of Sales Tax)
(Appeal-VI), Suburban State GST Office,)
Bandra Kurla Complex, Bandra (East),)
Mumbai – 400 051.)

4. The Deputy Commissioner of Sales Tax)
(E-623), Large Tax Payer Unit-2,)
Vikrikar Bhavan, Mazgaon,)
Mumbai - 400 010.) .. Respondents

Mr.Vikram Nankani, Senior Advocate a/w Mr.Prithviraj Chaudhari, Mr.Roshil Nichani, Mr.Mehul Taleva, Mr.Dhruv Nyadhish, Mr.Sandip Ghaterao and Mr.Prathamesh Gargate i/by Mr.N.V. Tapare for the petitioner in WP/2883/2018.

Mr.Prakash Shah a/w Mr.Jas Sanghavi and Mr.Mihir Mehta i/by M/s.PDS Legal for the petitioner in WPST/11589/2021 and WP/13754/2018.

Mr.Ashutosh Kumbhakoni, Advocate General a/w Ms.Jyoti Chavan, Asstt. Govt. Pleader, a/w Mr.S.B. Lolge, “A” Panel Counsel, a/w Mr.Akshay Shinde, ‘B’ Panel Advocate Ms.Neha Bhide, “B” Panel Counsel a/w Mr.P.P. Kakade, Government Pleader for the respondents-State in all Writ Petitions.

CORAM : R.D. DHANUKA
NITIN W. SAMBRE
ABHAY AHUJA, JJJ.
RESERVED ON : 4th MARCH, 2022
PRONOUNCED ON : 12th JULY, 2022

Judgment (Per R.D. DHANUKA, J.) :-

. The Division Bench of this Court at Mumbai by its order dated 14th October 2019 passed in this appeal found it difficult to reconcile the conflicting views of this Court in Ansul Impex Pvt. Ltd.

Vs. State of Maharashtra and as such formulated three questions for consideration by Larger Bench. Accordingly Larger Bench is constituted pursuant to the Administrative Order passed by the learned Chief Justice.

2. The Division Bench has referred the following questions of law to the full bench :-

(a) *Whether the State of Maharashtra has legislative competence to enact the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017 and the Maharashtra Tax Laws (Amendment and Validation) Act, 2019 to amend the provisions of the Maharashtra Value Added Tax Act, 2002 to incorporate mandatory pre-deposit for filing appeals against the assessment orders pertaining to all the goods after 16th September 2016 that is post 101 Constitutional Amendment Act, 2016 ?*

(b) *Whether Explanation to Section 26 of the MVAT Act introduced with effect from 15th April 2017 by the Maharashtra Tax Laws (Amendment and Validation) Act, 2019 takes away the right of the assessee to file an appeal without statutory deposit in respect of orders passed for the assessment years prior to 15th April 2017 and whether the Explanation nullifies the decision of the Division Bench of this Court (Nagpur Bench) in the case of* ***Anshul Impex Pvt. Ltd. Vs. State of Maharashtra*** *in Sales Tax Appeal No.2/2018?*

(c) *Whether the decision of the Division bench in the case of Anshul Impex Pvt. Ltd. Vs. State of Maharashtra laying down that right of filing appeal accrues on the date of order of assessment and requirement of mandatory pre-deposit introduced by way of amendment does not apply to the orders passed in the assessment years prior to 15th April 2017, is a correct proposition since the right of appeal can be made conditional by the Legislature with*

express indication and, therefore, the decision in the case of Anshul Impex Pvt. Ltd. Vs. State of Maharashtra requires reconsideration by the Larger Bench ?

Facts and submissions in Writ Petition No. 2883 of 2018

3. The petitioners filed first quarterly returns for the period 2013-2014, under the Maharashtra Value Added Tax Act, 2002 (hereinafter referred to as 'the MVAT Act, 2002') on 24th July 2013. On 18th July, 2016, the assessment proceedings were initiated by the Deputy Commissioner of Sales Tax, Issue Base Audit, Mumbai. On 13th October 2017, the assessing officer passed an assessment order for the period 2013-2014 under the MVAT Act, 2002. On 10th July 2018 , the petitioner filed a stay application in Form No. 311 of the MVAT, Act. 2002 before the Joint Commissioner of State Tax, (Appeals) Mumbai. It being the First Appellate Authority. The petitioners also filed appeal in Form No. 301 before the State First Appellate Authority.

4. The Joint Commissioner of State Tax (Appeals) II addressed a letter to the petitioners on 10th August, 2018, inviting attention to Section 26(6A) of the MVAT Act, 2002 and stated that until a part payment towards the tax liability is made, as per the said provisions of the MVAT Act, 2002, the document submitted by the petitioners cannot be called as an appeal.

5. The MVAT Act, 2002 came into force w.e.f. 1st March 2005 to consolidate and amend the Laws regarding levies and

collection of tax on sales and purchase of certain goods in the State of Maharashtra. The said Act was amended from time to time. Section 2(12) of the MVAT Act, 2002 defines "goods'' as all kinds of movable property not being the properties mentioned in the said sub-section such as newspaper, actionable claims, money, stock, share etc. Section 2(24) defines 'Sale' as sale of goods within the State for cash or deferred payment or other valuable consideration excluding the categories listed therein. The incidence of tax is provided in Section 3 and certain goods on which tax was not leviable were referred to under Section 5 of the said Act. Section 26 deals with appeals under the MVAT Act, 2002.

5. By the Constitution (One Hundred and First Amendment) Act, 2016, the Central Government introduced Goods and Services Tax (GST) w.e.f. 1 July 2017 subsuming various central indirect taxes and levies as they relate to the supply of goods and services. Article 246 (A) regarding GST came to be inserted in the Constitution of India which enables the Union and States to legislate in respect of the GST. Article 269-A deals with levy and collection of GST in the course of inter-state trade or commerce. The tax collected is to be apportioned between the Union and States in the manner as provided by Parliament by law on the recommendation of the Goods and Services Tax Council.

6. On 15th April 2017, the State Government published Maharashtra Tax Laws (Levy, Amendment and Validation) Act 2017 in the Government Gazette thereby amending various provisions of

various Acts. In paragraph No. 26 of the MVAT Act, 2002, Section 6(A), 6(B) and 6(C) were inserted.

7. Several amendments were made in the Lists attached to Seventh Schedule of the Constitution, including Entry 54 in List II, which deals with the right of the State Government to levy a tax on goods. Prior to the said Entry No. 54, the State Government could collect tax on sale or purchase of the goods other than the newspaper viz only on the sale of petroleum crude, high-speed petrol, natural gas and aviation turbine fuel and alcoholic liquor for human consumption.

8. On 26th June 2018, a Division Bench of this Court at Nagpur in case of ***Anshul Impex Private Ltd Vs. State of Maharashtra*** (Sales Tax Appeal No.2 of 2018 in a Judgment delivered on 28th September, 2018) held that the amended section 26(6B)(c) of the MVAT Act requiring appellant to deposit 10% of the disputed tax is not applicable to the appellant therein as lis had commenced in the year 2011 while the amendment was prospective w.e.f. 15th April 2017. The said Division Bench accordingly held that the Tribunal had committed an error in dismissing the appeal filed by the petitioner therein as not maintainable for non payment of amount i.e. 10% of the amount assessed.

9. The Nagpur Bench accordingly quashed and set-aside the order passed by the Tribunal and remanded the matter back to the Tribunal for deciding the same afresh by affording opportunity of hearing the parties with liberty to raise all relevant questions of law

and facts before the Tribunal. The Hon'ble Supreme Court by an order dated 11th March 2019 dismissed the Special Leave Petition filed by the State of Maharashtra against the said Judgment delivered by the Nagpur Bench of this Court in case of ***Anshul Impex Private Ltd (supra).***

10. On 6th March, 2019, the Hon'ble Governor of Maharashtra promulgated an Ordinance i.e. Maharashtra Ordinance No. VI of 2019, which was published in the Government Gazette on 6th March, 2019. By the said Ordinance the State of Maharashtra inserted an explanation w.e.f. 15th April 2017. It is the case of State of Maharashtra that the said explanation was inserted for the purpose of removal of doubts, in view of the Judgment of Nagpur Bench of this Court in the case of ***Anshul Impex Private Ltd. (supra).***

11. On 9th July 2019, the Maharashtra Tax Laws (Levy, Amendment and Validation) Act 2019 came to be enacted which was published in the Government Gazette on 9th July 2019. The said Ordinance was replaced by the enactment of the State Legislature inserting various provisions including the said explanation to Section 26 (6C) of the MVAT Act, 2002.

12. Writ Petition No.2883 of 2018 along with various connected petitions were on board before this Court for seeking various reliefs. The petitioners sought relief by relying upon the Judgment of Nagpur Bench of this Court in case of ***Anshul Impex Private Limited (supra).*** The learned counsel for the parties

addressed this Court in the lead matter i.e. ***Writ Petition No. 2883 of 2018 filed by the M/s United Projects Ltd Vs. State of Maharashtra.***

13. On 14th October 2019, a Division bench of this Court, after adverting to the Judgment of the Nagpur Bench in case of ***Anshul Impex Private Limited (supra)*** and various other Judgments formulated three questions of law for opinion of the larger bench of this Court. In paragraph No. 14 of the Division Bench of this Court at principal seat expressed its inability to agree with the view taken by the Nagpur Bench in case of ***Anshul Impex Private Limited (supra)*** and referred various issues to the larger bench.

14. Mr. Ashtuosh Kumbhakoni, learned Advocate General for the State argued first by consent of the learned Advocate for the petitioners. He invited our attention to various provisions of the MVAT Act, 2002, various Articles of Constitution of India, provisions of the Central Goods and Services Act 2017, Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017, explanation inserted by the 2019 Ordinance and several Judgments of Hon'ble Supreme Court and this Court.

15. It is submitted by the learned Advocate General that "Right of Appeal'' is neither a fundamental right nor a Constitutional right and it is not even an ingredient of 'natural justice'. It is a statutory right and is a creature of Statute. Such a right accrued under the statute and can be even taken away completely by the Legislature by effecting statutory amendment provided there are provisions

made by the Legislature to take away such a right. Since the right can also be taken away by a provision as and by way of a necessary intendment, it cannot be however taken away merely 'impliedly'. It cannot be taken away by an executive fiat or an administrative instruction.

16. It is submitted that a Statute can always impose various conditions for exercise of such a right, subject to the restrictions that the restrictions or conditions subject to which it can be exercised, that are so imposed, are not so onerous amounting to unreasonable restrictions on such a right, rendering the right itself illusionary. It is submitted that if such right of an appeal can be made conditional at the first instance itself, such conditions can also be imposed subsequent to its unconditional grant, by inserting amendment into the Statute, which in first place has granted it.

17. It is submitted that these principles would apply for taking away right itself or regulating it or making it conditional at the first instance itself, apply with equal force for introducing by way of an amendment, a new conditions making such a right, a conditional one, which in first place may have been unconditional. Similarly, it is permissible to bring about change in such conditions and make it subject to such a set of conditions that are totally different than the original set of conditions. It is submitted that it is not a procedural right but a substantive right.

18. The learned Advocate General invited our attention to the

Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017 and stated that the said provision ex facie demonstrates that the right of appeal in issue has been made conditional by an express provision of the Statute, which confers such a right. However, it is subsequently made clear that on or after the commencement of the Act, the right of appeal can be exercised subject to compliance with the conditions imposed by the amendment in issue. He submits that the expression "shall be filed'' also indicates an express intention of the Legislature to make the right of appeal in issue subject to express conditions contained in the amendment. The term "shall be filed'' is enough explicit clear such an appeal cannot be filed on or after the commencement of the Act unless, conditions prescribed thereby are fully complied with by the appellant.

19. It is submitted that the term "shall be filed'' must be appreciated in sharp contrast to the terms appearing in other Statutes dealing with right of an appeal such as, "shall be entertained'' or "shall be decided.'' He submits that such operation of the amended provision is certainly not "retrospective'' operation of the amended provision. He submits that if the amended provision would have been made retrospective in its operation it would affect even such appeals which were pending and not just filed ' on or after' the date on which such amendment had been brought into force i.e. 15th April, 2017. He submits that the retrospective, prospective or retroactive operation of the amendment at hand, really is irrelevant and totally beside the point. The said question does not arise for the consideration in case of appeals that are filed on or after 15th April, 2017.

20. In his alternate submission the learned Advocate General submits that even if the 2017 amendment adversely affects the right of appeal of the petitioners on account of its retrospective operation, the legislature is fully empowered to enact such provisions which may adversely affect the right of appeal. This is because it is so done in clear and specific terms expressly or by necessary intendment.

21. It is submitted that newly inserted sub sections 6(A), 6(B) and 6 (C) of Section 26 of the MVAT Act, 2002 clearly and conspicuously demonstrate that they apply to all the Appeals that are filed under Section 26 "against an order passed on or after'' 2017 amendment in issue, which has been brought into force w.e.f. 15th April, 2017. Thus, provisions by way of 2017 amendment apply to an order passed on or after 15th April 2017 irrespective of the period of assessment to which the order appealed against relates or the date on which the proceedings in respect of such lis commenced.

22. The learned Advocate General invited our attention to various paragraphs from the Judgment of the Nagpur Bench of this Court in case of ***M/s Anshul Impex Private Limited (supra)*** and stated that this Court had interpreted the newly inserted provisions in such a way that, they would not apply to orders, which have been passed prior to the introduction of the said amendment i.e. 15th April, 2017. It is submitted that the altered package of the "Right of Appeal, post amendment (s) has various advantageous to the revenue as well as the assessee clearly granting a justifiable time balance between their respective rights and liability.

23. It is submitted that with the filing of the appeal after complying with the condition to deposit 10%, the assessee gets an unconditional statutory stay for the recovery of the balance amount in issue in appeal. It is not required to deposit balance 90% of the recovery amount in issue. He submits that prior to the said amendment, there was unlimited discretion with the appellate authority and the Tribunal to impose any amount as deposit to be made before entertaining the appeals. The said discretion is substituted by a condition to either deposit 10% amount or 15 crores ceiling bringing standardization with respect to every appellant.

24. It is submitted that by virtue of such standardization brought in by way of the said amendment, valuable time and energy of the appellate authorities and this Court is saved and the same can be utilized for beneficial purposes. Filing of frivolous appeals is curtailed to a considerable extent which have been clogging the board and increasing the pendency in these Courts.

25. It is submitted that the revenue is also protected to the extent of pre-deposit amounts. If the appellate authority directs the appellant not to deposit any amount as condition precedent for granting stay and if the assessee does not succeed in the appeal, in all such cases, the revenue would not be able to recover any tax dues from the such assessee. If the business of the assessee is wound up due to precarious financial condition, no recovery would be possible. In that event, the decision in favour of the revenue would remain only

as a decree with no actual recovery possible.

26. It is submitted that the condition of 10% deposit introduced by the amendment is not oppressive as, upon deposit of 10% of the amount stay is automatically granted for the remaining 90% of the amount. He submits that though a vested right of appeal accrues in favour of the assessee, such a right expressly made conditional does not oppress or nullify the right of appeal.

27. Learned Advocate General invited our attention to the Judgment of Supreme Court in case of ***Hoosein Kasam Dada (India) Ltd Vs. The State of Madhya Pradesh and others AIR (1953) SC 114***. He submits that the Supreme Court in the said Judgment had considered the amended Section 22 (I) of the Central Provinces And Berar Sales Tax Act, 1947. He submits that the question for consideration before the Supreme Court in the said matter was whether the imposition of a condition requiring payment of entire assessed amount as a condition precedent to the admission of the appeal could affect the assessee's right of appeal. He submits that the Supreme Court in the said Judgment reiterated that the right of appeal was not a mere matter of procedure but is inherent from the commencement of the action in the Court of first instance and that such a right could not be taken away except by express provision or by necessary implication.

28. It is submitted that the Supreme Court in ***Hoosein Kasam Dada (India) Ltd. (supra)*** did not deal on facts the case where

"right of appeal'' was adversely affected retrospectively without any statutory provision expressly or by necessary implications to that effect. He submits that Supreme Court has held that statutory provision expressly or by necessary intendment enacted to that effect can even take away right of appeal. He submits that the impugned amendments in these case are by the express statutory provisions and in any case do so by necessary intendment.

29. Learned Advocate General placed reliance on the Judgment of Supreme Court in case of ***Gangadhar Palo Versus Revenue Divisional Officer and Another, (2011) 4 SCC 602*** *a*nd in particular paragraphs Nos 3 and 5 to 8. He submitted that since the Special Leave Petition filed by the State of Maharashtra against the Judgment of Nagpur Bench of this Court in case of ***Anshul Impex Pvt. Ltd (supra)*** was dismissed in *limine*, the Judgment of the Nagpur Bench has not merged with the order passed by the Supreme Court rejecting the Special Leave Petition in *limine* and thus can be reviewed by this Court. It is submitted by the learned Advocate General that the impugned amendment at the best is retroactive and not retrospective. It does not show that deposit of 10% is mandatory in respect of all the orders passed before the date of such amendment brought into effect for filing appeal.

30. Learned Advocate General placed reliance on the Judgment of Supreme Court in case of ***M/s.Tecnimont Pvt. Ltd Vs. State of Punjab and Others*** *in Civil Appeal No.7358 of 2019 decided on 18th September, 2019* particularly on paragraph Nos.4 and 17. He

submits that after considering various Judgments the Supreme Court upheld the order passed by the Punjab and Haryana High Court declaring that the provision of 25% pre-deposit as not onerous or harsh, unreasonable and violative of Article 14 of the Constitution of India. He submits that in this case the State Government has prescribed deposit of 10% of the tax which is much less than 25% declared as reasonable.

31. Learned Advocate General placed reliance on the Judgment of Supreme Court in case of ***Videocon International Ltd Vs. Securities And Exchange Board of India, (2015) 4 SCC 33*** *and* in particular paragraphs No.37, 39 and 40 and submitted that by prescribing the condition of pre-deposit of 10% and thereby staying the recovery of 90% is one of the package provided by the State Government to all the assesees.

32. Learned Advocate General placed reliance on the Judgment of Madras High Court in case of ***Dream Castle Versus Commissioner of Service Tax-I in Writ Petition No. 13431 of 2015 delivered on 18.04.2016*** and in particular paragraphs No. 52, 55, 59, 78 and 79. He stated that Madras High Court had considered identical facts and held that when the unamended condition gave an assessee a total waiver at the discretion of the Appellate Authority, the same cannot be stated as a vested right. The Madras High Court held that the amendment did not take away right vested, but merely made a chance divested.

33. Learned Advocate General placed reliance on the Judgment of ***M/s Newtech Promoters And Developers Pvt. Ltd Vs. State of Uttar Pradesh and Others Etc. in Civil Appeal No.(S). 6745 -6749 of 2021 delivered on 11th November, 2021*** and in particular paragraphs Nos 31,43,48 to 51, 121 and 122. He submits that the amendment inserted by the State Government cannot be construed as retrospective merely because it affects existing right or its retrospection because a part of requisites for its action is drawn from a time antecedent to its passing. At the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.

34. It is submitted that even if assessment year in question is for the period prior to the amendment and if the action is initiated after such amendment the assessee would be governed by the provision applicable on the date of action.

35. It is submitted that the original statute as it is would apply irrespective of the year of assessment and would depend on the date of the order. The date of the order has to be after the date of amendment. If the date is after the date of amendment then the condition is retroactive. He submits that the explanation is added by the State Government by ordinance irrespective of the date of commencement of the original proceedings.

36. In his alternate argument, he submits that, the explanation inserted by the State Government is clarificatory in

nature and takes away the effect of Judgment of Nagpur Bench of this Court in case of ***Anshul Impex Pvt. Ltd (supra).*** He submits that the State Government has not overruled the Judgment of Nagpur Bench in case of ***Anshul Impex Pvt. Ltd (supra)*** by effecting amendment to the provisions of the MVAT Act, 2002.

37. Learned Advocate General placed reliance on the Judgment of the Supreme Court in case of ***State of Himachal Pradesh Versus Narain Singh [(2009) 13 SCC 165]*** in particular paragraphs No. 14, 21,22,23, 26 and 32. He submits that the State Government has not transgressed any constitutional limitation while inserting the amendment in the MVAT Act, 2002. The Supreme Court has held in the said Judgment that Government has legislative competence to retrospectively remove the substratum of foundation of a Judgment. The said exercise is a valid legislative exercise provided it does not transgress any other constitutional limitation. It is submitted that the State Government is empowered to amend the law by use of appropriate phraseology removing the defects pointed out by the Court in any Judgment. He submits that the State Government has neither directly nor indirectly overruled the view taken by the Nagpur Bench of this Court as sought to be canvassed by the petitioners. The State Government has simplicitor removed the defects pointed out by the Nagpur Bench of this Court in the said Judgment.

38. Learned Advocate General placed reliance on the Judgment of the Supreme Court in case of ***Assistant Commissioner***

of Agricultural Income Tax & Ors. Versus Netley 'B' Estate And Others, (2015) 11 SCC 462 and in particular paragraphs No. 15 and 18. He submits that though the Legislature cannot directly overrule the decision or make a direction as not binding, it has the power to make the decision ineffective by removing the base on which the decision was rendered.

39. Learned Advocate General placed reliance on the Judgment of this Court in case of ***Godrej Soaps Ltd Vs. State of Maharashtra And others, 2005 SCC OnLine Bom 1297*** in particular paragraphs No.10,11,21,24 to 26 30, 36 and 53. He submits that since the State Government in this case has inserted the amendment in the MVAT Act, 2002 to cure the defect pointed out by the Nagpur Bench of this Court, the rule of reasonable interpretation should apply to the amendment inserted by the State Government.

40. The learned Advocate General placed reliance on the Judgment of the Supreme Court in case of ***Ssangyong Engineering & Constructions Company Limited Vs. National Highway Authority of India, 2019 SCC OnLine SC 677*** and in particular paragraph Nos. 22 and 32. He submits that the two explanations added by the Legislature in the original provision were inserted with a view to reduce the scope of Section 34 of the Arbitration and Conciliation Act 1996 so as to reduce the powers of the Court to review the Arbitral Award on merits to do away with the interpretation of Section 34 by the Supreme Court in case of ***Oil and Natural Gas Corporation Ltd Versus Western Geco International Ltd., (2014) 9 SCC 263*** as

understood by the Supreme Court in case of ***Associated Builders Versus Delhi Development Authority, (2015) 3 SCC 49.*** He submits that similarly State Government by the impugned amendment has done away with the interpretation of the Nagpur Bench of this Court in case of Anshul Impex Private Ltd (supra) about commencement of lis or the date of order.

41. The learned Advocate General placed reliance on the Judgment of this court in case of ***Noopura Vishwajit Kulkarni Vs. State of Maharashtra, 2019 SCC OnLine Bom 1252*** and in particular paragraphs No. 4, 26, 29 and 30. He submits that though the Legislature cannot by way of an enactment declare a decision of the Court as erroneous or nullity, but it can amend the statute or the provision so as to make it applicable from the past. The Legislature via amendment has the power to rectify a defect in law noticed in the enactment and even highlighted in the decision of the Court. He submits that there is plenary power to bring the statute in conformity with the legislative intent and to correct the flow pointed out by the Court to have a curative and neutralizing effect. He submits that the State Government did not have any intention to overrule the decision of the Nagpur Bench of this Court or to encroach upon the judicial turf but carried out the amendment to remove the base on which the Judgment of the Nagpur Bench of this Court is founded.

42. It is submitted by the learned Advocate General that there is misconception of the petitioners that only the Seventh schedule provides the Lists of the Legislative heads speaking out the

Legislative competence or the Legislature of either Center or State. He submits that even if no entry is stated in any of the List prescribed in the Seventh schedule but is in the body of the Constitution, the State is empowered to Legislate on any such subject and cannot be objected to. The powers of legislation flows from various sources under the Constitution of India and not only from the Seventh schedule. Amendment of entry No. 54 in List II by 101st Constitution amendment does not denude the powers of the State Government to legislate.

43. Learned Advocate ***General placed reliance on the Judgment of Supreme Court in case of Bimolangshu Roy Versus State of Assam And Another, (2018) 14 SCC 408*** and in particular paragraphs No. 10, 17, 18, 20, 21 and 22 to 26. He submits that the authority to make law flows not only from an express grant of power by the Constitution to a legislative body but also by virtue of implications flowing from the context of the Constitution as well as by the various decisions. Such authority to legislate by the State Government is inherent in the nature of the sovereignty. The power to make legislation flows from (i) express text of the Constitution (ii) by implication from the scheme of the Constitution and (iii) as an incident of sovereignty. Such power is conferred by Articles of Constitution by an express grant on the Parliament or State legislature to make laws for certain purposes specified in each of those articles even if there is no corresponding entry in the corresponding list indicating the field of such legislation.

44. It is submitted by the learned Advocate General that large number of amendments are carried out in the MVAT Act, 2002 under entry No. 54 List II. He relied upon the list of 24 subjects amended by the State Government after the enforcement of 101st Constitutional amendment in the the MVAT Act, 2002. These amendments cover not only the six goods listed out in the substituted entry No. 54 but also all the goods. The learned Advocate General tenders a compilation of provisions in support of his submission that State Government can legislate on various items prescribed under entry No.54.

45. Learned Advocate General relied upon Article 246(A) of the Constitution of India and would submit that Legislative of every State has power to make Laws notwithstanding anything contained in Article 246 or 254 in respect of goods and services Tax. By the said Article 246(A) legislative competence is granted to Center as well as State on Goods and Service Tax Act. He submits that accordingly two Acts i.e. Central Goods and Service Tax Act and Maharashtra Goods and Services Tax Act were enacted simultaneously by the Central Government and State Government respectively.

46. The learned Advocate General invited our attention to Article 366 (12) and would submit that the definition of goods includes all material, commodities and articles. Section 14 of the said Constitutional amendment inserted Article 12(A), 26A and 26B. Section 19 of the amending Act makes transitional provisions which clearly provides that notwithstanding anything in that Act, any

provision of any law relating to tax on goods and services or both in force in any State immediately before the commencement of that Act which is inconsistent with the provisions of the Constitution as amended by the said Act. The said section operates irrespective of inconsistency in the other provisions of amending Act.

47. It is submitted that the Maharashtra Goods and Services Tax Act came into force from 1st July 2017 and was gazetted on 15st July 2017. By the said amendment, pre-deposit of the amount was prescribed at two stages of appeal. Article 323 (B) deals with the Tribunal. He submits that as a matter of fact the petitioners have filed appeals under the provision of the MVAT Act, 2002 even after insertion of the amendment by the State of Maharashtra in the provisions of the MVAT Act, 2002. The definition of goods is amended by the State of Maharashtra in line with entry No. 54 in the Constitution of India.

48. The learned Advocate General placed reliance on Section 107 of the Maharashtra Goods and Services Tax Act 2017. He submitted that Section 107(6) (b) deals with the provisions of appeals and Revisions providing for a 10% pre-deposit of the tax in question. Learned Advocate General invited our attention to Section 26 of the MVAT Act, 2002 and submitted that after insertion of the said amendment the State Government came out with amnesty scheme under the provisions of the MVAT Act, 2002 wherein assessees have paid the tax to the extent of Rs. 3436 crores.

49. Learned Advocate General placed reliance on the judgment of the ***Kerala High Court in case of Shreen Golden Jewels (India) Pvt. Ltd. Vs. State Tax Officer, Thiruvanathapuram, (2019) 62 GSTR 207(Ker)*** and in particular paragraphs No. 123, 130 and 133, 176, 181, 184 and would submit that the Kerala High Court in identical situation has upheld the validity of the amendment having founded the legislative competence of the State Government.

50. On the other hand, Mr.V. S. Nankani, learned senior advocate for the petitioner invited our attention to various documents annexed to the writ petition, averments made by the State Government in the affidavit in reply, various provisions of law forming part of the record and various judgments of the Hon'ble Supreme Court, this Court and various other High Courts in support of his rival contentions.

51. It is submitted that, after coming into force of 101st Constitutional Amendment Act, 2016 effective from 16th September, 2016, new composite and binding tax called Goods and Service Tax has been introduced as defined in Article 366(12-A) of the Constitution of India, whereby concurrent powers have been given to the Parliament and State Legislatures to levy tax on the supply of goods and services. He relied upon the statement of objects and reasons of the 101st Constitutional Amendments and would submit that, the Goods and Service Tax is altogether a new tax which is different from the taxes levied earlier by the Union and the States. He relied upon the judgment of the Hon'ble Supreme Court in a case of

Union of India Vs. Mohit Minerals Pvt. Ltd. reported in ***(2019 (2) SCC 599*** and also referred to the judgment of the Kerala High Court in a case of ***Sheen Golden Jewels (India) Ltd. Vs. State Tax Officer*** reported in ***(2019) 62 GSTR 207 : 2019 SCC Online Ker. 973***. He submits that the said judgment of Kerala High Court is distinguishable on facts.

52. The learned senior counsel placed reliance on the Rajya Sabha Select Committee report on the said constitutional amendment Act and would submit that the said report also clearly lays down that the purpose of introducing Article 246A. It was to introduce GST regime of taxation where parliament and state legislature would have concurrent powers to tax supply of goods and services.

53. It is submitted that, though the said constitutional amendment while introducing Article 246A also makes corresponding changes in the entries in the two lists i.e. List – I and List – II of Schedule VII, these changes show that the power to legislate under Article 246 is now confined only to six items mentioned in Entry – 54 List II of Schedule VII. He submits that as Article 246 is confined only to the six items covered by Entry – 54 of List II. Article 246A covers totally new and different tax, namely the Goods and Service Tax, which is on supply, and beyond and outside the MVAT Act, 2002. The State legislature does not have the power to amend the existing MVAT Act, 2002 after 16.09.2016 on any matter including appeals in relation to goods other than the six items mentioned in Entry – 54 of List II.

54. It is submitted by the learned senior counsel that, the power to legislate includes the power to amend the legislation. Once the power to legislate has been taken away the power to amend the legislation also ceases to exist. He submits that, though technically, the MVAT Act, 2002 was not repealed, but post the said constitutional amendment, the provisions thereof were amended to align with Article 246 of the Constitution by the Maharashtra Goods and Services Tax related laws (amendments, validation and Savings) Act, 2017. It virtually has the effect of repealing the MVAT Act, 2002 in so far as all other goods, except the 6 mentioned in Entry-54 of List-II of Schedule-VII of the Constitution. The power to legislate with respect to all other goods have also ceased to exist.

55. It is submitted by the learned senior counsel that, the submission that Article 246-A is the source of power for the State Legislature to amend the MVAT Act, 2002 as it stood prior to 29th May, 2017, when the aforesaid Maharashtra Amendment Act of 2017 came into force is legally unsustainable. The pith and substance test has to be applied. The Goods and Service Tax referred in Article 246-A is totally different and distinct from the tax levied on goods by the State Legislature. He submits that prior to the said Constitutional amendment, legislative power to tax was clearly divided. Post the federal structure of the Constitution Parliament was empowered to levy certain taxes, such as Central Excise Duty and Service Tax, whereas the State was empowered to levy Sales Tax, Entry Tax, Entertainment Tax, amongst others.

56. It is submitted that, now there is no entry in any of the three lists of Schedule – VII of the Constitution to cover GST. It also does not fall within any of the erstwhile entries of Schedule – VII, as in force prior to the said Constitutional amendment. The GST is totally different which gives a simultaneous power to the Central and State Governments to levy and collect tax on "supply". Supply is the new taxable event, as opposed to the taxable events. He submits that, mere fact that the word "supply" is wide enough to cover manufacture, service and sale for the purpose of levy and assessment of GST, does not mean that the legislative competence of the State Legislature would continue to have the power to amend the erstwhile MVAT under Article 246-A, which otherwise related only to sale or purchase of goods.

57. Learned senior counsel for the petitioner placed reliance on Article 367 of the Constitution of India and would submit that the said Article incorporates the provisions of the General Clauses Act, 1897 and makes them applicable to the Constitution. He submits that, on account of this incorporation the effect of Section 6 of the General Clauses Act also applies to the amendments to the Constitution. However, what is saved by Section 6 of the General Clauses Act is the pre-existing power to continue with the assessment, appeal, recovery, etc. in respect of matters pending on the date of the repeal or amendment. This is distinct and different from the powers to legislate which have been repealed or amended and do not exist in the eyes of law.

58. It is submitted by the learned senior counsel that, the power under the old Article 246 has been abridged by simultaneously amending the field of legislation in Entry-54 of List-II, which is referred therein. In this case, there is no question of any power to legislate in respect of rest of the goods other than the six presently covered by Entry – 54, which survives post-amendment even by applying the provisions of General Clauses Act.

59. It is submitted by the learned senior counsel for the petitioner that, in so far as the MVAT Act, 2002 is concerned, the State Legislature amended the same by Taxation Laws Amendment Act, 2017. This was to change the definition of goods therein in order to align it with Entry-54 of List-II, as amended by the said constitutional amendment Act 2016. Instead of repealing the old MVAT Act, 2002 and enacting a new legislation in keeping with Article 246, the State Legislature amended the definition of "goods" along with other consequential changes in the Taxation Laws Amendment Act of 2017. He submits that, though a separate Act, namely the Maharashtra Goods and Services Tax related laws (Amendment, Validation and Savings) Act, 2017 has a saving clause in Section 78 thereof. Such a saving clause does not save the power to legislate on matters on which the power under the Constitution has been taken away, and merely saves rights and liabilities accruing under the MVAT Act, 2002.

60. It is submitted that, though the State Government was allowed to recover sales tax for a period of one year after the said

amendment, the power to legislate available to the State Government then was taken away. He submits that, the legislative competence of the State is dependent upon the power to legislate after 16th September, 2016.

61. It is submitted by the learned senior counsel that, insertion of an explanation in the provisions of the MVAT Act, 2002 by the State Government amounts to judicial encroachment in the garb of clarification, it seeks to put forth an alternative view to the interpretation given by the Nagpur Bench of this Court in a case of ***Anshul Impex (supra).*** He submits that, said explanation is a device to overcome a binding judgment of this Court without removing the basis in the provisions of substantive law, which has been construed by the Nagpur Bench and held to be limited in its application. There is no amendment to sub section (6A) to (6C) of Section 26, nor is sub section (6) of Section 26 is deleted or amended.

62. It is submitted that, the legislative overruling is permissible only to the extent of curing any defect which may have been pointed out in a decision of the judiciary. However, if the decision of the Court is not based on any defect in the provision but is based on legal interpretation and judicial precedents, there would remain no scope for any legislative overruling. The learned senior counsel placed reliance on the judgment of the Supreme Court in a case of ***Shri Prithvi Cotton Mills Vs. Broach Borough Municipality*** reported in ***1969 (15) ITR 136 (SC)***, in a case of ***S. R. Bhagwat Vs State of Mysore*** reported in ***(1995) 6 SCC 16*** and in a case of State of

Karnataka Vs. Karnataka Pawn Brokers Association reported in ***AIR 2018 SC 1441***.

63. It is submitted by the learned senior counsel that, Nagpur Bench of this Court in ***Anshul Impex (supra)*** came to the conclusion purely based on legal interpretation of the principles laid down in the case of ***Hossein Kasam Dada (supra)***. The entire action on the part of the State of Maharashtra to introduce the 2019 amendment is not in the nature of legislative overruling, but is a case of legislative overreaching into the functions of the judiciary, thereby violating the doctrine of separation of powers. The legislature cannot simply overrule any unfavourable decision by bringing a subsequent amendment. It can do so only in specific circumstances to remove or cure any defect pointed out by the Court. He submits that 2019 amendment is invalid in as much as it encroaches upon powers of judiciary as it seeks to overrule a decision of this Court without any legal basis for the same.

64. The learned senior counsel attempted to distinguish the judgment of this Court in a case of ***Noopura Vishwajit Kulkarni Vs. State of Maharashtra (supra)*** and submitted that, the said judgment does not decide upon the issue that the explanation inserted by the amendment to SEBC Act, 2018 validated an earlier judgment of this Court as can be seen from paragraphs No.39 to 44 thereof. He submits that, said judgment would not apply in the facts of this case.

65. It is submitted by the learned senior counsel that though

the explanation starts with the words “for removal of doubts”, same does not invariably mean that the explanation is clarificatory. He submits that, the said explanation shall have retrospective effect in the sense of being applicable to appeals filed against orders where the lis commences prior to 15th April 2017. He relied upon the judgment of the Supreme Court in a case of ***Union of India Vs. Martin Lottery Agencies*** reported in ***(2009) 12 SCC 209*** in support of his contention. The learned senior counsel also placed reliance on the judgment of the Gujarat High Court in a case of ***Reliance Industries Ltd. Vs. State of Gujarat and others, 2020 SCC OnLine Guj 694.***

66. It is submitted by the learned senior counsel that, the explanation inserted by the State Government relates back to 15.04.2017, whereas this Court in a case of ***Anshul Impex (supra)*** has held that, the substantive provision introduced by the 2017 amendment does not apply to cases where the proceedings or lis commenced prior thereto. It is submitted that the explanation inserted by the State Government cannot be given a retrospective operation so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure as is observed in ***Govind Das Vs. ITO, (1976) 1 SCC 906*** and upheld in ***CIT Vs. Vatika Township Pvt. Ltd*** reported in (***2015) 1 SCC 1***.

67. It is submitted that, there is nothing in sub sections (6A) to (6C) expressly or by implication to apply to Assessment Years prior to 15th April 2017. The explanation seeks to impose a new condition

which does not exist and continues not to exist in sub-section (6A) to (6C) to Section 26 of the MVAT Act, 2002. He submits that, Section 7 of the 2019 Amendment Act, under the heading "Validation and Saving" also does not help overcome the judgment in a case of ***Anshul Impex (supra)*** as there is no change by the 2019 Amending Act in sub-sections (6A) to (6C) to Section 26 of the MVAT Act, 2002 and the explanation inserts a new condition.

68. It is submitted by the learned senior counsel that, the said impugned explanation not only violates Article 14 of the Constitution of India but also discriminates between two assessees in the same assessment year. It causes delay in passing assessment orders wholly attributable to the Government. The right of appeal of such similarly situated assessees cannot be different merely due to a fortuitous event of different assessing officers completing the assessment at different time for the same assessment years, some before and some after 15th April 2017. He submits that, subject to the legislative competence and to passing the constitutional test of Article 14 of the Constitution, at best the explanation would have prospective effect.

69. It is submitted by the learned senior counsel that, the Nagpur Bench of this Court after relying upon the judgment of the Hon'ble Supreme Court in a case of ***Hoosein Kasam Dada (supra)*** held that sub-section (6A), (6B) and (6C) do not take away the vested right of an assessee and that the right to file an appeal is governed by the law on the date of commencement of the lis. The said judgment of Nagpur Bench has attained finality since the challenge thereto did

not succeed on account of dismissal of the SLP on 11th March 2019.

70. The learned senior counsel distinguished the judgment of the Allahabad High Court in a case of ***Ganesh Yadav Vs. Union of India, 2015(320) ELT 711 (All)*** and the judgment of this Court in a case of ***Nimbus Communications Ltd. Vs. Commissioner of Service Tax, Mumbai – IV, 2016 SCC Online Bom 6792*** by contending that, the amendment to Section 35F of the Central Excise Act, 1944 with the corresponding Section 129E of the Customs Act, 1962 are materially different. Under the Excise Act or the Customs Act, prior to its amendment in the year 2014, the Tribunal or the First Appellate Authority as the case may be had discretion to grant waiver of pre-deposit while deciding the stay application. Subsequently, the entire Section 35F was substituted which prescribed payment of mandatory pre-deposit for entertaining an appeal and simultaneously deleted the powers of granting partial or full waiver. On the contrary, when Section 26 of the MVAT Act was amended in 2017, Section 26(6) was not deleted and accordingly discretionary powers of the Appellate Authority to waive the pre-deposit has been retained. Thus, Section 26(6) will continue to govern appeals filed against assessment order for the period prior to 15th April, 2017.

71. It is submitted by the learned senior counsel for the petitioner that, the decision of the Nagpur Bench of this Court in a case of ***Anshul Impex (supra)*** cannot be said to be *per incuriam.* There is no substance in the submission of the learned Advocate General that the Division Bench of this Court in the said judgment

had failed to notice binding precedents of this Court and other Courts. He submits that, this Court in a case of ***Anshul Impex (supra)*** has considered amendment carried out under the Central Excise/Customs Act and had also considered one of the decision on the point in paragraph 18 of the judgment.

72. It is submitted that merely because this Court has distinguished the said decision in a case of ***Anshul Impex (supra)*** and has held that the amendments to the Excise Act stands on different footing does not mean that the decision in a case of ***Anshul Impex (supra)*** is *per incuriam*. He submits that, the judgment of this Court relied upon by the learned Advocate General is not applicable because despite taking note of the judgment in ***Hoosein Kasam Dada (supra)***, there is no discussion why the law laid down therein does not apply to the amendments to Section 35F/129E. He submits that, when there is direct judgment in relation to same provision i. e. Section 26 of the MVAT Act, 2002 considered by Nagpur Bench of this Court in a case of ***Anshul Impex (supra)*** then judgments interpreting other Acts would not be applicable.

73. The learned senior counsel for the petitioner placed reliance on the judgment of the Supreme Court in a case of ***Ambika Prasad Mishra Vs. State of UP*** reported in ***(1980) 3 SCC 719*** and submitted that, it was clearly held that, “fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned.” He submits that, the

respondents thus cannot be allowed to urge that the decisions in the case of ***Anshul Impex (supra)*** is not binding merely because certain decisions were not brought to the notice of the Nagpur Bench of this Court even though the point of law considered in those decisions had been dealt with.

74. The learned senior counsel for the petitioner submits that, there is no dispute that an appeal is a creature of statute and is a substantive right created by express provision or by necessary implication. It is submitted that, any conditions introduced for filing appeal cannot be introduced at the later stage. Any conditions which take away the right of appeal cannot be introduced even by way of amendment. If 'lis' has commenced before the amendment then the assessees would be governed by the old provisions and not by the amendment. However, if the lis is commenced after amendment then the amended provisions would apply.

75. The learned senior counsel for the petitioner placed reliance on the judgment of the Supreme Court in a case of ***ECGC Limited Vs. Mokul Shriram EPC JV*** reported in ***2022 SCC Online SC 184*** and particularly paragraphs No.4 to 6, 8, 13 and 14. He submits that, if returns are filed before amendment and notice is issued after amendment, amended provisions in that event may apply. He submits that, principles laid down by the Supreme Court in the case of ***Hoosein Kasam Dada (supra)*** are confirmed by the Supreme Court in a case of ***ECGC Limited Vs. Mokul Shriram EPC JV (supra)***. He submits that, in this case the assessment order was

passed after amendment on 31st October, 2017.

76. Learned senior counsel for the petitioner distinguished the judgment of this Court in a case of ***Nimbus Communications Ltd. Vs. Commissioner of Service Tax*** in ***Central Appeal No. 161 of 2016*** delivered on **25th July, 2016** by submitting that this Court has considered the judgment of the Allahabad High Court in a case of ***Ganesh Yadav Vs. Union of India (supra).*** He submits that, in the said judgment in case of ***Ganesh Yadav Vs. Union of India (supra)***, the Allahabad High Court misconstrued the judgment in a case of ***Hoosein Kasam Dada (supra)***. In the said judgment retrospective effect was given to the amended provisions. He submits that since this Court in a case of ***Nimbus Communications Ltd. Vs. Commissioner of Service Tax (supra)*** has followed the principles laid down by the Allahabad High Court in case of ***Ganesh Yadav (supra)***, judgment of this Court in a case of ***Nimbus Communications Ltd. (supra)*** is thus *per incuriam.* He submits that, on the contrary Nagpur Bench of this Court in a case of ***Anshul Impex (supra)*** has referred to the judgment of the Supreme Court in a case of ***Hoosein Kasam Dada (supra)***. He submits that, in a case of ***ECGC Limited Vs. Mokul Shriram EPC JV (supra)***, the judgment of the Supreme Court in ***Sri Satya Nand Jha, Kharkhand Vs. Union of India*** reported in ***2016 SC Online SC 1627*** has not been relied upon.

77. Learned senior counsel for the petitioner tenders a compilation of various provisions in support of his submissions. He submits that, the MVAT Act, 2002 is not repealed in *toto* and some of

the provisions were either deleted or amended. Amendments were carried out by the respondents to remove the alleged inconsistency in the Act in view of 101st Constitutional Amendment. The old Act is saved for all other goods previously covered by the earlier provisions. He invited our attention to Section 78 of the MVAT Act, 2002 and would submit that, the provision of appeal prescribed under the said Act has been continued. He invited our attention to the Maharashtra Tax Laws (Levy Amendment and Validation) Act, 2017 and would submit that, sub section 6A is added by the said amendment.

78. It is submitted that, the ratio in the judgment of the Supreme Court in a case of ***Hoosein Kasam Dada (supra)*** is not diluted in the said judgment and continues to apply. The amendment introduced by the respondents is affected by principles laid down by the Supreme Court in a case of ***Hoosein Kasam Dada (supra)*****.** He submits that by amendment to Section 26 of the Amended Act, appeal provision continues to remain in the Act. Section 6B and 6C introduced by way of amendment took away the unfettered right of the petitioner to file an appeal. The said amendment of 2019 lacks legislative competence beyond Article 246A of the Constitution of India. The explanation inserted by the amendment by the State Government is an after-thought and is inserted with an intent to nullify the view taken by the Nagpur Bench of this Court in a case of ***Anshul Impex (supra)***. Learned senior counsel for the petitioner also placed reliance on the judgment in a case of ***State of Karnataka Vs. Karnataka Pawn Brokers Association*** reported in ***AIR 2018 SC 1441*** in support of the aforesaid submissions.

79. Mr. Shah, the learned counsel for the petitioner in other writ petitions which are on board adopts the arguments advanced by Mr. V. S. Nankani. He submits that the other issues which are raised in the individual writ petitions need not be answered and be kept open in this reference referred to the Full Bench.

80. Mr. Kumbhkoni, the learned Advocate General in the rejoinder argument submits that right of appeal can be taken away by carrying out amendment. Right to file appeal is made conditional and is not taken away. The Court has to consider the justifiability of the conditions to strike balance and equity. The conditions imposed by the State Government after the amendment are not onerous to make right of appeal illusory or unavailable. He submits that, Sub Section 6A, 6B and 6C will apply only for those orders which are passed after 15th April, 2017 and not to the prior orders. All earlier orders are governed by the original provisions of Section 26(6) and not by the amendment. Both the provisions i. e. old Section 26(6) and the amendment introduced by Sub Section 6A, 6B and 6C to Section 26 will apply and co-exist. There is no conflict between these provisions. If both these provisions co-exist then there is no question of any conflict.

81. The learned Advocate General distinguished the judgment of the Gujarat High Court in a case of ***Reliance Industries Ltd and others Vs. State of Gujarat and others (supra)*** relied upon by the learned Senior Counsel for the petitioner and would submit

that, Section 84A considered by the Gujarat High Court came to be incorporated by the State Legislation from 3rd April 2018. The constitutional amendment relied upon by the State Government came into effect from 16th September, 2016. Amendment to Section 84A was carried out after one year of the said constitutional amendment i.e. on 3rd April, 2018. On 1st July, 2017, the Gujarat GST Act came into force. On 3rd April, 2018 amendment was brought even after Gujarat GST Act came into force.

82. It is submitted by the learned Advocate General that, the Court has to interpret the provisions harmoniously. The State Government could have carried out amendment within one year from the date of constitutional amendment which is rightly done by the State Government. In this case amendment to the MVAT Act, 2002 came to be carried out within one year before the Maharashtra Goods and Service Tax Act came into force. The provisions of the MVAT Act, 2002 were amended so as to cure the lacuna in MVAT Act and to avoid inconsistency with powers granted by the Legislation to the Central Government as well as the State Government.

83. Mr. Nankani, learned senior counsel in his sur-rejoinder argument submits that, Section 19 of the Constitutional Amendment does not result in stay of operation of Article 246A of the Constitution. Section 19 is not a saving clause. Literal meaning has to be given to the said provision by this Court. There was conflict between Article 246 and 246A for one year.

REASONS AND CONCLUSIONS

84. Before dealing with the questions of laws referred to the Full Bench by an administrative order passed by the Hon'ble the Chief Justice, we feel it appropriate to refer to some of the relevant provisions which would have bearing while answering the question of law referred.

85. With effect from 1st March, 2005 MVAT Act was brought into force to consolidate and amend the Laws regarding levies and collection of Tax on Sales and purchase of certain goods in the State of Maharashtra. Various amendments were carried out to the provisions of the said Act from time to time.

86. On 22nd July, 2015, the report of the Select Committee on the Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 came to be presented to the Rajya Sabha. It was proposed to subsume various Central indirect taxes and levies such as Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, Service Tax, Additional Customs Duty commonly known as Countervailing Duty, Special Additional Duty of Customs, and Central Surcharges and Cesses so far as they relate to the supply of goods and services.

87. By Constitution (One Hundred and First Amendment) Act, 2016, various provisions of various Acts came to be amended. Article 246A was inserted in the Constitution of India which reads thus :-

> *"246A (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.*
>
> *(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce."*

88. In 6th Schedule to the Constitution of India, in List II, entry 54 was substituted as under :-

> *"54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods."*

89. Clause 19 of the said Amendment Act reads thus :-

> *"19. Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier."*

90. The State Government issued Maharashtra Goods and Services Tax related laws (Amendment, Validation and Savings) Act, 2017 published in the Government Gazette on 29th May, 2017 to amend various laws including MVAT Act, 2002.

"Clause 12 of section (2) of the MVAT Act was substituted and reads thus :-

> *"(12) "goods" means petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption."*

91. Section 78 of the said Amendment Act provides for validation service w.e.f. 1st July, 2017 which reads thus :-

> *"78(1) Notwithstanding the amendments made in the Mumbai Municipal Corporation Act, the Maharashtra Entertainments Duty Act, the Maharashtra Municipal Corporations Act, the Maharashtra Motor Vehicles Tax Act, the Maharashtra Village Panchayats Act, the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 and the Maharashtra Value Added Tax Act, 2002 by this Act, those laws and all rules, regulations, orders, notifications, form, certificates and notices, appointments and delegation of powers issued under those laws which are in force immediately before the appointed day of the Maharashtra Goods and Services Tax Act, 2017 shall, subject to the other provisions of this Act, in so far as they apply, continue to have effect after the appointed day of the Maharashtra Goods and Services Tax Act, 2017 for the purposes of the levy, returns, assessment, re-assessment, appeal, determination, revision, rectification, reference, limitation, production and inspection of accounts and documents and search of premises, transfer of proceedings, payment and recovery, calculation of cumulative quantum of benefits, exemption from payment of tax and deferment of due date for payment of tax, cancellation of the certificate of Entitlement, collection or deduction of tax at source, refund or set off of any tax, withholding of any refund, exemption from payment of tax, collection of statistics, the power to make rules, the imposition of any penalty, or of interest or forfeiture of sum where such levy, returns*

assessment, re-assessment, appeal, determination, revision, rectification, reference, limitation, payment and recovery, calculation of cumulative quantum of benefits, exemption from payment of tax and deferment of due date for payment of tax, cancellation of the certificate of entitlement, collection, deduction of tax at source, refund, set-off, withholding of any refund, exemption, collection of statistics, the power to make rules, limitation, production and inspection of accounts and documents and search of premises, transfer of proceedings, penalty, interest or forfeiture of any sum relates to any period ending before the appointed day of the Maharashtra Goods and Services Tax Act, 2017 or for any other purpose whatsoever connected with or incidental to any of the purposes aforesaid and whether or not the tax, penalty, interest, sum forfeited or tax deducted at source, if any, in relation to such proceedings is paid before or after the appointed day of the Maharashtra Goods and Services Tax Act, 2017.

(2) Without prejudice to the provisions contained in the foregoing sub- section, the provisions of section 7 of the Maharashtra General Clauses Act, shall apply in relation to the repeal of any of the provisions of the Acts referred to in sub-section (1).”

On 1st July, 2017, the Central Government enacted Central Goods and Services Act, 2017. On the same date, the State Government enacted Maharashtra Goods and Services Act, 2017.

92. Sub-sections 6A, 6B and 6C were added to section 26 of the MVAT Act which read thus :-

“26. Appeals:-

....

(6A) No appeal against an order, passed on or after the commencement of the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017, shall be filed before the appellate authority in first appeal, unless it is

accompanied by the proof of payment of an aggregate of the following amounts, as applicable :—

(a) in case of an appeal against an order, in which claim against declaration or certificate, has been disallowed on the ground of non-production of such declaration or, as the case may be, certificate then, amount of tax, as provided in the proviso to sub-section (6),

(b) in case of an appeal against an order, which involves disallowance of claims as stated in clause (a) above and also tax liability on other grounds, then, an amount equal to 10 per cent of the amount of tax, disputed by the appellant so far as such tax liability pertains to tax, on grounds, other than those mentioned in clause (a),

(c) in case of an appeal against an order, other than an order, described in clauses (a) and (b) above, an amount equal to 10 per cent. of the amount of tax disputed by the appellant,

(d) in case of an appeal against a separate order imposing only penalty, deposit of an amount, as directed by the appellate authority, which shall not in any case, exceed 10 per cent. of the amount of penalty, disputed by appellant:

Provided that, the amount required to be deposited under clause (b) or, as the case may be, clause (c), shall not exceed rupees fifteen crores.

(6B) No appeal shall be filed, before the Tribunal, against an order, which is passed on or after the commencement of the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017, unless it is accompanied by the proof of payment of an aggregate of following amounts, as applicable,—

(a) in case of an appeal against an order, in which claim against declaration or certificate has been disallowed on the grounds of non-production of such declarations or, as the case may be, certificates then, amount of tax, as provided in the proviso to sub-section (6),

(b) in case of an appeal against an order, which involves disallowance of claims as stated in clause (a) above and also tax liability on other grounds, then, an amount equal to 10 per cent. of the balance amount of disputed tax, so far as such tax liability pertains to tax, on grounds, other than those mentioned in clause (a),

(c) in case of an appeal against an order, other than an order, described in clauses (a) and (b) above, an amount equal to 10 per cent. of the balance amount of disputed tax,

(d) in case of an appeal against any other order, an amount, as directed by the Tribunal :

Provided that, the amount required to be deposited under clause (b) or, as the case may be, clause (c), shall not exceed rupees fifteen crores.

Explanation :—
For the purposes of clause (b) or clause (c) of sub-section (6B), the expression, "balance amount of disputed tax" shall mean an amount of disputed tax, which remains outstanding, after considering the amount paid, as directed by the appellate authority in first appeal under clause (b) or, as the case may be, clause (c), respectively of sub-section (6A).

(6C) The appellate authority or, as the case may be, Tribunal shall stay the recovery of the remaining disputed dues, in the prescribed manner, on filing of an appeal under sub-section (6A) or, as the case may be, sub-section (6B).

93. It is the case of the State Government in the wake of interpretation rendered by the Nagpur Bench of this Court in case of ***M/s.Anshul Impex Private Ltd.*** (supra), it has inserted the explanation after sub-section 6(c) to section 26, stating that 'shall be deemed to have been inserted w.e.f. 15th April, 2017', the said sub-sections 6A, 6B and 6C were already inserted w.e.f. 15th April, 2017.

The said explanation inserted by the said 2019 amendment reads thus :-

> *"5. In section 26 of the Value Added Tax Act, after sub-section (6C), the following Explanation shall be inserted and shall be deemed to have been inserted with effect from the 15th April, 2017, namely - "Explanation.- For the removal of doubts, it is hereby clarified that, the provisions of sub-sections (6A), (6B) and (6C) shall be applicable for any appeal, against all such orders, referred to in those sub-sections, irrespective of the period to which the order, appealed against, relates or irrespective of the date on which the proceedings in respect of such order have commenced."*

94. Kerala High Court in case of ***Sheen Golden Jewels (India) Pvt.Ltd.*** (supra) has considered the scope of Article 246A of the Constitution of India on the Goods and Services Act, 2017, 101st Constitutional Amendment and also the provisions of the Kerala Value Added Tax Act and rejected the arguments of the petitioner that the State Government lacks the legislative power to enact Section 174 of the KSGST Act. Article 246A is the special provision (if it can be called a provision) on the Goods and Services Tax. It empowers both the Union and the State, for the first time, to have simultaneous-not concurrent- powers to legislate on certain items. Indeed, concurrency yields to the doctrine of repugnancy, but simultaneous legislative power does not. That is, both the legislatures, say one from the Union and the other from the State, coexist-operate in the same sphere, subject to other constitutional safeguards.

95. It is further held that the legislative power of the State had not been taken away; they have been, on the contrary,

constitutionally permitted to be shared with the Union Government. The principles laid down by the Kerala High Court in case of ***Sheen Golden Jewels (India) Pvt.Ltd.*** (supra) applies to the facts of this case. We are in respectful agreement with the view expressed by the Kerala High Court in the said judgment.

96. Recently, the Hon'ble Supreme Court in case of ***Union of India & Anr. vs. M/s.Mohit Minerals Pvt. Ltd.*** in the judgment delivered on 19th May, 2022 in ***Civil Appeal No. 1390 of 2022*** has held that the Parliament and the State Legislatures have the power to enact laws on GST. Article 246A does not envisage the repugnancy provision to resolve the inconsistencies between the Central and the State Laws of GST. It is held that the distribution of the Legislative power between the federating units – the Union and the States, is among the paramount features of a federal Constitution. Articles 246 and 254 have been centre of debate on the federal nature of the Indian Constitution. Article 246A, is a 'special provision with respect to goods and service tax', and begins with a *non obstante* clause overriding Articles 246 and 254.

97. It is held that Article 246 sets down the constitutional framework defining the legislative competence of Parliament and the State Legislatures. Article 254 provides the framework for addressing inconsistency between the central and state laws on matters in the concurrent list. Article 246A entrusts Parliament and State legislatures the power to legislate on the goods and services tax. The power of the States however is subject to the conferment of the exclusive

domain to Parliament to levy the goods and services tax where the supply of goods or services takes place in the course of inter-state trade and commerce.

98. The Hon'ble Supreme Court also adverted to the earlier judgment in case of ***Union of India vs. Mohit Minerals Pvt. Ltd., (2019) 2 SCC 599*** in which it was observed that Constitution Amendment Act 2016 confers concurrent taxing powers on the Union as well as the States for levying GST on transactions of supply of goods or services or both.

99. After adverting to the judgment of the Hon'ble Supreme Court, the Hon'ble Supreme Court approved the principles laid down by the Kerala High Court in case of ***Baiku vs. State Tax Officer, GST, 2019 SCC OnLine Ker 5362*** in which the Kerala High Court had considered whether the Kerala State legislature had the legislative competence to amend the KVAT Act after the introduction of Article 246A to the Constitution, and the repeal of KVAT pursuant to the amendment. Kerala High Court in the said judgment further held that the special power introduced by Article 246A allows Parliament and the State legislatures to 'simultaneously' make laws. Subsequently, while explaining the 'simultaneous' nature of power held by Parliament and State legislature, it has observed that the power under Article 246A can be exercised simultaneously by the State legislature and Parliament as none of them hold any 'unilateral or exclusive' legislative power.

100. The Hon'ble Supreme Court also considered the earlier judgment in case of ***Union of India v. VKC Footsteps India Private Limited, (2022) 2 SCC 603*** in which it was held that Article 246-A has brought about several changes in the constitutional scheme. Article 246-A defines the source of power as well as the field of legislation (with respect to goods and services tax) obviating the need to travel to the Seventh Schedule. The provisions of Article 246-A are available both to Parliament and the State Legislatures, save and except for the exclusive power of Parliament to enact GST legislation where the supply of goods or services takes place in the course of inter-State trade or commerce. Article 246-A embodies the constitutional principle of simultaneous levy as distinct from the principle of concurrence which operated within the fold of the Concurrent List, was regulated by Article 254.

101. The Hon'ble Supreme Court in case of ***Union of India vs. Mohit Minerals Pvt. Ltd., (Civil Appeal No. 1392 of 2022)*** has held that Article 246A provides Parliament and the State legislature with the concurrent power to legislate on GST. Article 246A has a *non obstante* provision which overrides Article 254. Article 246 A does not provide a repugnancy clause. It is further held that unlike Article 254 which stipulates that the law made by Parliament on a subject in the Concurrent list shall prevail over conflicting laws made by the State legislature, the constitutional design of Article 246A does not stipulate the manner in which such inconsistency between the laws made by Parliament and the State legislature on GST can be resolved. The concurrent power exercised by the legislatures under

Article 246A is termed as a ‘simultaneous power’ to differentiate it from the constitutional design on exercise of concurrent power under Article 246, the latter being subject to the repugnancy clause under Article 254.

102. The Hon’ble Supreme Court in the said judgment has considered the statement of objects and reasons and the Legislative History of the Constitution Amendment Act 2016. The Hon’ble Supreme Court considered the First Discussion Paper on Goods and Services Tax in India released by the Empowered Committee in November 2009 explaining the rationale for introducing the GST regime.

103. It is held that for this GST to be introduced at the State-level, it is essential that the States should be given the power of levy of taxation on all services. This power of levy of service taxes has so long been only with Centre. A Constitutional Amendment will be made for giving this power also to the States. Moreover, with the introduction of GST, burden of Central Sales Tax (CST) will also be removed. The GST at the State-level is, therefore, justified for (a) additional power of levy of taxation of services for the States etc.

104. The Hon’ble Supreme Court also considered the introduction of the Constitution (One Hundred and Fifteenth Amendment) Bill 2011 which sought to amend the provisions of the Constitution to introduce the GST regime. The Hon’ble Supreme Court after considering the Union and the State lists observed that

while the Union primarily has the power to impose income taxes, except for agriculture, the State has the power to impose tax on agricultural income. Both the Union and the States had a separate and an exclusive domain over specific heads of taxation. The Union and the State could not impose tax under the same head since the concurrent list did not include an entry for taxes.

105. It is held that in the pre-GST regime, the Union had the exclusive power to impose indirect taxes, that is, on inter-state sale of goods, customs duty, service tax, and excise duty. The States had the exclusive power to impose tax on intra-State sale of goods, luxury tax, entertainment tax, purchase tax, and taxes on gambling and betting. The GST regime has subsumed all the indirect taxes. Article 246A which was introduced by the Constitution Amendment Act 2016 vests the Parliament and the State legislatures with the concurrent power to make laws with respect to GST. The principles laid down by the Hon'ble Supreme Court in case of ***Union of India & Anr. vs. M/s.Mohit Minerals Pvt. Ltd.*** in the judgment delivered on 19th May, 2022 in ***Civil Appeal No. 1390 of 2022*** apply to the facts of this case.

106. In our view, there is no substance in the submission made by Mr.Nankani, learned senior counsel for the petitioner that the State Government had no power to legislate including the power to amend the legislation or that such power to legislate of power has been taken away in view of the introduction of Article 246A in the Constitution of India. The argument of the learned senior counsel that post

constitutional amendment, the provision of MVAT Act, 2002 virtually has the effect of repealing the MVAT Act, 2002 in so far as all other goods, except the 6 mentioned in Entry-54 of List-II of Schedule-VII of the Constitution are concerned, has no merit. These submissions of the learned senior counsel is contrary to the principles of law laid down by the Hon'ble Supreme Court in case of ***Union of India & Anr. vs. M/s.Mohit Minerals Pvt. Ltd.*** (supra) and the objects of legislative intent of introducing with the Article 246A in the Constitution of India.

107. Learned senior counsel does not dispute that after introduction of Article 246A in the Constitution of India, the State Government has already carried out amendment to various provisions of the MVAT Act, 2002 about 24 times which were never impugned by the petitioner or others on the ground of legislative incompetence or otherwise. In our view, the power to legislate on the GST concurrently vest with the Union as well as all the States irrespective of the fact whether GST is not included in any of the three lists provided in VIIth Schedule of the Constitution of India.

108. Article 367 of the Constitution of India provides that unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

109. By virtue of Article 367 of the Constitution of India, the provisions of the General Clauses Act, 1897 stands incorporated by interpreting the provisions of the Constitution of India and more particularly including section 6 of the General Clauses Act. In our view, there is no merit in the submission of the learned senior counsel for the petitioner that what is saved by Section 6 of the General Clauses Act is the pre-existing power to continue with the assessment, appeal, recovery, etc. in respect of matters pending on the date of the repeal or amendment which is distinct and different from the powers to legislate which has been repealed or amended and does not in the eyes of law exist. The provisions of the MVAT Act are not repealed as sought to be canvassed by the learned senior counsel for the petitioner. The said provision continued to apply in respect of the earlier transactions/assessment which are not governed by the amendments carried out to the provisions of the MVAT Act by the State Government after introduction of Article 246A of the Constitution of India.

110. Learned senior counsel for the petitioner does not dispute that the appeal has filed by the petitioner after introduction of Article 246A and after the provisions of the Central Goods and Services Act, 2017, Maharashtra Goods and Services Tax, 2017 and the provisions of the MVAT Act including the amendment to section 26 and insertion of explanation to the said provision.

111. Similarly there is no substance in the submission made by the learned senior counsel that the power under the old Article 246

has been abridged by simultaneously amending the field of legislation in Entry-54 of List-II, which is referred to therein. In this case, there is no question of any power to legislate in respect of rest of the goods, other than the six presently covered by Entry – 54, which survives post-amendment, even by applying the provisions of General Clauses Act. There cannot be any separate provision or the condition imposed for filing an appeal or for entertaining the same in respect of six items covered by Entry – 54 and different provisions for other items not covered by the said entry.

112. There is no substance in the submission made by the learned senior counsel for the petitioner that in view of the provisions of Maharashtra Goods and Services Tax related laws (Amendment, Validation and Savings) Act, 2017 having a saving clause in Section 78 thereof such a saving clause does not save the power to legislate on matters on which the power under the Constitution has been taken away, and merely saves rights and liabilities accruing under the MVAT Act, 2002.

113. It is not the case of the petitioner that the provision of the MVAT Act in *toto* have been repealed by the provisions of Maharashtra Goods and Services Tax Act, 2017. In our view, in view of the specific saving clause in section 78 of the Maharashtra Goods and Services Tax related laws (Amendment, Validation and Savings) Act, 2017, power to legislate the matters or to bring the amendment in the provisions of the MVAT Act have not been taken away rather saves rights to that extent.

114. Insofar as ***Shri Prithvi Cotton Mills Ltd.*** (supra) relied upon by the learned senior counsel for the petitioner is concerned, in the said judgment, Hon'ble Supreme Court held that when a Legislature sets out to validate a tax declared by a Court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. It is held that if a tax is held to be illegal validation of the same can be done if such illegality or invalidity are capable of being removed.

115. It is held that sometimes this is done by conferring jurisdiction where jurisdiction has not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. The legislature may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted, it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions.

116. In our view, since by carrying out amendment to the provisions of the MVAT Act and that also within a period of one year from the date of introduction of Article 246A of the Constitution of India, the impugned amendment was within the legislative

competence of the State Government and has neither overreached nor overruled the effect of the judgment by the Nagpur Bench of this Court in case of ***M/s. Anshul Impex Private Ltd.*** (supra). There is no merit in the challenge to the constitutional validity thereof.

117. Insofar as the judgment of the Supreme Court in case of ***State of Karnataka and others vs. Karnataka Pawn Brokers Association and others*** (supra) relied upon by the learned senior counsel for the petitioner is concerned, the Hon'ble Supreme Court in the said judgment has held that the legislature has the power to enact laws including the power to retrospectively amend laws and thereby remove causes of ineffectiveness or invalidity. The Legislature basically corrects the errors which have been pointed out in a judicial pronouncement. Resultantly, it amends the law, by removing the mistakes committed in the earlier legislation, the effect of which is to remove the basis and foundation of the judgment. If this is done, the same does not amount to statutory overruling.

118. In our view, the principles laid down by the Hon'ble Supreme Court in the said judgment would support the case of the State Government and not the petitioner. There is no merit in the submission of the learned senior counsel for the petitioner that the Nagpur Bench of this Court in case of ***M/s. Anshul Impex Private Ltd.*** (supra) has decided the issue based on the legal interpretation of the principles laid down the judgment of Supreme Court in the case of ***Hoosein Kasam Dada (India) Ltd.***(supra).

119. In our view, there is no violation of any doctrine of separation of powers as sought to be canvassed by the learned senior counsel for the petitioners. The petitioners have also not disputed the proposition of the law that the State Government has power to legislate for the purpose of removing or curing any defect pointed out by the Court in the said judgment. In our view, there is no encroachment on the part of the State Government upon the power of the judiciary by carrying out the amendment in the provision of MVAT in any manner whatsoever. There is no merit in the submission of the learned senior counsel for the petitioners that in the amending Act though the explanation starts with the words "for removal of doubts", the same does not invariably mean that the explanation is clarificatory.

120. The judgment of the Supreme Court in case of ***Union of India Vs. Martin Lottery Agencies*** (supra) relied upon by the learned senior counsel would not assist the case of the petitioners. The said judgment is distinguishable on the facts. On plain reading of the words "for removal of doubts" and also the legislative intent for introducing the said explanation which is subject matter of these petitions clearly indicate that the same was inserted for clarifying the doubts raised by the Nagpur Bench of this Court in case of ***M/s. Anshul Impex Private Ltd.*** (supra).

121. Insofar as judgment of the Gujarat High Court in a case of ***Reliance Industries Ltd. Vs. State of Gujarat and others*** (supra) relied upon by the learned senior counsel for the petitioner is

concerned, perusal of the said judgment clearly indicates that section 84A considered by the Gujarat High Court in the said judgment was incorporated by the said Legislature w.e.f. 3rd April, 2018. The amendment came into effect on 16th September, 2016. The said amendment carried out by the State of Gujarat was carried out after one year to the said constitutional amendment i.e. on 3rd April, 2018. On 1st July, 2017, the Gujarat GST Act had already come into force. The said judgment of the Gujarat High Court in case of ***Reliance Industries Ltd. Vs. State of Gujarat and others*** (supra) is thus clearly distinguishable on the facts and would not assist the case of the petitioner.

122. Insofar as issue raised by the learned senior counsel for the petitioner that by way of impugned amendment, retrospective effect cannot be given so as to take away the vested right is concerned, learned Advocate General for the State of Maharashtra has already clarified that sub-sections 6A, 6B and 6C will apply for those orders which are passed after 15th April, 2017 and not to the prior orders. All earlier orders are governed by the original provisions of Section 26(6) and not by the amendment. Both the provisions i. e. old Section 26(6) and the amendment introduced by Sub Section 6A, 6B and 6C to Section 26 will apply and co-exist. There is no conflict between these provisions. Admittedly in the facts of this case, the appeal has been filed by the petitioner after insertion of the impugned amendment to section 26 of the MVAT Act.

123. This Court in case of ***Nimbus Communications Ltd. Vs.***

Commissioner of Service Tax, Mumbai – IV (supra) relied upon by the learned Advocate General, considered the judgment of the Division Bench of Allahabad High Court in a case of ***Ganesh Yadav Vs. Union of India*** (supra) and accepted the view of the Allahabad High Court delivered in case of ***Ganesh Yadav Vs. Union of India*** (supra). Learned senior counsel for the petitioner could not distinguish the judgment of the Allahabad High Court in a case of ***Ganesh Yadav Vs. Union of India*** (supra) and judgment of this Court in case of ***Nimbus Communications Ltd. Vs. Commissioner of Service Tax, Mumbai – IV*** (supra).

124. There is no substance in the submission made by the learned senior counsel for the petitioner that the amendment introduced by the State Government is hit by principles laid down by the Supreme Court in case of ***Hoosein Kasam Dada*** (supra). This Court has to interpret the provisions harmoniously. By virtue of the constitutional amendment made under the provisions of GST empowers the State Government to carry out amendment within one year from the date of such constitutional amendment, such powers are rightly exercised by the State Government within the time prescribed and the Maharashtra Goods and Service Tax Act came into force. The provisions of the MVAT Act, 2002 were amended so as to cure the lacuna in MVAT Act and to avoid inconsistency with the Central Legislature.

125. The Hon’ble Supreme Court in case of ***Videocon International Limited*** *(supra)* has held that an appellate remedy is

available in different packages. An aggrieved party, is entitled to pursue such a vested substantive right, as and when, an adverse judgment or order is passed. Such a vested substantive right can be taken away by an amendment, only when the amended provision, expressly or by necessary intendment, so provides. Failing which, such a vested substantive right can be availed of, irrespective of the law which prevails, at the date when the order impugned is passed, or the date when the appeal is preferred. It is held that the legal pursuit of a remedy, suit, appeal and second appeal, are steps in a singular proceeding. All these steps, are connected by an intrinsic unity, and are regarded as one legal proceeding.

126. It is held by the Hon’ble Supreme Court that where the appellate package, as in the present case, is expressed differently at the "pre" and "post" amendment stages, there could only be two eventualities. Firstly, the pre-amendment appellate package, could have been decreased by the amendment, or alternatively, the post-amendment package, could have been increased by the amendment. In the former situation, all that was available earlier, is now not available. In other words, the right of an individual to the appellate remedy, stands reduced or curtailed. In the latter situation, the amendment enhances the appellate package. The appellate remedy available prior to the amendment, stands included in the amendment, and some further addition has been made thereto. In the latter stage, all that was available earlier continues to subsist.

127. It is held that the two situations contemplated as referred

to will obviously lead to different consequences, because in the former position, the amendment would adversely affect the right, as was available earlier. In the latter position, the amendment would not affect the right of appeal, as was available earlier, because the earlier package is still included in the amended package.

128. The Hon'ble Supreme Court held that the right of appeal being a vested right, the appellate package, as was available at the commencement of the proceedings, would continue to vest in the parties engaged in a lis, till the eventual culmination of the proceedings. Obviously, that would be subject to an amendment expressly or impliedly, providing to the contrary. The principles laid down by the Hon'ble Supreme Court in case of ***Videocon International Limited*** (supra) apply to the facts of this case. In this case, the State Government has provided the package to all the assessees by prescribing the condition of pre-deposit of 10% and thereby staying the recovery of 90% as a pre-condition for entertaining an appeal. Such package by the Legislature is permissible in law.

129. Madras High Court in case of ***M/s.Dream Castle*** (supra) has held that right of appeal is neither an absolute right nor an ingredient to natural justice and that it is only a statutory right which can be circumscribed by the condition in the grant. The Madras High Court adverted to the judgment of the Hon'ble Supreme Court in case of ***Seth Nand Lal vs. State of Haryana, 1980 (supp) SCC 574*** and in case of ***Vijay Prakash D.Mehta vs. Collector of Customs, (1988) 4***

SCC 402 and held that the right of appeal is a creature of statute and the legislature is well within its competence to impose conditions for the exercise of such a right subject to the only restriction that the conditions so imposed are not so onerous which sounds putting unreasonable restrictions rendering the right almost illusory.

130. The Madras High Court in the said judgment had considered the question as to whether the switch-over from a regime where the deposit of the entire duty was mandatory subject to the discretion granted to the Appellate Authority to waive the whole or any part of it, viz. regime where a fixed percentage of 7.5% of the demand is made mandatory, can be said to be more onerous or less onerous. After considering the judgment of the Hon'ble Supreme Court in case of ***Shyam Kishore vs. Municipal Corporation of Delhi, (1993) 1 SCC 22*** and several other judgments, it is held by the Madras High Court that when the unamended condition gave only a chance or hope for an assessee to get a total waiver at the discretion of the Appellate Authority, the same cannot be equated to a vested right. A mere chance of convincing the Appellate Authority to exercise the discretion for the grant of a total waiver is not a vested right. After considering the amendment thereby prescribing pre-deposit of the fixed percentage of 7.5% of the demand as mandatory, it is held that the said amendment did not take away a right vested, but merely made a chance divested. What has now gone, is not the right , but the chance or hope.

131. In our view, the principles of law laid down by the

Madras High Court in case of ***M/s.Dream Castle*** (supra) would apply to the facts of this case. We are in respectful agreement with the views expressed by the Madras High Court in the said judgment. In the facts of this case also, the unamended provisions which gave wide discretion upon the Appellate Authority to pass the order of deposit as pre-condition for granting stay could be between 0% to 100%, which is substituted by fixed percentage of 10% of the disputed dues. The discretion granted to the Appellate Authority earlier gave only a chance or hope for the assessee to get a total waiver and thus could not be equated to a vested right. Per contra, by the said judgment, the prescribed fixed percentage of the 10% of the demand to be deposited mandatorily and granting stay of the balance 90% of the demand does not take away a right vested, if any, but merely made a chance divested. In our view, there is no substance in the submission of the learned senior counsel for the petitioner that the vested right of the petitioner of filing an appeal against the order of assessing officer or the First Appellate Authority is taken away by the impugned amendment.

132. The Hon'ble Supreme Court in case of ***M/s. Newtech Promoters And Developers Pvt. Ltd.*** (supra) has held that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights. The Hon'ble Supreme Court in the said judgment considered various

issues including the issue whether the condition of pre-deposit under proviso to section 43(5) of the Real Estate (Regulation and Development) Act, 2016 for entertaining substantive right of appeal is sustainable in law or not.

133. The Hon'ble Supreme Court adverted to the several judgments including the judgment in case of ***State of Bombay (Now Maharashtra) vs. Vishnu Ramchandra, AIR 1961 SC 307***. In the said judgment in case of ***State of Bombay (Now Maharashtra) vs. Vishnu Ramchandra*** (supra), the Hon'ble Supreme Court observed that if the part of requisites for operation of the statute were drawn from a time antecedent to its passing, it did not make the statute retrospective so long as the action was taken after the Act came into force. The Hon'ble Supreme Court considered the said provision which provides that the promoter has to deposit at least 30 per cent of the penalty amount or such higher amount as may be directed by the Appellate Tribunal before the said appeal can be entertained. The Hon'ble Supreme Court also considered section 18 to SARFAESI Act, 2002 in the said judgment and also section 19 of the Consumer Protection Act, 1986, section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 and section 62(5) of the Punjab Value Added Tax, 2005 imposing the condition of pre-deposit of various amounts for hearing of first appeal and held that the right of appeal which is a creature of the statute and without a statutory provision, person aggrieved is not entitled to file the appeal.

134. It is held that it is neither an absolute right nor an

ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial litigations. It is always be circumscribed with the conditions of grant. At the given time, it is open for the legislature in its wisdom to enact a law that no appeal shall lie or it may lie on fulfillment of pre-condition, if any, against the order passed by the Authority in question. After considering various provisions providing for such condition of deposit as condition precedent for entertaining of the appeal, the Hon'ble Supreme Court held that in no circumstance the said provision can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India.

135. In our view, the principles laid down by the Hon'ble Supreme Court in case of ***M/s. Newtech Promoters And Developers Pvt. Ltd.*** (supra) would apply to the facts of this case. The provisions considered by the Hon'ble Supreme Court in the said judgment are in pari materia with the impugned amended provisions which are the subject matter of these petitions. We are respectfully bound by the principles laid down by the Hon'ble Supreme Court in the said judgment which apply to the facts of this case.

136. The Hon'ble Supreme Court in case of ***Ssangyong Engineering & Construction Co. Ltd.*** (supra) has considered the amendment to section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996 including the Explanation 2 and held that it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law,

as understood in paragraphs 18 and 27 of ***Associate Builders vs. Delhi Development Authority, (2015) 3 SCC 49***, or secondly, that such award is against basic notions of justice or morality as understood in paragraphs 36 to 39 of ***Associate Builders*** (supra). It is held that Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to section 48(2)(b)(ii) were added by the Amendment Act only so that judgment of the Hon'ble Supreme Court in case of ***ONGC Ltd. vs. Western Geco International Ltd., (2014) 9 SCC 263*** as understood in Associate Builders (supra), and paragraphs 28 and 29 in particular, is now done away with.

137. It is held that on perusal of the said two explanations added by the Legislature in the original provision would clearly indicate that the said explanations were added with a view to reduce the scope of section 34 of the Arbitration and Conciliation Act, 1996 to reduce the powers of the Court to review the Arbitral Award on merits, to do away with the interpretation of Section 34 by the Supreme Court in case of ***ONGC Ltd. vs. Western Geco International Ltd.,*** (supra) as interpreted by the Hon'ble Supreme Court in case of ***Associate Builders*** (supra).

138. In this case also in our view, the amendments which are the subject matter of these writ petitions are carried out to do away with the interpretation of the Nagpur Bench of this Court in case of ***M/s. Anshul Impex Private Ltd.*** (supra) about the commencement of lis or the date of order. The principles laid down by the Hon'ble Supreme Court in case of ***Ssangyong Engineering & Construction***

Co. Ltd. (supra) would apply to the facts of this case. We are bound by the principles laid down by the Hon'ble Supreme Court.

139. A perusal of the impugned explanation added by the State Government by Ordinance of 2017 w.e.f. 15th April, 2017 irrespective of the date of the commencement of the original proceedings indicates that the same is clarificatory in nature and takes away the effect of the judgment of the Nagpur Bench of this Court in case of ***M/s. Anshul Impex Private Ltd.*** (supra). There is no substance in the submission made by the learned senior counsel for the petitioner that the impugned amendment directly or indirectly overrules or overreaches the judgment in case of ***M/s. Anshul Impex Private Ltd.*** (supra).

140. In our view, the State Government in this case has not transgressed any constitutional limitation while inserting the amendments in the Act which are the subject matter of these petitions. The State Government has legislative competence to remove the substratum of foundation of a Judgment retrospectively. The State Government is empowered to carry out amendment suitably to amend the law by use of appropriate phraseology removing the defects pointed out by the Court in any judgment and by amending the law inconsistent with the law declared by the Court so that the defects which were pointed out were never on the statute for effective enforcement of law. There is no judicial encroachment directly or indirectly by the State Government by inserting amendment which are the subject matter of these petitions as sought to be canvassed by

the learned senior counsel for the petitioner.

141. In our view curing the defect pointed out by any Court through a judgment or simplicitor removing such defects does not amount to encroachment directly or indirectly or overruling the view taken by the Court or overreaching the powers of the State Government by nullifying the effect of the law laid down by the Court.

142. Hon’ble Supreme Court in case of **State of Himachal Pradesh vs. Narain Singh** (supra) considered the question as to whether the State can in exercise of its sovereign legislative power enact an amending Act seeking to remove and cure the defects in the previous law despite there being a judgment on the previous law or not? The Hon’ble Supreme Court held that the power of the Sovereign legislature to legislate within its domain, both prospectively and retrospectively cannot be questioned. After adverting to the various judgments of the Hon’ble Supreme Court, it is held that the Legislature has powers by virtue of validating legislation, to "wipe out" judicial pronouncements of the High Court and the Supreme Court by removing the defects in the statute retrospectively when such statutes had been declared ultra vires by Courts in view of its defects.

143. In case of ***Bhubaneshwar Singh & another Vs. Union of India & others, (1994) 6 SCC 77*** which was considered by the Supreme Court in case of ***State of Himachal Pradesh*** (supra), it was

held that where there is a competent legislative provision which retrospectively removes the substratum of foundation of a judgment, the said exercise is a valid legislative exercise, provided it does not transgress any other constitutional limitation. The Supreme Court also considered the judgment delivered by a three Judge Bench in ***Meerut Development Authority etc. vs. Satbir Singh and others, (1996) 11 SCC 462*** in which it was held by the Supreme Court that when the Supreme Court in exercise of power of judicial review, has declared a particular statute to be invalid, the Legislature has no power to overrule the judgment; however, it has the power to suitably amend the law by use of appropriate phraseology removing the defects pointed out by the Court and by amending the law inconsistent with the law declared by the Court so that the defects which were pointed out were never on statute for effective enforcement of the law.

144. The Supreme Court in the said judgment in case of ***State of Himachal Pradesh*** (supra), has adverted to the judgment in case of ***State of Bihar and others Vs. State Pensioners Samaj, (2006) 5 SCC 65***, in which it has been held by the Supreme Court that it is always open to the legislature to alter the law retrospectively as long as the very premise on which the earlier judgment declared a certain action as invalid is removed. The situation would be one of a fundamental change in the circumstances and such a validating Act was not open to challenge on the ground that it amounted to usurpation of judicial powers. The principles laid down by the Hon'ble Supreme Court in case of ***State of Himachal Pradesh vs. Narain Singh*** (supra) and other judgments which are adverted to in some of the judgments and

are referred to aforesaid applies to the facts of this case. We are respectfully bound by the principles laid down by the Hon'ble Supreme Court in the said judgment.

145. In our view, the Legislature has power to remove the defects retrospectively and prospectively by Legislative action so as to cure the defect or inconsistency in the law declared by the Court so as to remove such inconsistency from the statute for effective enforcement of law.

146. The Hon'ble Supreme Court in case of ***Assistant Commissioner of Agricultural Income Tax and others*** (supra) has held that in exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid. It also empower to give effect to retrospective legislation with a deeming date or with effect from a particular date.

147. It is held that the legislature can change the character of the tax or duty from impermissible to permissible tax but the tax or levy should answer such character and the legislature is competent to recover the invalid tax validating such a tax on removing the invalid

base for recovery from the subject or render the recovery from the State ineffectual. It is held that it is competent for the legislature to enact the law with retrospective effect and authorize its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the Court or the direction given for recovery thereof. It is held that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law, the Constitution and the legislature must have competence to do the same.

148. In our view, the principles of law laid down by the Hon'ble Supreme Court in case of ***Assistant Commissioner of Agricultural Income Tax and others*** (supra) would apply to the facts of this case as by carrying out the amendment to section 26 of the MVAT Act or by inserting explanation, the State Government has cured the defects pointed out by the Nagpur Bench of this Court in the case of ***Anshul Impex Private Ltd.*** (supra) by removing the basis on which the said decision was arrived at.

149. This Court in case of ***Godrej Soaps Ltd. & Anr. vs. The State of Maharashtra & Ors.*** (supra) has considered the validity of the amendment to section 2(17) of the Bombay Sales Tax Act, 1959 with retroactive effect. This Court considered the contention of the petitioner that the Explanation – II inserted with a view to amend section 2(17) of the Bombay Sales Tax Act, 1959 was beyond

legislative competence of the State of Maharashtra in so far as it operates retrospectively on various grounds. This Court after adverting the various judgments and the impugned amendment held that the said amendment was clarificatory which was necessary to take away the effect of the judgment of the Tribunal. The retrospective effect to the amendment was thus rightly given by this Court in the said judgment in case of ***Godrej Soaps Ltd. & Anr. vs. The State of Maharashtra & Ors.*** (supra). The principles laid down therein applies to the facts of this case. We are respectively bound by the said principles laid down by this Court in the said judgment.

150. The Hon'ble Supreme Court in case of ***Chandra Sekhar Jha vs. Union of India, 2022 SCC OnLine 269*** delivered on 28th February, 2022 in Civil Appeal No. 1566 of 2022 has construed section 129E of the Customs Act, 1962 and the amendment thereto, has considered the identical situation and has held that the conspectus of the provisions of Section 129E of the Customs Act, 1962 before and after the substitution, makes it clear that the law giver has intended to bring about a sweeping change from the previous regime and usher in a new era, under which the amount to be deposited was scaled down and pegged at a certain percentage of the amount in dispute. In other words, while under Section 129A, as it stood prior to the substitution, the appellant was to deposit the duty and the interest demanded or the penalty levied, whereas in the present regime, the appeal is maintainable upon the appellant depositing seven and the half percent of the amount.

151. It is held that under the earlier regime, in other words the entire amount which was in dispute had to be deposited. Under the earlier avatar of section 129E, the law giver also clothed the appellate body with powers as contained in the first proviso. The first proviso provided the Commissioner (Appeals) or as the case may be, Appellate Tribunal the power to dispense with such deposit, subject to conditions as he deemed fit to impose to safeguard the interest of the revenue. The Hon'ble Supreme Court considered that it was in sharp departure from the previous regime that the new provision has been enacted. Under the new regime, the amount to be deposited to maintain the appeal has been reduced from 100% to 7.5% but the discretion which was made available to the appellate body to scale down the pre-deposit has been taken away.

152. The Hon'ble Supreme Court held that the first proviso to section 129E enacts a limitation on the total amount which can be demanded by way of pre-deposit. The first proviso provided that the amount required to be deposited should not exceed Rs.10 Crores. In this regard, the law giver has purported to grant relief to an appellant. The second proviso contemplates that section 129E as substituted would not apply to stay applications and appeals which are pending before the Appellate Authority prior to the commencement of the Finance Act (2) of 2014. The amended provision had, as we have already noticed has come into force from 6th August, 2014 and therefore, in regard to stay applications and appeals which were pending before any Appellate Authority prior to commencement of The Finance (No.2) Act 2014, section 129E as substituted provision

would not apply. The substitution of a provision results in repeal of the earlier provision and its replacement by the new provision.

153. The Hon'ble Supreme Court rejected the argument of the appellant that since the incident which triggered the appeal filed by the appellant took place in the year 2013, the appellant must be given the benefit of the power available under the substituted provision. It is held that the substitution has effected a repeal and it has re-enacted the provision as it is contained in section 129E. In fact, the acceptance of the argument would involve a dichotomy in law. On the one hand, what the appellant is called upon to pay is not the full amount as is contemplated in Section 129(E) before the substitution. The order passed by the the Commissioner is dated 23rd November, 2015 which is after the substitution of Section 129E. The appellant filed the appeal in 2017. What the appellant is called upon to pay is the amount in terms of Section 129E after the substitution, namely, the far lesser amount in terms of the fixed percentage as provided in section 129E. The appellant, however, would wish to have the benefit of the proviso which, in fact, appropriately would apply only to a case where the appellant is maintaining the appeal and is called upon to pay the full amount under Section 129E under the earlier avtar.

154. It is further held that the legislative intention would clearly be to not to allow the appellant to avail the benefit of the discretionary power available under the proviso to the substituted provision under Section 129E. Supreme Court found no merit in the matter on the ground that the appellant is not being called upon to pay

the full amount but is only asked to pay the amount which is fixed under the substituted provision.

155. Upon applying the principles laid down by the Supreme Court in case of ***Chandra Sekhar Jha vs. Union of India*** (supra) to the provisions to the facts of this case challenging the validity of the amended provisions of the MVAT Act, it is clear that under the amended provisions of MVAT Act, the unlimited discretion granted to the Appellate Authority to grant waiver or exemption from the payment of deposit of the tax dues from 0% to 100% is substituted by the flat rate of deposit of 10% of the total tax due thereby granting stay of the 90% balance amount of the tax dues so as to safeguard the interest of assessee as well as the revenue. The principles laid down by the Supreme Court in case of ***Chandra Sekhar Jha vs. Union of India*** (supra) apply to the facts of this case. We are respectively bound by the said judgment.

156. This Court in case of ***Noopura Vishwajit Kulkarni Vs. State of Maharashtra*** *(supra)* has considered the submission as to whether the amendment effected by the Maharashtra Act No. III of 2013 to the provisions of the Maharashtra State Reservation (of seats for admission in educational institutions in the State and for appointments in public services and posts under the State) for Socially and Educationally Backward Classes (SEBC) (Amendment) Act, 2019 was an attempt on the part of the State Government to nullify and render void the decision of the Nagpur Bench of this Court and Supreme Court or not.

157. This Court after adverting to the judgment of the Supreme Court in case of ***Shri Prithvi Cotton Mills Ltd. vs. Broach Borough Municipality, (1969) 2 SCC 283*** held that it is settled that there is a demarcation between legislative and judicial functions predicated on the theory of separation of powers. The legislature has the power to enact laws including the power to retrospectively amend laws and thereby remove causes of ineffectiveness or invalidity.

158. It is held that when a law is enacted with retrospective effect, it is not considered as an encroachment upon judicial power when the legislature does not directly overrule or reverse a judicial dictum. The legislature cannot, by way of an enactment, declare a decision of the Court as erroneous or a nullity, but can amend the statute or the provision so as to make it applicable to the past. The legislature has the power to rectify, through an amendment, a defect in law noticed in the enactment and even highlighted in the decision of the court. This plenary power to bring the statute in conformity with the legislative intent and correct the flaw pointed out by the Court can have a curative and neutralizing effect.

159. This Court held that when such a correction is made, the purpose behind the same is not to overrule the decision of the Court or encroach upon the judicial turf, but simply enact a fresh law with retrospective effect to alter the foundation and meaning of the legislation and to remove the base on which the judgment is founded. This does not amount to statutory overruling by the legislature. The principles laid down by this Court in the said judgment in case of

Noopura Vishwajit Kulkarni Vs. State of Maharashtra (supra) and by the Supreme Court in case of ***Shri Prithvi Cotton Mills Ltd.*** (supra) apply to the facts of this case.

160. In the facts of this case also, it became necessary for the legislation to cure the defects in the provisions of the appeals prescribed in the MVAT Act as pointed out by the Nagpur Bench of this Court in case of ***Anshul Impex Private Ltd.*** (supra). In our view, under the circumstances it can be held that by the said amendment, which is the subject matter of these petitions, the State Government has not overruled or overreached the law laid down by this Court in the said judgment. Curing the defects pointed out by this Court in the judgment in any provision of law is permissible by carrying out an amendment in the provisions of law and cannot amount to overruling or overreaching the binding effect of the judgment.

161. The Supreme Court in case of ***S.R.Bhagwat & Ors.*** (supra) has held that the judgment having attained finality, cannot be overruled by any legislative measure. There is no dispute about this proposition of law held by the Supreme Court. However, since this Court is of the view that the judgment of the Nagpur Bench of this Court in case of ***M/s. Anshul Impex Private Ltd.*** (supra) has not been overruled by the impugned amendment, the said judgment in case of ***S.R.Bhagwat & Ors.*** (supra) would not assist the case of the petitioners.

162. A perusal of the explanation inserted by 2019

amendment after sub-section 6(c) of section 26 of the MVAT Act clearly indicates that the same is deemed to have been inserted w.e.f. 15th April, 2017, i.e. the date of amendment and has been brought into force in the necessary provisions i.e. sub-sections 6A, 6B and 6C to section 26 of the MVAT Act. It is thus clear that the said amendment takes away the basis of the law as it stood when the said judgment of Nagpur Bench of this Court in case of ***M/s. Anshul Impex Private Ltd.*** (supra) was decided. The said 2019 amendment removes the doubt created by the judgment in case of Nagpur Bench of this Court in case of ***M/s. Anshul Impex Private Ltd.*** (supra) and has been inserted by exercising legislative power of the State Government.

163. In our view, the judgment of Nagpur Bench of this Court in case of ***M/s. Anshul Impex Private Ltd.*** (supra) did not take into consideration the crucial aspect that the judgment of the Supreme Court in the case of ***Hoosein Kasam Dada (India) Ltd.***(supra) did not deal with the case where the right of the appeal was adversely affected retrospectively without any statutory provision expressly or by necessary implications to that effect. The said judgment on the contrary had held that with statutory provisions expressly or by necessary intendment enacted to that effect, can even take away right of appeal. In the case at hand, the amendments in this case are by the express statutory provisions and in any case do so by necessary intendment.

164. The Nagpur Bench of this Court in case of ***M/s. Anshul Impex Private Ltd.*** (supra) also overlooked the fact that sub-section

6(1) to section 26 of MVAT Act was inserted by 2017 amendment with overall package in respect of the Right of Appeal. In our view, right of appeal can be made conditional, with conditions similar to the one inserted by the 2017 amendment in issue, by way of an amendment made with retrospective effect, even if the same adversely affects such a right, much after the 'lis' has begun, containing express words or by necessary implications.

165. In our view learned Advocate General is right in his submission that the statute always makes the 'right of appeal' available, if any and if at all, in a package which includes various facets of such a right such as limitation, overall extent and scope of such a right, will include various aspects thereof, such as the available grounds, conditions subject to which it can be exercised. The Right of Appeal at the pre-amendment stage was available in a package which is now altered and at the post-amendment stage it is very much continued, but in a different package with a right of appeal vested at the pre-amendment stage continues.

166. A perusal of the said amendment clearly indicates that the said amendment prescribing 10% deposit of the disputed tax strikes a justifiable fine balance and is beneficial to the assessee as well as the revenue. Upon pre-deposit of only 10%, the assessee gets an unconditional stay to the recovery of the balance amount in issue in appeal. A kind of standardization is brought in. A very wide discretion conferred upon the Appellate Authority to direct the deposit from 0% to 100% of the disputed amount as a condition precedent is

taken away which not only saves valuable time but also the energy not only of the assessee but also of the Courts or Appellate Authority in deciding the stay application or the proceedings arising out of such applications. It also saves money of the assessee as well as revenue in pursuing such applications or opposing thereof. Filing of such appeals to the considerable extent would be reduced which would help in reducing the arrears of other pending proceedings.

167. In the event of the assessee not succeeding in the appeals before the Appellate Authority after deposit of such 10% as pre-condition deposit, the revenue would be protected atleast to the extent of such 10% amount, if the financial condition of the assessee is precarious at the time of disposal of such appeal. The amount of pre-condition deposit in various Acts is much more than 10% and the validity thereof has been upheld by the Supreme Court on the ground that such provisions of pre-condition of deposit are not onerous and are reasonable.

168. The Supreme Court in a case of ***Hoosein Kasam Dada*** (supra) had considered the proviso to Section 22(I) of the Central Provinces and Berar Sales Tax (Second Amendment) Act. The question that fell for consideration of the Supreme Court in the said judgment was whether the imposition of a condition requiring payment of entire assessed amount as a condition precedent to the admission of the appeal, could affect the assessee's right of appeal from a decision commenced prior to the date of such amendment and which right of appeal was free from such restrictions under the Act at

the time of commencement of the proceedings.

169. Proviso to Section 22(I) of the said Act considered by the Hon'ble Supreme provided that no appeal against the order of assessment with or without penalty shall be entertained by the said authority unless it is specified that such an amount of tax or penalty or both as the appellant may admit to the demand from him has been paid. The said proviso was subsequently amended and it was provided that no appeal against an order of assessment with or without penalty shall be admitted by the said authority unless such appeal was accompanied by a statutory proof of payment of tax with penalty, if any, in respect of which the appeal has been preferred. The Supreme Court held that right of appeal is a substantive right and not a mere matter of procedure. The Court was bound to admit the appeal whether appellant deposited the amount recoverable in execution of the decree or not.

170. It is held that by requiring such deposit as a condition precedent to the admission of appeal, a new restriction has been put on the right of appeal, the admission of which is now hedged in with a condition. The Supreme Court accordingly held that, there can be no doubt that right of appeal had been affected by the new provision and in the absence of express enactment, amendment cannot apply to the proceedings pending on the date when the new amendment came into force.

171. The Supreme Court held that whenever there is

proposition by one party and opposition to that proposition by another a 'lis' arises. When assessee files his return, a 'lis' may not immediately arise or under section 22(I) of the Act, the authority may accept the return as correct and complete. But if authority is not satisfied as to the correctness of the return and calls for evidence surely controversy arises involving a proposition by the assessee and opposition by the State. It is held that, even if the 'lis' is to be taken as arising only on the date of assessment, there was a possibility of such a 'lis' arising as soon as proceedings started with the filing of the return or at any rate when the authority calls for evidence and began hearing on such dates. For the purpose of accrual of right of appeal, the critical and relevant date is the date of initiation of the proceedings and not the date of decision itself.

172. Under the unamended provision i.e. Section 22(1) considered by the Supreme Court in the said judgment, a restriction was imposed on the appellate authority not to entertain the appeal unless it was satisfied that such amount of tax or penalty or both as the appellant may admit to be due from him has been paid. The amended Section 22(I) however, prohibited the appellate authority to admit the appeal unless appeal is accompanied by a satisfactory proof of payment of tax with penalty, if any, in respect of which appeal has been preferred. The amended impugned provisions in this case are different.

173. Supreme Court in case ***Gangadhar Palo*** (supra) has held that if the Special Leave Petition arising out of the impugned order

passed by High Court is dismissed without recording reasons, such impugned order is not merged with the order of the Supreme Court. Review of such order passed under Article 226 of the Constitution of India is thus maintainable. In the facts of this case, the special leave petition filed by the State of Maharashtra against the judgment of Nagpur Bench of this Court in case of ***Anshul Impex Pvt. Ltd.*** (supra) was dismissed without recording any reasons by the Supreme Court. The said judgment of Nagpur Bench of this Court in case of ***Anshul Impex Pvt. Ltd.*** (supra) thus can be reviewed by this Court. The principles of law laid down by the Hon'ble Supreme Court in case of ***Gangadhar Palo*** (supra) applies to the facts of this case. We are respectfully bound by the said judgment.

174. Supreme Court in case of ***M/s Tecnimont Pvt. Ltd.*** (supra) considered the question whether the State Government was empowered to enact Section 62(5) of the Punjab Value Added Tax Act, 2005 and whether the condition of 25% pre-deposit for hearing first appeal was onerous, harsh, unreasonable and therefore violative of Article 14 of the Constitution of India. The Supreme Court after adverting to various judgments held that the High Court had rightly held that Section 62(5) of the Punjab Value Added Tax Act, 2005 was legal and valid and the condition of 25% of pre-deposit was not onerous, harsh, unreasonable and violative of Article 14 of the Constitution of India. In this case, the State Government has imposed condition of 10% of pre-deposit for filing an appeal before the Appellate Authorities. It is not in dispute that upon deposit of 10% of pre-deposit, there is automatic stay of the balance of 90% of the tax

dues. Prior to the date of the impugned amendment, the discretion was granted to the Appellate Authority to direct any amount as pre-deposit before entertaining the appeal.

175. Such discretion can be for any sum from 0% to 100%. In this case, a flat rate of 10% of pre-deposit is thus neither onerous, harsh, unreasonable or violative of Article 14 of the Constitution of India. The judgment of Supreme Court in case of ***M/s Tecnimont Pvt. Ltd.*** (supra) applies to the facts of this case. We are respectfully bound by the said judgment.

176. A perusal of the provisions of sections 6A, 6B and 6C of section 26 of the said MVAT Act makes it clear that all those provisions apply to all these appeals that are filed under section 26 against the order passed on or after 2017 amendment which has been brought into force w.e.f. 15th April, 2017. The newly inserted provision by way of 2017 amendment thus would apply to the order passed on or after 15th April, 2017 irrespective of the period of assessment to which the order appealed against relates or irrespective of the date on which the proceedings in respect of such lis has commenced. There is no substance in the submission of the learned senior counsel for the petitioners that the said amendment is applied with retrospective effect. The Nagpur Bench of this Court in case of ***M/s. Anshul Impex Private Ltd.*** (supra) has interpreted the newly inserted provisions in the Judgment in such a way that the newly inserted provisions would not apply to such orders, which have been passed in respect of such period of assessment i.e. prior to the

introduction of the said amendment i.e. 15th April, 2017.

177. In our view, there is no substance in the submission of the learned senior counsel for the petitioners that the impugned explanation violates Article 14 of the Constitution of India, or discriminates between two assessees in the same assessment year, or causes delay in passing assessment orders attributable to the Government or otherwise. The impugned amendment would apply only for those orders which are passed only after 15th April, 2017 and not to the prior orders being passed by exercising the legislative power of the State Government. The argument of the petitioner that the amendment violates Article 14 of the Constitution of India on the ground that two sets of assessees are discriminated against insofar as the pre-condition of deposit for entertaining the appeal is concerned has no merit.

178. In our view, the impugned amendment also does not take away vested right of the assessee to file an appeal as sought to be canvassed by the learned senior counsel for the petitioner. The judgment of Nagpur Bench has not merged with the judgment of the order passed by the Supreme Court while dismissing the Special Leave Petition on 11th March, 2019. Be that as it may, this Full Bench can take a different view in the matter and is not bound by the principles of law laid down by the Division Bench of the Nagpur Bench of this Court in case of ***M/s. Anshul Impex Private Ltd.*** (supra).

179. The Supreme Court in case of ***Bimolangshu Roy Versus State of Assam And Another*** (supra) has held that the authority to make law flows not only from an express grant of power by the Constitution to a legislative body but also by virtue of implications flowing from the context of the Constitution. The US Supreme Court also recognized that the Congress would have the authority to legislate with reference to certain matters because of the fact that such authority is inherent in the nature of the sovereignty. The doctrine of inherent powers was propounded by Justice Sutherland in the context of the role of the American Government in handling foreign affairs and the limitations thereon.

180. It is held that an Entry in one of the 3 lists of the 7th Schedule is not the source of power but are only indicative of the fields of legislation. Power to legislate is conferred by some of the Articles by an express grant either on the Parliament or the State Legislature to make laws with reference to certain matters specified in each of those Articles but there is no corresponding entry in the corresponding list indicating the field of such legislation.

181. It is held that a broad pattern can be identified from the scheme of the three lists, the salient features of which are (i) Fields of legislation perceived to be of importance for sustaining the federation, are exclusively assigned to the Parliament, (ii) State legislatures are assigned only specified fields of legislation unlike the US Constitution, (iii) Residuary legislative power is conferred in the Parliament; (iv) taxing entries are distinct from the general entries,

and (v) List III does not contain a taxing entry. It is not in dispute that the taxation in respect of the GST is not inserted in any of the three lists in Seventh Schedule. The principles laid down by the Supreme Court in case of ***Bimolangshu Roy Versus State of Assam And Another*** (supra) would apply to the facts of this case. In our view it is not necessary that in taxing matter, if the subject is not specified in Seventh Schedule, the State Government has no power to legislate on the said subject.

182. It is held by the Supreme Court that the authority to make law flows not only from an express grant of power by the constitution to a legislative body but also by virtue of implications flowing from the context of the Constitution as well as settled by the various decisions. Such authority to legislate by the State Government is inherent in the nature of the sovereignty. Such power is conferred by some of the articles by an express grant either on the Parliament or State legislature to make laws for certain purposes specified in each in those articles, though there is no corresponding entry in the corresponding list indicating the field of such legislation.

183. The judgment of the Supreme Court in case of ***Ambika Prasad Mishra vs. State of U.P.*** (supra) relied upon by the learned senior counsel for the petitioner would not assist the case of the petitioner. The Supreme Court in the said judgment has held that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority "merely because it was badly argued, inadequately considered and fallaciously reasoned". The

judgment of the Nagpur Bench of this Court in case of ***M/s. Anshul Impex Private Ltd.*** (supra) is not distinguished by the learned Advocate General on the ground that it was badly argued or inadequately considered or fallaciously reasoned. Be that as it may, the said judgment is not binding on the Full Bench of this Court.

184. Insofar as judgment of the Supreme Court in case of ***ECGC Limited Vs. Mokul Shriram EPC JV*** (supra) relied upon by the learned senior counsel for the petitioner is concerned, the Supreme Court considered the issue as to whether the appeal would be governed under the provisions of the Consumer Protection Act, 2019 or under the erstwhile 1986 Act. In the said judgment, the Supreme Court considered the argument of the learned counsel for the State that until actual assessment is made, there can be no lis and therefore, no right of appeal can accrue before that date. The Supreme Court observed that when assessee files a return, the lis may not immediately arise. The authority may assess the return under section 11 of the 1947 Act, but if the authority is not satisfied as to the correctness of the return and call for evidence, the controversy arises. The said judgment is distinguishable on facts.

185. The Division Bench of this Court in the judgment delivered on 19th June, 2017 in ***Writ Petition No. 4315 of 2016*** in case of ***Haresh Nagindas Vora vs. Union of India & Anr.*** and in companion petition considered the challenge to the constitutional validity of section 129E of the Customs Act, 1962 and the Finance Act No.2 of 2014 prescribing a mandatory pre-deposit for filing an

appeal before the Tribunal or the Commissioner (Appeals). The petitioners therein had raised various grounds including the ground that the said section 129E of the Customs Act, 1962 was discriminatory and violative of Articles 14, 19 and 21 of the Constitution of India and has taken away the powers earlier conferred on the appellate authority to waive the pre-deposit, upon forming an opinion that a pre-deposit would cause undue hardship.

186. The respondents revenue had placed reliance on various judgments of Division Bench of this Court in case of ***Nimbus Communications Ltd. Vs. Commissioner of Service Tax, Mumbai – IV*** (supra). The Division Bench of this Court after construing the pre-amended section 129E and the amended section held that prior to the amendment, in view of the powers and discretion conferred with the appellate authority to waive/dispense with the pre-deposit, substantial time was expended on the adjudication of such applications and in deciding issues, as to whether, the contention of the applicant in the stay application, of an undue hardship is being caused, could be accepted to grant an appropriate waiver.

187. It is held that resultantly, orders on the stay application generated further litigation before the higher forums taking a toll on the valuable time of the tribunal delaying the adjudication of the appeals. This undoubtedly caused a serious prejudice to the parties before the Tribunal. It is held that the aim of the amended provision is also to curtail litigation which had assumed high proportions, leaving no time to the appellate authorities to devote the same to

important issues. Considering these hard realities and to have a expeditious disposal of the statutory appeals which undoubtedly is a necessary requirement of effective trade, commerce and business, the Parliament in its wisdom amended the provisions of section 129E of providing deposit of 7.5% and 10% respectively as sub-clauses (i), (ii) and (iii) respectively provide.

188. It is held that if such is the aim and insight behind the provision, it certainly cannot be held to be unreasonable, onerous, unfair or discriminatory for two fold reasons. Firstly, the object of a public policy sought to be achieved by the amendment, namely speedy disposal of the appeals before the appellate authorities is a laudable object and cannot be overlooked, so as to label the provision as unreasonable and onerous and violative of Article 14 of the Constitution. Secondly that the amount which is required to be deposited is not unreasonable from what the earlier (pre amended) regime provided.

189. This Court in the said judgment also rejected the submission of the petitioner that the said amended provision was rendered discriminatory as it creates two different classes when it mandates pre-deposit of duty demanded or penalty imposed or both, and more particularly when penalty cannot be considered to be a revenue as it is not a tax requiring it to be safeguarded. This Court also noticed that even the pre-amended provision stipulated for a deposit in case of appeals from orders levying penalty. This Court adverted to the judgment of Supreme Court in case of ***Vijay Prakash***

D.Mehta and Jawahar D.Mehta vs. Collector of Customs (Preventive), Bombay, AIR 1988 SC 2010 in which it was held that right to appeal is a statutory right and not an absolute right, which can be circumscribed by the conditions in the grant. Similar view is also taken by the Supreme Court in case of ***Nand Lal Vs. State of Haryana, AIR 1980 SC 2097*** and in case of ***Anant Mills Co. Ltd. vs. State of Gujarat & Ors., AIR 1975 SC 1234***.

190. This Court in the said judgment held that by virtue of section 129E, the right to appeal as conferred under the said provision is a conditional right, the legislature in its wisdom has imposed a condition of deposit of a percentage of duty demanded or penalty levied or both. The fiscal legislation as in question can very well stipulate as a requirement of law of a mandatory pre-deposit as a condition precedent for an appeal to be entertained by the appellate authority and thus section 129E of the Customs Act cannot be held to be unconstitutional on the ground as assailed by the petitioner therein.

191. This Court also adverted to the judgment of the Madras High Court in case of ***M/s.Dream Castle*** (supra) and the judgment of the Allahabad High Court in a case of ***Ganesh Yadav Vs. Union of India*** (supra) which are relied upon by the learned Advocate General in support of his rival contention. This Court dismissed the said writ petition impugning the constitutional validity of section 129E of the Customs Act on the similar grounds.

192. In the facts of this case also, under unamended section

26(6) of the MVAT Act, there was no condition prescribed that the Appellate Authority or the Tribunal as the case may be was bound to admit the appeal and to grant stay without imposing any condition for deposit of the part or whole of the disputed amount by the appellant. In our view, the right of appeal which was already provided under section 26 of the MVAT Act has been protected and is not taken away by virtue of sections 6A, 6B and 6C inserted in the said section 26(6) or by inserting explanation to section 26(6C) of the MVAT Act but is only made conditional. The principles laid down by the Division Bench of this Court in case of ***Haresh Nagindas Vora*** (supra) apply to the facts of this case. We do not propose to take a different view in the matter.

193. A perusal of the judgment of the Nagpur Bench of this Court in case of ***M/s. Anshul Impex Private Ltd.*** (supra) indicates that the implications of the words used in Section 26(6A) expressing clear intention of the legislature to make the right of appeal conditional and not taking away the vested right of filing an appeal by the assessee, has not been considered by the Division Bench in the said judgment. The decision in the said judgment proceeds on the ground that the appeal is governed by the legal position on the date of order of assessment. Though the Division Bench of this Court in the said judgment has taken note of the decisions of the Supreme Court in case of ***Hoosein Kasam Dada (India) Ltd.*** (supra) ***and Garikapatti Veeraya vs. N.Subbaiah Choudhary, AIR 1957 SC 5***, which refers to the right of the legislature to curtail the right of appeal or make it conditional, does

not comment on this aspect.

194. In the facts of this case, the petitioner has not made out the case of legislative incompetence on the part of the State Government to make the amendment to the provisions of the MVAT including the explanation inserted to section 26(6B). In our view, the State of Maharashtra has legislative competence to enact the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017 and the Maharashtra Tax Laws (Amendment and Validation) Act, 2019 to amend the provisions of the Maharashtra Value Added Tax Act, 2002 to incorporate a condition/modifying the earlier condition for entertaining an appeal for a mandatory pre-deposit for filing appeals against the assessment orders pertaining to all the goods after 16th September 2016 that is post 101 Constitutional Amendment Act, 2016.

195. The explanation to section 26 of the MVAT Act introduced by the Maharashtra Tax Laws (Amendment and Validation) Act, 2019 does not take away the right of the assessee to file an appeal without statutory deposit in respect of the orders passed for the assessment year prior to 15th April, 2017. The said explanation also does not nullify the decision of the Division of this Court of Nagpur Bench in case of ***M/s. Anshul Impex Private Ltd.*** (supra).

196. In our view, the decision of the Nagpur Bench of this Court in case of ***M/s. Anshul Impex Private Ltd.*** (supra) holding down that ‘right of filing appeal accrues on the date of order of

assessment and requirement of mandatory pre-deposit introduced by way of amendment does not apply to the orders passed in the assessment years prior to 15th April, 2017', is not a correct proposition since the right of appeal can be made conditional by the Legislature with express indication.

197. We accordingly answer the question of law referred to Full Bench as under :-

(i) Question of Law (a) i.e."*whether the State of Maharashtra has legislative competence to enact the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017 and the Maharashtra Tax Laws (Amendment and Validation) Act, 2019 to amend the provisions of the Maharashtra Value Added Tax Act, 2002 to incorporate mandatory pre-deposit for filing appeals against the assessment orders pertaining to all the goods after 16th September 2016 that is post 101 Constitutional Amendment Act, 2016?"* **is answered in affirmative and in favour of the Revenue.**

(ii) Question of Law (b) i.e."*whether Explanation to Section 26 of the MVAT Act introduced with effect from 15th April 2017 by the Maharashtra Tax Laws (Amendment and Validation) Act, 2019 takes away the right of the assessee to file an appeal without statutory deposit in respect of orders passed for the assessment years prior to 15th April 2017 and whether the Explanation nullifies the decision of the Division Bench of this*

Court (Nagpur Bench) in the case of ***Anshul Impex Pvt. Ltd. Vs. State of Maharashtra*** *in Sales Tax Appeal No.2/2018?*" **is answered in negative and in favour of Revenue.**

(iii) The question of law (c) as to whether the Explanation nullifies the decision of the Division Bench of this Court (Nagpur Bench) in the case of ***Anshul Impex Pvt. Ltd. Vs. State of Maharashtra in Sales Tax Appeal No.2/2018*** **is answered in negative and in favour of the Revenue.**

(iv) Question of Law (c) i.e. "whether the decision of the Division bench in the case of ***Anshul Impex Pvt. Ltd. Vs. State of Maharashtra*** laying down that right of filing appeal accrues on the date of order of assessment and requirement of mandatory pre-deposit introduced by way of amendment does not apply to the orders passed in the assessment years prior to 15th April, 2017, is a correct proposition since the right of appeal can be made conditional by the Legislature with express indication" **is answered in negative and in favour of the Revenue and is thus declared not a good law.**

(v) It is declared that the explanation inserted in 2019 amendment w.e.f. 15th April, 2017 would apply to those orders which are passed after 15th April, 2017and not to the prior orders. All earlier orders are governed by the original provisions of Section 26(6) and not by the amendment. Both the provisions i.e. old Section 26(6) and the amendment introduced by Sub

Section 6A, 6B and 6C to Section 26 and the explanation thereto will apply and co-exist.

(vi) Office is directed to place these matters before the Division Bench having assigned these matters for passing further orders.

R. D. DHANUKA, J.

NITIN W. SAMBRE, J.

ABHAY AHUJA, J.

198. By an order dated 4th March 2022, it was made clear while closing the matter for pronouncement of judgment that ad-interim relief, if any, granted to continue till pronouncement of judgment.

199. Mr.Nankani, learned senior counsel for the petitioners seeks continuation of ad-interim order passed by this Court

200. Ad-interim order passed by this Court, if any, to continue till further order is passed by the Division bench.

R. D. DHANUKA, J.

NITIN W. SAMBRE, J.

ABHAY AHUJA, J.