

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C.) NO. OF 2020

(EXTRA ORDINARY WRIT JURISDICTION)

GAURAV YADAV & ANR. PETITIONERS
 VERSUS
 UNION OF INDIAN AND ORS ... RESPONDENTS

{ CIVIL WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA
 SEEKING A WRIT OF MANDAMUS OR ANY OTHER WRIT DIRECTING THE
 RESPONDENT NO. 1 TO CLASSIFY MASKS AND SANITIZERS AS ESSENTIAL
 COMMODITY AND TO REGULATE THEIR PRICES AND A WRIT OF
 MANDAMUS OR ANY OTHER WRIT DIRECTING THE RESPONDENT NO. 4 TO
 REDUCE THE GST RATE OF 18% ON SANITIZERS TO 5% OR 12%. }

To,

The Hon'ble Acting Chief Justice

and His Companion Justices of this

Hon'ble High Court of Delhi at New Delhi

MOST RESPECTFULLY SHOWETH

15. That by way of the instant writ petition, the Petitioners are seeking the direction of this Hon'ble Court to the Respondent No.1 to classify masks and sanitizers as Essential Commodities and regulate their prices. Also, the Petitioners are seeking a direction from this Hon'ble Court to Respondent No. 3 and 4 to reduce the GST rate of 18% on alcohol based sanitizers to 5% or 12%.
16. The Petitioners are also challenging the decisions of the Respondent No.1 of not extending the Notifications dated 13/03/2020 and 21/03/2020 after 30/06/2020 whereby the masks and sanitizers were classified as "Essential Commodities" under the Essential Commodities Act, 1955 and prices of masks and sanitizers were fixed at Rs. 8, 10, 16 and Rs. 100. As per the Petitioners, the said act of the Respondent No.1 is arbitrary, illogical and will have a vast ill impact on the conditions of the general public.

17. That the institutions/ persons likely to be affected by the orders sought in the writ petition are the Union of India, the Ministry of Consumer Affairs, Food and Public Distribution, Ministry of Health and Family Welfare, Ministry of Finance, the GST Council, and the Ministry of Home Affairs who have been impleaded as respondents in the writ petition and to the knowledge of the Petitioners, no other persons/ body/ institutions are likely to be affected by the orders sought in the writ petition.
18. That the Petitioner No.1 is a citizen of India and a law student in Lucknow University. That the Petitioner No. 2 is a citizen of India and an advocate by profession.
19. That the Respondent No.1 is the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution and is *inter-alia* responsible for the functioning and management of the Essential Commodities Act, 1955 and other consumer centric laws.
20. That the Respondent No.2 is the Ministry of Health and Family Welfare and is charged with health policy in India. The said Ministry plays a key role in guiding India's public health system.
21. That the Respondent No. 3 is the Ministry of Finance, which is concerned with taxation, financial legislation, financial institutions, capital markets, centre and state finances, and the Union Budget.
22. That the Respondent No.4 is the GST Council which is the Constitutional body to decide issues relating to GST.

23. That the Respondent No. 5 is the Ministry of Home Affairs which is responsible for s mainly responsible for the maintenance of internal security and domestic policy.

BRIEF FACTS

24. That the present Petition is being for seeking a Writ in the nature of Mandamus or any other appropriate Writ, Order, directions of like nature directing the Respondent No.1 to notify masks and sanitizers as 'Essential Commodities' under the Essential Commodities Act, 1955 and to regulate their prices and a Writ in the nature of Mandamus or any other appropriate Writ, Order, directions of like nature directing the Respondent No. 2 and 3 to reduce the GST rate of 18% on sanitizers to 5% or 12%.

Outbreak of Novel COVID-19 virus

25. That it is submitted, in the light of recent outbreak of the Novel Covid -19, advisories from healthcare professionals and institutions around the world were issued to citizens at large to continually disinfect their hands with sanitizers and soaps and cover their face with mask as a measure to stop the spread of the said disease.
26. That the World Health Organization ('WHO'), which has been tasked at evaluating the global health position and to carry out effective remedial actions in case of any infection or disease throughout the world on 11/03/2020 due to the ever increasing number of cases and the deaths caused by the said infectious diseases declared it to be a 'Pandemic'. The said declarations/press release have been attached herewith as **Annexure P-1**.
27. That Section 2A of the Essential Commodities Act, 1955 states that if the Central Government is satisfied that it is necessary so as to do in the public interest may notify a commodity as an Essential Commodity. The relevant part of section 2A is as follows:

“2A. Essential commodities declaration, etc.— (1) For the purposes of this Act, “essential commodity” means a commodity specified in the Schedule.

(2) Subject to the provisions of sub-section (4), the Central Government may, if it is satisfied that it is necessary so to do in the public interest and for reasons to be specified in the notification published in the Official Gazette, amend the Schedule so as to—

(a) add a commodity to the said Schedule;

(b) remove any commodity from the said Schedule,

in consultation with the State Governments.”

28. That Section 3 of the Essential Commodities Act 1955, provides for the control, production, supply, distribution etc. of essential commodities as follows:

(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution availability at fair prices, [or for securing any essential commodity for the defence of India or the efficient conduct of military operations], it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made there under may provide:—

(a) for regulating by licenses, permits or otherwise the production or manufacture of any essential commodity;

(b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops,

and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops;

(c) for controlling the price at which essential commodity may be bought or sold;

(d) for regulating by licenses, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;

(e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;

Notification dated 13/03/2020 issued by the Respondent No. 1 classifying masks and sanitizers as Essential Commodities

29. That the Respondent No. 1 vide the powers conferred on them under sub-section (2) of section 2A of the Essential Commodities Act, 1955 issued the Notification bearing S.O 1087(E) dated 13/03/2020 issued an Order whereby the N-95 masks and Sanitizers were treated as ‘Essential Commodity’ under the Essential Commodities Act, 1955. Also, **the said Notification was in force only till 30/06/2020**. The said Notification is annexed herewith and marked as **Annexure P-2**.

Notification dated 21/03/2020 issued by the Respondent No. 1 fixing price of masks and sanitizers at Rs. 8 and Rs. 100

30. That the Respondent No. 1 vide the powers conferred on them under section 2A and 3 of the Essential Commodities Act, 1955 issued a Notification dated 21/03/2020 bearing S. No. 1197(E) whereby the ‘Fixation of prices of masks (2 ply and 3 ply) Melt Blown non-Woven Fabric and hand sanitizers Order, 2020’ was issued to regulate the prices of masks (2 ply and 3 ply) Melt Blown non-Woven Fabric and hand sanitizers, which are used for preventing infections due to Novel Covid-19 virus. The said Order fixed the prices of the mask i.e. 2 ply masks to be priced at Rs.8 and 3 ply masks to be priced at Rs.10 and that the sanitizer bottle of 200 ml to be sold at a price of Rs 100. Also, **the said**

Notification was in force only till 30/06/2020. The said Notification has been attached herewith as **Annexure P-3**.

31. That the Respondent No. 1 issued the Notification bearing S. No. 1207(E) dated 24/03/2020 amending the Notification dated 21/03/2020 thereby fixing the retail price of 3ply surgical mask contain a layer of Melt Blown non-Woven Fabric shall not be more than Rs.16/- per piece. The said Notification bearing S. No. 1207(E) dated 24/03/2020 has been attached herewith as **Annexure P-4**.

No Extension of the Notifications dated 13/03/2020 and 21/03/2020 post 30/06/2020

32. That there has been no extension of the afore-mentioned Notifications dated 13/03/2020 and 21/03/2020 by Respondent No.1. Therefore, Post 30/06/2020, the N-95 masks and sanitizers are not classified as 'Essential Commodity' under the Essential Commodities Act, 1955 nor their price are being regulated. In other words, post 30/06/2020, the pricing, quality, production, logistics and distribution of masks and sanitizer are being handled by no authority or government.
33. That in contrast to the situation whereby masks and sanitizers have emerged as the basic necessity for every individual, the Respondent No. 1 vide the Office Memorandum bearing S-26/1/2020- ECR&E dated 01/07/2020 stated that they have decided not to continue to classify masks and sanitizers as 'Essential Commodities' as no adverse reports from the State/ Uts with respect to the price or availability to continue face masks & hand sanitizers as essential commodities. The said Office Memorandum bearing S-26/1/2020- ECR&E dated 01/07/2020 is attached herewith and marked as **Annexure P-5**.
34. That in contrast to the situation whereby masks and sanitizers have emerged as the basic necessity for every individual, the Respondent No.1 vide its Monthly Summary issued on 20/07/2020 for the Cabinet for the month of June, 2020 through Paragraph 1.5 stated that there is no shortage of masks and hand

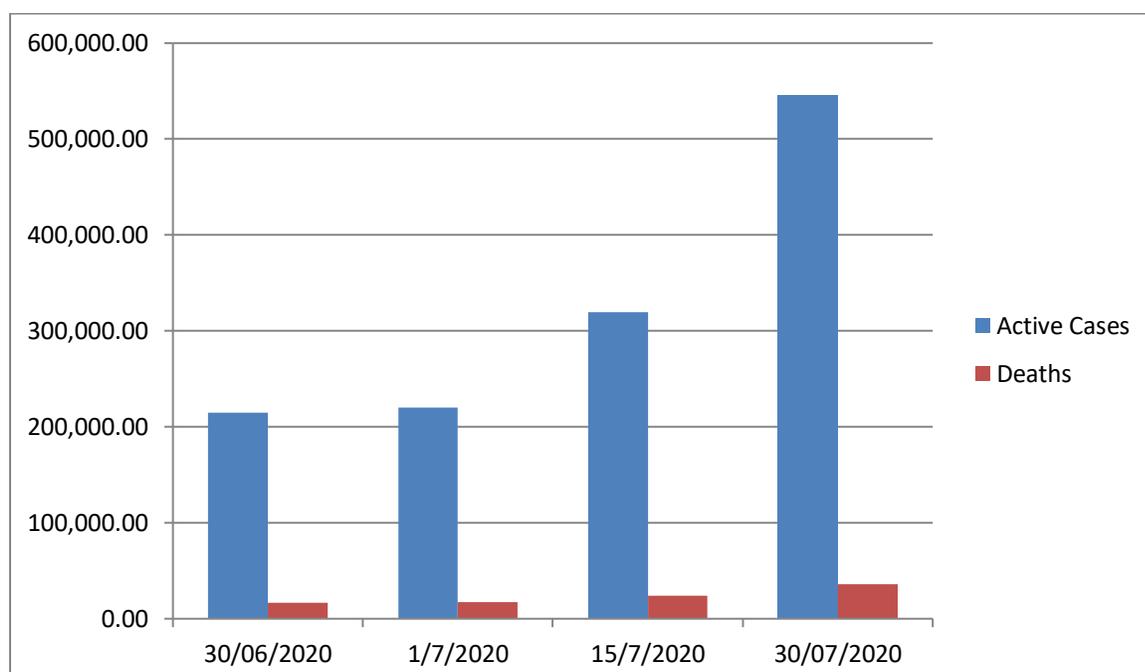
sanitizers in the country and there items are easily available in the markets. Hence, the Department has decided not to continue classification of surgical masks and sanitizers as essential commodities under the Essential Commodities Act, 1955 beyond 30/06/2020. The said Monthly Summary dated 20/07/2020 is annexed herewith and marked as **Annexure P-6**.

Continuous increase in the number of daily cases in India post 30/06/2020

35. That there has been a continuous surge in the number of cases of people getting infected with the Novel Covid-19 in India. In India, there have been 5,45,318 active cases and 35,747 deaths (as of 30th July, 2020). The same has been continuously been reported by the state authorities and by various leading newspapers and media channels. The number of daily active cases and deaths as per the Arogya Setu Application are as follows:

| Time-Period | Number of daily active cases | Deaths |
|-------------|------------------------------|--------|
| 30/06/2020 | 2,15,125 | 16,893 |
| 01/07/2020 | 2,20,114 | 17,400 |
| 15/07/2020 | 3,19,840 | 24,309 |
| 30/07/2020 | 5,45,318 | 35,747 |

A graph depicting the same is as follows:



36. That it is explicitly clear from the above graph that there has been a continuous increase in the number of people dying and getting contacted by the Covid-19 Virus. The more the people are affected from the Virus, the more the nation would suffer.
37. That in such a situation, wearing of masks and using hand sanitizers have become utmost important for general public to protect themselves from contacting the Covid-19 virus.

Press Release dated 15/07/2020 issued by Respondent No. 3 stating that 18% GST would be charged and levied on alcohol based sanitizers.

38. Further, that the Respondent No. 3 vide a press release dated 15/07/2020 stated that the alcohol based sanitizers would be classified as disinfectants and GST rate of 18% (9% CGST + 9% SGST) would be levied on the same. The relevant part of the press release dated 15/07/2020 is extracted below for the ease of reference:

“It is stated that hand sanitizers attract GST at the rate of 18%. Sanitizers are disinfectants like soaps, anti-bacterial liquids, dettol etc which all attract duty standard rate of 18% under the GST regime. The GST rates on various items are decided by the GST Council where the Central Government and all the state governments together deliberate and take decisions.

It is further clarified that inputs for manufacture of hand sanitizers are chemicals packing material, input services, which also attract a GST rate of 18%. Reducing the GST rate on sanitizers and other similar items would lead to an inverted duty structure and put the domestic manufacturers at disadvantage vis-a-vis importers. Lower GST rates help imports by making them cheaper. This is against the nation’s policy on Atmanirbhar Bharat. Consumers would also eventually not benefit from the lower GST rate if domestic manufacturing suffers on account of inverted duty structure.”

39. That the rationale provided by the Respondent No.2 in the this regard *inter-alia* included that reducing the GST Rate on sanitizers would lead to a situation of inverted duty structure, wherein the input tax credit is left utilised due to output tax being lower than the input tax which would hamper the growth domestic

manufacturers vis-à-vis imports. It was further stated that it's a measure to promote the domestic manufacturers and the scheme of Atamnirbhar Bharat. The said Press Release dated 15/07/2020 is annexed herewith and marked as **Annexure P-7**.

Wearing of masks and using sanitizers has become mandatory

40. That in order to bring back the life in a normal situation, the companies, offices, workplaces etc have started opening up for work. Therefore, the workers, employees, labourers etc. have to step out of their house for work and have to follow the safety rules devised by the state authorities including wearing masks and the using hand sanitizers in factories, workplaces and offices etc.
41. That the Respondent No.2 on 04/06/2020 issued a SOP on preventive measures to contain spread of COVID-19 in offices whereby *inter-alia* the use of masks and sanitizers in offices was made mandatory. The said SOP dated 04/06/2020 is attached herewith and marked as **Annexure P-8**.
42. That considering the surge in the number of daily cases, wearing of masks has been made mandatory by various state authorities. The Health & Family Welfare Department, Government of NCT of Delhi Notification bearing No. F. 51/DGHS/PH-IV/COVID-19/prsecyhw/ 13087-336 dated 13/06/2020 notified 'The Delhi Epidemic Diseases, (Management of COVID-19) Regulations, 2020' thereby notifying the act of non-wearing a mask in public/ work places as an offence attracting fine and action under section 188 of the Indian Penal Code, 1860. The Notification bearing No. F. 51/DGHS/PH-IV/COVID-19/prsecyhw/ 13087-336 dated 13/06/2020 issued by the Government of NCT of Delhi is annexed herewith and marked as **Annexure P-9**.
43. Further, it has been reported that around 83,393 challans have been issued by the Delhi Police for not wearing masks between 15/06/2020 to 31/07/2020. The

report issued by the Economic Times is attached herewith and marked as **Annexure P-10**.

44. That the Respondent No.2 vide the Order No. 40-3/2020-DM—I(A) dated 29/07/2020 whereby the Hon'ble Union Home Secretary has notified the guidelines on **Unlock-3** which will in force till 31/08/2020. The National Directive for COVID-19 Management states that wearing of masks is compulsory in public places, in workplaces, and during transport. Further, hand wash or sanitizers have been made compulsory at entry points, exit points and common areas, failing which is a punishable act. The Order dated 29/07/2020 is annexed herewith and marked as **Annexure P-11**.

Exemption of license to sale provided in respect of Hand Sanitizer

45. That the Respondent No. 2 on being satisfied that hand sanitizers are essential to meet the requirements of emergency arising out of Covid-19 Pandemic and their easy availability to general public is necessary issued the Notification No. S.O. 2451(E) dated 27/07/2020 thereby exempting hand sanitizer as a drug from the requirement of license for its sale or stocking. The said Notification No. S.O. 2451(E) dated 27/07/2020 is attached herewith and marked as **Annexure P-12**.

Issues to be faced due to the arbitrary act of the Respondent No.1 in not extending the Notifications dated 13/03/2020 and 21/03/2020.

46. That it is submitted that keeping the masks and sanitizers out from the classification of 'Essential Commodity' under Essential Commodities Act, 1955 would increase the chances of malpractice viz. black marketing, price hiking, hoarding etc. of the said products thereby exposing every strata of the society ranging from the economically challenged citizens who due to lockdown and other restrictive steps were not able to earn their livelihood and the citizens who have started going out for work and masks and sanitizers are the primary protective gears to protect themselves from contacting the deadly novel Covid-19 virus.

47. That as per Business Standard's article dated 17/04/2020 stated that as per projections based on an analysis by researchers at the United Nations University show that, in the worst case scenario. 104 million more people in India could fall below the World Bank- determined poverty line of \$ 3.2 a day for lower-middle countries. The said article is annexed herewith and marked as **Annexure P-13**.
48. That more than a quarter of the population living in rural areas of India is below the poverty line in rural areas of India in below the poverty line. Out of the total population living in the rural parts of India, 25.7% is living below the poverty line whereas in the urban areas, the situation is a bit better with 13.7% of the population living below the poverty line.
49. That around 160 million Indians do not have access to clean water. Health experts worldwide say that basic hand washing is critical to preventing the spread of Novel Covid-19. Therefore, washing hands with clean water would not turn out to be viable option for a potent part of the general public.

Issues being faced due to high rate of 18% GST being levied on alcohol based hand sanitizer

50. That it is submitted that the high GST rate of 18% on sanitizers have led to the high prices of the sanitizers thereby becoming a non-pocket friendly necessity for citizens.
51. That a sanitizer is a primary product that is being used by the citizens to keep themselves safe but if the price of the said sanitizer is kept high due to the high rate of GST then that product would not be a buyable item for the citizens who have to use it regularly.

Representations filed by the Petitioners before the Respondents to bring in light the present issue

52. That the Petitioners on understanding the present situation felt a need to represent the said issue before the concerned authorities. In furtherance thereto, a representation dated 01/08/2020 was filed before the Respondents explaining them the importance of masks and sanitizers and requesting them to treat masks and sanitizers as 'Essential Commodity'. It was also requested that the GST rate of 18% on alcohol based sanitizers shall be reduced to 5% or 12%. A copy of the Representations dated 01/08/2020 filed before the Respondents is annexed herewith and marked as **Annexure P-14**.
53. That no reply from the Respondents has been received by the Petitioners in regard to the afore-mentioned representations filed.
54. That the Petitioners move this Hon'ble Court in light of the abovementioned facts & circumstances under the Art. 226 of the Constitution of India.
55. That the issues being agitated in this Petition are very critical. It is submitted that the public at large is concerned with the issues in hand as the issues are concerning the fundamental rights of the every person in the country as everyone is using masks and sanitizers on a daily routine.
56. That there is no alternative for the people to avoid using masks and sanitizers as the same are treated as the frontline protective gears protecting an individual from contacting the novel Covid-19 virus.
57. That this Hon'ble Court may indulge, directing the Respondents on this issues as prayed herein. It is submitted that this Hon'ble Court, has time and again stepped

in to provide a beacon in terms of directions and has provided for such situations where one's rights are violated.

58. That the petition prefers this Writ petition, inter-alia, on the grounds, amongst which the others are;

GROUNDS

A. **The impugned action of the Respondent No.1 in not extending the Notification dated 12/03/2020 and 21/03/2020 is violative of Article 21 of the Constitution of India.**

- A.1 It is submitted that the impugned action of the Respondent No.1 in not extending the Notification dated 12/03/2020 whereby the masks and sanitizers were classified as 'Essential Commodity' under the Essential Commodities Act, 1955 and the Notification dated 21/03/2020 whereby the prices of masks and sanitizers were fixed, violates the inviolable fundamental right to life of the general public particularly the people belonging to the lower income strata that is contained in Article 21 of the Constitution of India inasmuch as it gives a leeway to the manufacturers/ traders/ retailers to start the malpractice of hoarding, black marketing etc. thereby causing harm to the general public

- A.2 It is submitted that the Hon'ble Supreme Court in the case of **Vincent Panikurlangara vs. Union of India, AIR 1987 SC 990** observed as follows:

“As pointed out by us, maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority perhaps the one at the top.”

A.3 Reliance is also placed on the judgment in the case, Hon'ble Supreme Court in the case, **Consumer Education & Research Vs Union of India, 1995 SCC (3) 42**, wherein the Hon'ble Supreme Court held as follows:

“27. Therefore, we hold that right to health, medical aid to protect the health and vigour to a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48A and all related Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person”.

A.4 Further reliance is placed on the judgment in the case of **Navtej Singh Johar v. Union of India, (2018) 10 SCC 1** held as follows:

“Article 21 does not impose upon the State only negative obligations not to act in such a way as to interfere with the right to health. This Court also has the power to impose positive obligations upon the State to take measures to provide adequate resources or access to treatment facilities to secure effective enjoyment of the right to health.”

B. The Respondent No. 1 grossly failed to understand the purpose of the Essential Commodities Act, 1955

B.1 It is submitted that the Respondent No. 1 vide the Office Memorandum dated 01/07/2020, marked as Annexure P-6 (*supra*) and the Monthly report dated 20/07/2020 marked as Annexure P-7 (*supra*) stated that the reason for discontinuing to classify masks and sanitizers as 'Essential Commodities' as notified by the Notification dated 13/03/2020 is the adequate supply of the said products. It is submitted that the **Respondent No. 1 failed to understand that only maintaining adequate supply is not the sole purpose of classifying masks and sanitizers.**

B.2 It is submitted that the Respondent No.1 vide the Notification dated 13/03/2020 issued the Essential Commodities Order, 2020 marked as Annexure P-3 (*supra*) thereby notifying masks and sanitizers as 'Essential Commodities' in pursuance of the powers conferred under sub-section (2) of section 2A of the Essential Commodities Act, 1955 to **regulate the production, quality, distribution, logistics of masks (2 ply and 3 ply surgical masks, N95 masks) & hand sanitizers.**

B.3 Therefore, It is submitted that the purpose for classifying the masks and sanitizers as 'Essential Commodities' was far more than maintaining the supply of the said products and included the act of regulating the quality, distribution, logistics etc. Hence, the Respondent No.1 grossly failed to understand the purpose of classifying the masks and sanitizers as 'Essential Commodities' under the Essential Commodities Act, 1955.

C. The Respondent No. 1 without application of mind has not continued the Notifications dated 13/03/2020 and 21/03/2020

C.1 It is submitted that the act of the Respondent No.1 in not extending the Notifications dated 13/03/2020 and 21/03/2020 is arbitrary, wrong and has been done without application of mind.

C.2 It is submitted that the Respondent No.1 while deciding to not to continue the Notifications dated 13/03/2020 and 21/03/2020 has grossly failed to take a note of the ground reality in regard to the availability and quality of masks and sanitizers.

C.3 It is submitted that a plethora of incidents have reported in the media and newspapers citing the unscrupulous trade practices of degraded quality masks and sanitizers. The relevant news articles are attached herewith and marked as **Annexure P-15.**

C.4 It is submitted that the Respondent No.1 did not continue the Notifications dated 13/03/2020 and 23/03/2020 without application of their mind inasmuch they didn't take a note of the degraded and hazardous masks and sanitizers available in the market which would anyway harm the general public who are not equipped with such technical knowledge but have to wear masks and use sanitizers as it has been made compulsory by the government.

C.5 Basis the above, it is submitted that the action of Respondent No. 1 in not extending the Notification dated 13/03/2020 and 23/03/2020 has been done without application of mind and in a haste manner.

D. The foremost purpose of the Essential Commodity Act, 1955 is to provide benefit to consumers and not the trade and industry

D.1 It is submitted that the Essential Commodity Act, 1955 is a consumer centric legislation and it provides the powers to the government to take necessary steps for the benefit of consumers and general public.

D.2 It is submitted that section 3 of the Essential Commodities Act, 1955 provides the power to Respondent No.1 to regulate the production, supply, distribution, quality of essential commodities. Section 3 of the Essential Commodities Act, 1955 is extracted herein below for ease of reference:

“3. Powers to control production, supply, distribution, etc., of essential commodities:

(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution availability at fair prices, [or for securing any essential commodity for the defence of India or the efficient conduct of military operations], it

may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by subsection (1), an order made there under may provide:—

(a) for regulating by licenses, permits or otherwise the production or manufacture of any essential commodity;

(b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops;

(c) for controlling the price at which essential commodity may be bought or sold;

(d) for regulating by licenses, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;

(e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;

D.3 It is submitted that the Hon'ble Supreme Court in the case, **Prag Ice & Oil Mills &Anr. Etc v. Union of India, 1978 AIR1296** while dealing the issue of validity of Mustard Oil (Price Control) Order, 1977 issued under the Essential Commodities Act, 1955, held as follows:

*“The dominant purpose of these provisions is to ensure the availability of essential commodities to the consumers at a fair price. And though patent injustice to the producer is not to be encouraged, a **reasonable return on investment or a reasonable rate of profit is not the sine qua non of the validity of action taken in furtherance of the powers conferred by s. 3 (1) and s. 3 (2) (c) of the Essential Commodities Act.** The interest of the consumer has to be kept at the forefront and the prime consideration that*

an essential commodity ought to be made available to the common man at a fair price must rank in priority over every other consideration.”

(Emphasis Supplied)

- D.4 In light of the above judgment and the provisions of the Essential Commodities Act, 1955, it is submitted that the Respondent No. 1 while deciding as to not to continue the Notifications dated 13/03/2020 and 21/03/2020 thereby declaring masks and sanitizers as ‘Essential Commodities’ and fixing the prices of the said products grossly failed to note that whether the intention or purpose of issuing the said Notifications have been fulfilled or not. Hence, the said action of the Respondent No.1 is wrong and has been done without application of mind.
- E. **The Press Release dated 15/11/2020 issued by the Respondent No. 3 is in direct contravention to the provisions of the Essential Commodities Act, 1955, whereby the masks and sanitizers were declared as ‘Essential Commodities’**
- E.1 Without prejudice, it is submitted that the rationale provided by the Respondent No. 3 vide their Press Release dated 15/11/2020 inter-alia included that reducing the GST rate on sanitizers and other similar items would lead to an inverted duty structure and put the domestic manufacturers at disadvantage vis-a-vis importers. Further, it was stated that reducing the GST would be against the nation’s policy on Atmanirbhar Bharat. Consumers would also eventually not benefit from the lower GST rate if domestic manufacturing suffers on account of inverted duty structure.
- E.2 It is submitted that the Respondent No.3 has acted in direct contravention to the provisions of the Essential Commodities Act, 1955 whereby the masks and sanitizers were classified as ‘Essential Commodities’ vide the Notification dated 13/03/2020.

- E.3 It is submitted that the Hon'ble Supreme Court in the case, **Prag Ice & Oil Mills & Anr. Etc v. Union of India, 1978 AIR1296 (supra)** have clearly held that the intention of the Essential Commodities Act, 1955 is to secure the interest of the consumers and the general public by maintaining the prices, supply, quality of the Essential Commodities and the interest of the manufacturers or the trade industry is not sine qua non for the action taken under Essential Commodities Act, 1955.
- E.4 It is submitted that the Respondent No. 3 also have the power under section 11 of the Central Goods and Services Tax Act, 2017 to grant exemption from tax charged and levied on sanitizers or other products, if it is necessary in public interest or as may be recommended by the Respondent No. 4.
- E.5 It is submitted that the Respondent No. 3 has the power to exempt or reduce the rate of GST on masks and sanitizers in the public interest or on the recommendation of the Respondent No. 4, which would be in consonance to the intent of the provisions of the Essential Commodities Act, 1955 where under the masks and sanitizers were declared as 'Essential Commodities'.
- E.6 Basis the above, it is submitted that the Respondent No. 3 by charging the high rate of 18% has acted in violation of the intent and purpose of classifying masks and sanitizers as 'Essential Commodities'.
- F. The retail prices of masks and sanitizers as fixed by the Notification dated 21/03/2020 is inclusive of GST. Therefore, higher the rate of GST leads to use of cheap raw material to increase the profit margins.**
- F.1 Without prejudice, it is submitted that Respondent No. 1 vide the Notification dated 21/03/2020 has fixed the prices of masks and sanitizers at Rs. 8, 10, 16 and 100.

- F.2 It is submitted that the retail prices declared by the Respondent No. 1 is inclusive of all taxes (GST etc.). Therefore, the manufacturers having malafide and ill intention to make profits on facing the high rate of GST @ 18% on hand sanitizers have been indulged in unscrupulous practices to increase their profit margins by using cheap raw materials, thereby degrading the quality of sanitizers.
- F.3 It is submitted that it would not be wrong to state that the manufacturers having malafide intent to make high profits but restricted due to 18% GST and the fixed retail price would tend to adopt the unethical practice of using degraded and cheap quality of raw material, which would eventually harm the innocent general public/ consumers using the said hand sanitizers made by those manufacturers.
- F.4 It is submitted that the sale of hazardous and degraded sanitizers has been reported vide various news agencies and media house citing the unscrupulous trade practices of degraded quality masks and sanitizers. The relevant news articles are attached herewith and marked as **Annexure P-15** (*supra*).
- F.5 Basis the above, it is submitted that the high rate of 18% GST is eventually becoming a bane for the general public/ consumers who use the degraded/ adulterated hand sanitizers made by the unethical manufactures.
- F.6 It is also submitted that the Respondent No. 1 by discontinuing the Notification dated 13/03/2020 and 21/03/2020 whereby masks and hand sanitizers were classified as 'Essential Commodities' and the prices of the said products were fixed have added to the force of worsening quality of hand sanitizers and masks as post 30/06/2020, there is no authority who would keep a check on the quality, price, production of masks and hand sanitizers.
- F.7 Further, it is submitted that the Respondent No. 5 vide the Notification No. S.O. 2451(E) dated 27/07/2020 has exempted hand sanitizer as a drug from the requirement of license for its sale or stocking, which would further deteriorate the

quality of hand sanitizers and masks as there would be no compliance or checklist, which has to be followed by the seller of hand sanitizers and masks.

G. Refund mechanism under section 54 of the CGST Act and Rules is available in regard to the tax accumulated due to inverted duty structure.

G.1 It is submitted that the Respondent No. 3 vide the press release dated 15/07/2020 has inter-ala stated that if the rate of GST on hand sanitizers is reduced from 18%, it would lead to a situation of inverted duty structure, thereby harming the interest of domestic manufacturers.

G.2 It is submitted that inverted duty structure is a structure wherein the input tax credit is accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.

G.3 It is submitted that the Respondent No. 3 vide section 54 of the CGST Act, 2017 and relevant rules has provided the refund mechanism in the case of inverted duty structure.

G.4 Therefore, without prejudice, it is submitted that if the rate of GST is reduced from 18% would be available to the manufacturers as refund as per the provisions of Section 54 of the CGST Act, 2017 and applicable rules.

G.5 Hence, the rationale given by the Respondent No. 3 vide the press release dated 15/07/2020 that domestic manufacturer would suffer due to inverted duty structure doesn't stand in front of the prevailing public interest at this time of epidemic.

H. The Respondent No. 4 has the power to restrict imports by levying customs duties.

- H.1 It is submitted that the Respondent No. 4 vide the press release dated 15/07/2020 has also stated that if the GST rate on hand sanitizers is reduced from 18%, the domestic manufacturers would be on disadvantage vis-à-vis importers of hand sanitizers.
- H.2 Without prejudice, it is submitted that the Respondent No.4 has the power to levy Basics Customs Duty and other additional duties viz. Antidumping Duty or Safeguard Duty on the imports of sanitizers under the provisions of the Customs Act and Rules to reduce and control the imports of sanitizers from other countries.
- H.3 Therefore, the reason stated by the Respondent NO. 4 vide the press release would not stand in front of the public interest which should be the foremost concern of Respondent No.4.
- I. It is submitted that the GST rate of 18% fixed and levied by Respondent No. 2 and 3 on alcohol based sanitizers violates the constitutional guarantee of the right to live with human dignity enshrined under Article 21 of the Constitution of India.
- J. It is submitted that under Section 3 of the Epidemic Act, 1897, disobeying any regulation or order made under that Act shall be punishable under Section 188 of the Indian Penal Code, 1961. Therefore, the Respondent No.45 have ample power to take such measures and by public notice prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof.
- K. Without prejudice to the above submissions, as per the reports of Mckinsey, India has suffered an estimated loss running in billions of dollars during the . Therefore, if the Government is able to tackle the said humungous loss, then the Government would also be able to absorb the meager amounts incurred on managing the

supplies, price and tax on masks and sanitizers. The relevant part of the Mckinsey report is attached herewith and marked as **Annexure P- 16**.

59. That in the aforementioned facts and circumstances it is necessary, expedient and in public interest that this Hon'ble Court may be pleased to exercise its powers under Article 226 of the Constitution of India and grant the prayers sought for in the present petition.
60. That the Petitioner has got no other equally efficacious alternative remedy for the reliefs prayed for in the Petition.
61. That the Petitioner has not previously filed a similar writ petition in this Hon'ble Court, in the Supreme Court of India or in any other High Court of India.
62. That the Petition is filed bonafide and in the interest of justice.

PRAYER

In the premises aforesaid, it is most humbly and respectfully prayed that this Hon'ble Court may be pleased to issue:

- a. An appropriate writ in the nature of Mandamus or any other appropriate Writ, Order, directions of like nature directing the Respondent No.1 to extend the Notifications dated 12/03/2020 and 21/03/2020 thereby classifying masks and sanitizers as 'Essential Commodity' under the Essential Commodity Act, 1955 and fixing the retail prices of the said products.
- b. An appropriate writ in the nature of Mandamus or any other appropriate Writ, Order, directions of like nature directing the Respondent No. 2 and 3 to reduce the GST rate of 18% on alcohol based sanitizers to either 5% or 12%.

- c. Such other and further orders and/ or directions as this Hon'ble Court may deem fit and proper in the fact and circumstances of the case.

Petitioner

Through

PLACE: NEW DELHI

COUNSELS FOR THE PETITIONERS

DATE: 03.08.2020

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