*** THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**
AND
THE HON'BLE SMT. JUSTICE P. MADHAVI DEVI

+ WRIT PETITION Nos.7893, 9550, 16527, 16853, 16896, 16903 OF 2020, 494, 7128, 7054, 9622, 10046, 11414, 11996, 12778, 15215, 15822, 15841, 15853, 15942, 17095, 17102, 17314, 17988, 18258, 20079, 20710, 20788, 21542, 22651, 22940, 23336, 23386, 24282, 25561, 27294, 27533, 28797, 29743, 32129, 32373, 32653, 32697 and 34054 OF 2021

% Date**:** 05-07-2022

M/s. Sri Sri Engineering Works and others

… Petitioners

v.

$ The Deputy Commissioner (CT), Begumpet Division, Hyderabad, and others.

… Respondents

! Counsel for the Petitioners : **Mr.S.Ravi, learned Senior Counsel, Mr.S.Dwarakanath, learned Senior Counsel, Mr.S.R.R. Viswanath, Mr.V.Bhaskar Reddy, Mr.Shaik Jeelani Basha, Mr.Karan Talwar, Mr.G.Narendra Chetty, Mr.A.V.A.Siva Kartikeya, Mr.P.Karthik Ramana, Mr.B.Srinivas, Mr.Tej Prakash Toshniwal, Mr.Pasam Mohith and Mr. Venkatram Reddy Mantur**

^ Counsel for respondents : Mr. B.S.Prasad, learned Advocate General with Mr. K. Raji Reddy

< **GIST:**

➢ **HEAD NOTE**:

? CASES REFERRED:

1. AIR 1964 SC 1729
2. 2020 82 GSTR 32 (Guj.)
3. 2020 74 GSTR 116 (Ker)
4. 2021 (10) TMI 583 (All)
5. 2021 SCC OnLine SC 706
6. (2010) 7 SCC 129
7. 2019 SCC OnLine Ker 973

8. AIR 1957 SC 699
9. (2017) 3 SCC 1
10. 2020 (1) KLT 233
11. (2011) 6 SCC 739
12. (2001) 6 SCC 356
13. (2021) 5 SCC 1
14. 2018 SCC Online Gau 1457
15. 53 ITR 231
16. (2020) 73 GSTR 235 (All)

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COMMON JUDGMENT & ORDER:
(*Per* Hon'ble the Chief Justice Ujjal Bhuyan)

Issue raised in all the writ petitions being identical, those were heard together and are being disposed of by this common judgment and order.

2. We have heard Mr.S.Ravi, learned senior counsel, Mr.S.Dwarakanath, learned senior counsel, Mr.S.R.R. Viswanath, Mr.V.Bhaskar Reddy, Mr.Shaik Jeelani Basha, Mr.Karan Talwar, Mr.G.Narendra Chetty, Mr.A.V.A.Siva Kartikeya, Mr.P.Karthik Ramana, Mr.B.Srinivas, Mr.Tej Prakash Toshniwal, Mr.Pasam Mohith and Mr. Venkatram Reddy Mantur, learned counsel for the petitioners; and Mr.B.S.Prasad, learned Advocate General for the State of Telangana along with Mr.K.Raji Reddy, learned senior standing counsel for Commercial Taxes.

3. Challenge made in this batch of writ petitions is to the constitutionality of Telangana Value Added Tax (Second Amendment) Act, 2017.

4. It is the contention of the petitioners that Telangana Value Added Tax (Second Amendment) Act, 2017 is *ultra vires* the Constitution of India and thus unconstitutional. As a corollary, prayer has been made that all notices and orders issued or passed on the strength of the extended period of limitation of six years in terms of the aforesaid amendment Act should be declared as illegal, null and void and quashed accordingly.

5. Before proceeding further and to understand the provisions in its proper perspective, it would be apposite to first advert to the Telangana Value Added Tax Act, 2005, more particularly, those provisions which have been either omitted or amended or substituted by virtue of the Telangana Value Added Tax (Second Amendment) Act, 2017.

6. The Telangana Value Added Tax Act, 2005 was initially enacted as the Andhra Pradesh Value Added Tax Act, 2005. After bifurcation of the State, insofar State of Telangana is concerned, the above enactment has been renamed as 'The Telangana Value Added Tax Act, 2005 (briefly, 'the VAT Act", hereinafter). It is an

Act to provide for and consolidate the law relating to levy of Value Added Tax (VAT) on the sale or purchase of goods in the State of Telangana and for matters connected therewith and incidental thereto.

7. Chapter V of the VAT Act deals with procedure and administration of tax, returns and assessments. It comprises of Sections 20 to 40. Section 20 deals with returns and self-assessments. As per Sub-Section (1), every dealer registered under Section 17 of the VAT Act, shall submit such return or returns along with proof of payment of tax in such manner, within such time and to such authority as may be prescribed. Sub-Section (4) says that every dealer shall be deemed to have been assessed to tax based on the return filed by him, if no assessment is made within a period of **four years** from the date of filing of the return.

8. Section 21 deals with assessments. Sub-Section (1) of Section 21 says that where a VAT dealer or a Turnover Tax (TOT) dealer fails to file a return in respect of any tax period within the prescribed period, the authority prescribed shall assess the dealer for the said period for such default in the manner prescribed.

8.1. As per Sub-Section (2), if a VAT dealer or TOT dealer submits a return along with evidence for full payment of tax, subsequent to the prescribed time the assessment made under Sub-Section (1) shall be withdrawn without prejudice to any interest or penalty leviable.

8.2. Sub-Section (3) deals with a situation where the authority prescribed is not satisfied with the return filed by the VAT dealer or TOT dealer or the return appears to be incorrect or incomplete, in which event, he shall make the assessment to the best of his judgment within **four years** of due date of the return or within **four years** of the date of filing of the return, whichever is later.

8.3. Power to conduct scrutiny of accounts is provided in Sub-Section (4) and making of assessment in the event of willful evasion of tax is dealt with in Sub-Section (5). In Sub-Section (6) the prescribed authority has been empowered to make reassessment when the assessment was made under Sub-Sections (1) to (5) and such assessment understates the correct tax liability of the dealer, within a period of **four years** from the date of such assessment. As per Sub-Section (7), where any assessment has been deferred by the Commissioner under Sub-Section (5) of

Section 32 or as the case may be, by the Appellate Tribunal under the proviso to Sub-Section (4) of Section 33 on account of any stay granted by the Appellate Tribunal or by the High Court or by the Supreme Court, or whereas appeal or other proceedings is pending before the Appellate Tribunal or the High Court or the Supreme Court involving a question of law having a direct bearing on the assessment in question, the period during which the stay order was in force or such appeal or proceeding was pending shall be excluded in computing the period of **four years or six years** as the case may be for the purpose of making the assessment.

8.4. Sub-Section (8) says that where an assessment made has been set aside by any Court or by the Appellate Tribunal, the period between the date of such assessment and the date on which it has been set aside shall be excluded in computing the period of **four years or six years** as the case may be for making any fresh assessment.

9. Section 31 provides for appeal to appellate authority. As per Sub-Section (1), any VAT dealer or TOT dealer or any other dealer objecting to any order passed or proceeding recorded by any authority under the provisions of the VAT Act, other than an order passed or proceeding recorded by an Additional Commissioner or

Joint Commissioner or Deputy Commissioner, may within 30 days from the date on which the order or proceeding was served on him, appeal to such authority in the manner prescribed. As per the first proviso, the appellate authority may admit an appeal within a further period of 30 days if he is satisfied that the appellant had sufficient cause for not preferring the appeal within the initial period of 30 days. The second proviso says that unless the appellant produces proof of payment of 12 ½% of the disputed tax, penalty, interest or any other amount, the appeal so preferred shall not be admitted by the appellate authority. Sub-Sections (2) to (6) lay down the procedure to be followed by the appellate authority; the relief that may be granted and the finality attached to such appellate order.

10. Revision by Commissioner and other prescribed authorities is dealt with in Section 32. As per Sub-Section (1), the Commissioner may *suo motu* call for and examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to him under the provisions of the VAT Act and if such order or proceeding recorded is prejudicial to the interest of revenue, may make such enquiry or cause such enquiry to be made and subject to the provisions of the VAT Act,

may initiate proceedings to revise, modify or set aside such order or proceeding and may pass such order in reference thereto as he thinks fit.

10.1. As per Sub-Section (2), such power may also be exercised by the Additional Commissioner, Joint Commissioner, Deputy Commissioner and Assistant Commissioner in the case of orders passed or proceedings recorded by the authorities, officers or persons subordinate to them. However, as per the proviso, such power shall not be exercised by the revisional authority in respect of an issue or question which was decided on appeal by the Appellate Tribunal under Section 33.

10.2. Sub-Section (3) says that in relation to an order of assessment passed under the VAT Act, the powers conferred by Sub-Sections (1) and (2) shall be exercisable only within a period of **four years** from the date on which the order was served on the dealer. However, as per Sub-Section (4), no such order enhancing any assessment shall be passed without giving an opportunity to the dealer to show cause against the proposed enhancement.

10.3 Under Sub-Section (5) the revisional authority may defer any such proceedings if an appeal or other proceeding is pending before the Appellate Tribunal or the High Court or the

Supreme Court involving a question of law having a direct bearing on the order or proceeding in question.

10.4. As per Sub-Section (6), where an order passed under Section 32 is set aside by any Court or other competent authority under the VAT Act for any reason, the period between the date of such order and the date on which it has been so set aside, shall be excluded in computing the period of **four years** specified in Sub-Section (3) for the purpose of making a fresh revision, if any.

10.5. Under Sub-Section (7), where any revisional proceedings under Section 32 has been deferred, on account of any stay order granted by the Appellate Tribunal or by the High Court or by the Supreme Court in any case, or by reason of the fact that an appeal or other proceeding is pending before the Appellate Tribunal or the High Court or the Supreme Court involving a question of law having a direct bearing on the order or proceeding in question, the period during which the stay order was in force or such appeal or proceeding was pending shall be excluded in computing the period of **four years** specified in Sub-Section (3) for the purpose of exercising the revisional power under Section 32.

11. Section 57 which finds place in Chapter VIII dealing with offences and penalties provides for penalty for unauthorized / excess collection of tax. Sub-Section (1) prohibits any dealer from collecting any sum by way of tax in respect of sale or purchase of any goods which are not liable to tax under the VAT Act.

11.1. Sub-Sections (2), (3) and (4) say that if any person collects tax in contravention of the above provision, the sum so collected shall be forfeited either wholly or partly to the Government. In addition, such a person shall be liable to pay penalty of an amount equal to the amount of tax so collected.

11.2. Sub-Section (5) says that no order of forfeiture shall be made after expiration of **three years** from the date of collection of the amount referred to in Sub-Section (4). As per the proviso, in computing the said period of **three years**, the period during which any stay order was in force or any appeal or other proceeding in respect thereof was pending, shall be excluded.

12. The Goods and Services Tax (GST) regime came to be introduced in the country by way of the Constitution (101st Amendment) Act, 2016. In this context we may advert to the relevant provisions of the Constitution (101st Amendment) Act, 2016. As per Section 2 of the aforesaid Constitution Amendment

Act, after Article 246 of the Constitution of India a new Article 246-A came to be inserted. Article 246-A reads as under:

> *"246A. Special Provision with respect to goods and services tax---*
>
> *(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.*
>
> *Explanation.---The provisions of this article, in respect of goods and services tax referred to in clause (5) of the article 279A, take effect from the date recommended by the Goods and Services Tax Council."*

12.1. As per Section 7, Article 268-A of the Constitution has been omitted.

12.2. After Article 269, Article 269-A has been inserted. Article 269-A is as under:

> *"269A. Levy and collection of goods and services tax in course of inter-state trade or commerce---*
>
> *(1) Goods and Services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.*
>
> *Explanation---For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.*
>
> *(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.*
>
> *(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under*

article 246A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce."

12.3. As per Section 10, after Clause (I) of Article 270, Clauses (1A) and (1B) have been inserted. Clauses (1A) and (1B) are as under:

"(1A) The tax collected by the Union under clause (1) of article 246A shall also be distributed between the Union and the States in the manner provided in clause (2).

(1B) The tax levied and collected by the Union under clause (2) of article 246A and article 269A, which has been used for payment of the tax levied by the Union under clause (1) of article 246A, and the amount apportioned to the Union under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2)."

12.4. Section 12 says that after Article 279 a new Article 279-A shall be inserted. Article 279-A reads as under:

"279A. Goods and Services Tax Council ---
(1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

(2) The Goods and Services Tax Council shall consist of the following members, namely:-

(a) the Union Finance Minister…….Chairperson;

(b) the Union Minister of State in charge of Revenue or Finance…… Member;

(c) The Minister in charge of Finance or Taxation or any other Minister nominated

by each State Government .....Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of the clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the State on---

(a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;

(b) the goods and services that may be subjected to, or exempted from the goods and services tax;

(c) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-state trade or commerce under article 269-A and the principles that govern the place of supply;

(d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;

(e) the rates including floor rates with bands of goods and services tax;

(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

(g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

(h) any other matter relating to the goods and services tax, as the Council may decide.

(5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonized structure of goods and services tax and for the development of a harmonised national market for goods and services.

(7) One-half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

(9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:---

(a) the vote of the Central Government shall be a weightage of one-third of the total votes cast, and

(b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of---

(a) any vacancy in, or any defect in, the constitution of the Council; or

(b) any defect in the appointment of a person as a Member of the Council; or

(c) any procedural irregularity of the Council not affecting the merits of the case.

(11) The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute---

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other side; or

(c) between two or more States,

arising out of the recommendations of the Council or implementation thereof."

12.5. Section 14 says that after Clause (12) of Article 366 a new clause being Clause (12-A) shall be inserted. Likewise after Clause 26, Clauses (26-A) and (26-B) shall be inserted.

12.6. A crucial amendment made was in the VII Schedule to the Constitution. As per Section 17 (a) in List I (Union List) for Entry 84, the following entry shall be substituted:

> *"84. Duties of excise on the following goods manufactured or produced in India, namely:---*
> *(a) Petroleum crude;*
> *(b) High speed diesel;*
> *(c) Motor spirit (commonly known as petrol);*
> *(d) Natural gas;*
> *(e) Aviation turbine fuel; and*
> (f) *Tobacco and tobacco products.";*

12.7. Entries 92 and 92 C have been omitted.

12.8. Likewise, as per Section 17 (b), in List II (State List) Entry 52 has been omitted and for the existing Entry 54 the following entry has been substituted:

> *"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."*

12.9. Section 19 says that notwithstanding anything contained in the Constitution (101st Amendment) Act, 2016, any provision of any law relating to tax on goods and services or on both in force in any State immediately before commencement of the aforesaid Act which is inconsistent with the provisions of the Constitution post such amendment 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.

13. Thus, what the Constitution (101st Amendment) Act, 2016 has done, amongst others, is that it has introduced a new article called Article 246-A and has substituted the existing Entry 54 in List II of the VII schedule to the Constitution. Clause (1) of Article 246-A starts with a *non-obstante* clause. It says that notwithstanding anything contained in Articles 246 and 254, Parliament and subject to Clause (2), Legislature of every State have power to make laws with respect to goods and services tax (GST) imposed by the Union or by such State. This is clarified in Clause (2) by saying that Parliament has the exclusive power to make laws with respect to GST where the supply of goods or of services or both takes place in the course of inter-state trade or commerce. Entry 54 of List II i.e, the State List post amendment now provides that State Legislature may make laws on 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.

14. As per Central Government Notification No.SO.2986 (e) dated 16.06.2019, the Central Government in exercise of the powers conferred by Sub-Section (2) of Section (1) of the Constitution (101st Amendment) Act, 2016, appointed the 16th day of September, 2016 as the date on which provisions of Sections 1 to 11 and 13 to 20 of the said Amendment Act would come into force.

15. Following the Constitution (101st Amendment) Act, 2016, Parliament enacted the Central Goods and Services Tax Act, 2017 (briefly, 'the CGST Act', hereinafter) to make provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith and incidental thereto. As per Section 1 (3), the CGST Act shall come into force on such date as the Central Government may by notification in the official gazette appoint. Several dates were notified by the Central Government as the date for coming into force of various sections of the CGST Act, such as, Sections 1 to 5, 10, 22 to 30, 139, 146 and 164 came into force on 22.06.2017; some sections came into force on 01.07.2017 whereas Section 52 came into force on 01.10.2018. Likewise, Parliament enacted the Integrated Goods and Services Tax Act, 2017 (IGST Act) for levy

and collection of tax on inter-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto. Like the CGST Act, Central Government notified various dates as the date for coming into force of relevant provisions of the IGST Act, such as, 22.06.2017 and 01.07.2017. Further, two more Acts were enacted by the Parliament post the Constitution (101st Amendment) Act, 2016.

16. Legislature of the State of Telangana enacted the Telangana Goods and Services Tax Act, 2017 ('TGST Act' hereinafter) to make provision for levy and collection of tax on intra-State supply of goods or services or both by the State of Telangana. TGST Act received the assent of the Governor on 25.05.2017 and was first published in the Telangana Gazette on 27.05.2017. Various provisions of the TGST Act came into force on various dates. While Sections 1 and 2 (definition clause) came into force on 22.06.2017, Section 174 which provides for repeal and saving came into force on 01.07.2017.

17. As noticed above, Section 174 provides for repeal and saving. As per Sub-Section (1), save as otherwise provided in the TGST Act, on and from the date of commencement of the TGST Act, the VAT Act amongst other Acts except in respect of goods included in

Entry 54 of the State List of the VII Schedule to the Constitution were repealed. Sub-Section (2) clarifies that such repeal would not revive anything not in force or existing at the time of such repeal or affect the previous operation of the repealed Act etc.

18. Government of Telangana in the Revenue (Commercial Taxes-II) Department issued G.O.Ms.No.107 dated 24.06.2017 directing publication of a notification in the gazette appointing 22.06.2017 as the date on which provisions of Sections 1 to 5, 10, 22 to 30, 139, 146 and 164 of the TGST Act would come into force. Likewise, G.O.Ms.No.123 dated 30.06.2017 was issued whereby it was notified that 01.07.2017 would be the appointed date for coming into force various provisions of the TGST Act including Section 174.

19. Telangana Ordinance No.2 of 2017 was promulgated by the Governor on 17.06.2017 to further amend the VAT Act. Preamble to the Ordinance says that Government of India had enacted the CGST Act and Government of Telangana had enacted the TGST Act. Both the Acts had not been brought into force. Though the VAT Act was repealed by the TGST Act, the same was yet to be brought into force. It was mentioned that such repeal would not affect any investigation, inquiry, verification including scrutiny

and audit assessment proceedings etc, which may be instituted, continued or enforced, whereafter tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if those Acts had not been so amended or repealed. That apart, such repeal would not affect any proceedings, such as, appeal, revision, review or reference which shall be continued under the amended Acts or repealed Acts. It was also mentioned that it was considered necessary to strengthen certain provisions of the VAT Act to overcome any limitations to help effective revenue realization besides preventing leakages. Accordingly, it was decided to amend the relevant provisions of the VAT Act by undertaking legislation. Since it was decided to give effect to the above decision immediately and since the Legislature was not in session, and as the Governor of Telangana was satisfied that circumstances exist which rendered it necessary for him to take immediate action; therefore, in exercise of the powers conferred by Clause (1) of Article 213 of the Constitution of India, the Governor promulgated Telangana Ordinance No.2 of 2017 called the Telangana Value Added Tax (Amendment) Ordinance, 2017, which came into force with immediate effect i.e., 17.06.2017. By the said amendment, certain provisions of the VAT Act, such as, in Section 20 (4), Section 21 (3), (4), (6), (7) and (8), Section 32 (3),

(6) and (7) and in Section 57, the words 'four years' or 'four years or six years' or 'three years' stood substituted by the words 'six years'.

20. Telangana Legislature enacted the Telangana Value Added Tax (Second Amendment) Act, 2017. It received the assent of the Governor on 29.11.2017, and was first published in the Telangana Gazette on 02.12.2017. The Telangana Value Added Tax (Second Amendment) Act, 2017 has been enacted to further amend the VAT Act. As per Section 1 (2), the Telangana Value Added Tax (Second Amendment) Act, 2017 (briefly, 'the Second Amendment Act', hereinafter) has come into force with effect from 17.06.2017. Basic thrust of the Second Amendment Act is to extend the limitation of four years to six years. Accordingly, in Section 20 (4) and in Section 21 (3), (4), (6), (7) and (8), the words 'four years' or 'four years or six years' have been substituted by the words 'six years'; so also in Sub-Sections (3), (6) and (7) of Section 32. The Second Amendment Act also provides for insertion of Sub-Section (1A) after Sub-Section (1) in Section 21; besides omitting the first proviso in Sub-Section (1) of Section 31. In Section 57 (5) and the proviso thereto, the words 'three years' has been substituted by

the words ‘six years’. The Second Amendment Act reads as follows:

1. (1) This Act may be called the Telangana Value Added Tax (Second Amendment) Act, 2017.

   (2) It shall be deemed to have come into force with effect from 17.06.2017.

2. In the Telangana Value Added Tax Act, 2005 (hereinafter referred to as the Principal Act), in Section 20, in Sub-Section (4), for the words ‘four years’ the words ‘six years’ shall be substituted.

3. In the principal Act in Section 21,-

   (i) after sub-section (1), the following sub-section shall be inserted, namely,-

   “(1-A) (a) Every VAT dealer shall within such time as may be prescribed, furnish certificates of ‘Annual Consolidated Statement of Turnovers’, along with other statements as may be prescribed, duly certified by a Charted Accountant within the meaning of the Charted Accountants Act, 1949 or Sales Tax Practitioner, enrolled with the Commercial Taxes Department.

   Provided that the VAT dealer, whose turnover is less than Rs.50 lakhs per annum, may opt to submit the statements as may be prescribed, by self certification, or certified by the Sales Tax Practitioner, enrolled with the Commercial Taxes Department.

   (b) Any VAT dealer, who fails to furnish the certificates along with other statements under Clause (a) on or before the prescribed date in the manner prescribed shall be liable to pay penalty as may be prescribed.”

   (ii) In sub-section (3), for the words “four years” occurring at two places, the words “six years” shall be substituted.

   (iii) in sub-sections (4) and (6), for the words ‘four years’ the words ‘six years’ shall be substituted.

(iv) in sub-sections(7) and (8), for the words 'four years or six years, as the case may be, the words 'six years' shall be substituted.

4 In the principal Act, in section 31, in sub-section (1),-

(i) the first proviso shall be omitted;

(ii) after omitting the first proviso, in the existing proviso, for the words "provided further that" the words "provided that' shall be substituted.

5 In the principal Act, in section 32, in sub-section (3), (60 and (7), for the words 'four years' the words 'six years' shall be substituted.

6 In the principal Act, in Section 57, in sub-section (5) and the proviso thereunder, for the words 'three years', the words 'six years' shall be substituted.

7 The Telangana Value Added Tax (Amendment) Ordinance, 2017 is hereby repealed.

21. Following the Second Amendment Act, as extracted above, relevant provisions of the VAT Act would now read as under:

Section 20 (4): Every dealer shall be deemed to have been assessed to tax based on the return filed by him, if no assessment is made within a period of **six years** from the date of filing of the return.

Section 21 (3): Where the authority prescribed is not satisfied with a return filed by the VAT dealer or TOT dealer or the return appears to be incorrect or incomplete, he shall assess to the best of his judgment within **six years** of due date of the return or within **six years** of the date of filing of the return whichever is later.

Section 21 (4): The authority prescribed may, based on any information available or on any other basis, conduct a detailed scrutiny of the accounts of any VAT dealer or TOT dealer and where any assessment as a result of such scrutiny becomes necessary, such assessment shall be made within a period of **six years** from the end of the period for which the assessment is to be made.

Section 21 (6): The authority prescribed may reassess, where an assessment was already made under sub-sections (1) to (5) and such assessment understates the correct tax liability of the dealer, within a period of **six years** from the date of such assessment.

Section 21 (7): Where any assessment has been deferred by the Commissioner under sub-section (5) of Section 32 or as the case may be, the Appellate Tribunal under the proviso to sub-section (4) of Section 33 on account of any stay order granted by the Appellate Tribunal or as the case may be, the High Court or the Supreme Court respectively, or whereas appeal or other proceedings is pending before the Appellate Tribunal or the High Court or Supreme Court involving a question of law having a direct bearing on the assessment in question, the period during which the stay order was in force or such appeal or proceedings was pending shall be excluded in computing the period of **six years** as the case may be for the purpose of making the assessment.

Section 21 (8): Where an assessment made has been set aside by any Court or as the case may be the Appellate Tribunal, the period between the date of such assessment and the date on which it has been set aside shall be excluded in computing the period of **six years** as the case may be, for making any fresh assessment.

Section 31 (1): Any VAT dealer or TOT dealer or any other dealer objecting to any order passed or proceeding recorded by any authority under the provisions of the VAT Act, other than the order passed or proceeding recorded by any authority under the provisions of the VAT Act, other than the order passed or proceeding recorded by an Additional Commissioner or Joint Commissioner or Deputy Commissioner, may within 30 days from the date on which the order or proceeding was served on him, appeal to such authority in the manner prescribed.

Provided that an appeal so preferred shall not be admitted by the appellate authority concerned unless the dealer produces proof of payment of tax, penalty, interest or any other amount admitted to be due, or of such installments as have been granted, and the proof of payment of twelve and half percent of the difference of the tax, penalty, interest or any other amount, assessed by the authority prescribed and the tax, penalty, interest or any other amount admitted by the appellant, for the relevant tax period, in respect of which the appeal is preferred.

Section 32 (3): In relation to an order of assessment passed under the Act, the powers conferred by sub-sections (1) and (2) shall be exercisable only within a period of **six years** from the date on which the order was served on the dealer.

Section 32 (6): Where an order passed under this Section has been set-aside by any court or other competent authority under the Act for any reason, the period between the date of such order and the date on which it has been so set-aside shall be excluded in computing the period of **six years** specified in sub-section (3), for the purpose of making a fresh revision, if any, under this Section.

> Section 32 (7): Where any proceeding under this Section has been deferred on account of any stay order granted by the Appellate Tribunal or the High Court or Supreme Court in any case, or by reason of the fact that an appeal or other proceeding is pending before the Appellate Tribunal or the High Court of the Supreme Court involving a question of law having a direct bearing on the order or proceeding in question, the period during which the stay order was in force or such appeal or proceeding was pending shall be excluded in computing the period of **six years** specified in sub-section (3), for the purposes of exercising the power under this Section.
>
> Section 57 (5): No order for the forfeiture under this section, shall be made after the expiration of **six years** from the date of collection of the amount referred to in sub-section (4).

22. According to the petitioners, State of Telangana was denuded of legislative competence to enact the Second Amendment Act after the Constitution (101st Amendment) Act, 2016 and after enactment of the CGST Act and TGST Act.

23. To appreciate the challenge, it may be useful to place the factual context. Randomly facts of two cases are taken up for consideration. In W.P.No.7054 of 2021 M/s. Rahul Trading Company is the petitioner. Petitioner is a proprietary concern carrying on the business in paddy. For the tax period 01.04.2010 to 27.03.2015, Commercial Tax Officer had completed audit assessment proceedings on 31.03.2015, upon authorization made by the Deputy Commissioner, Commercial Tax under the VAT Act. However, much later, the Deputy Commissioner, Commercial Tax in exercise of powers under Section 32 (2) of the VAT Act *suo-motu* proposed to revise the original audit assessment proceedings. In

this connection, show cause notice was issued on 30.11.2019 stating that on scrutiny of assessment records it was found that petitioner had imported 71 metric tons of Basmathi Rice valued at Rs.60,35,000.00 which was neither reported by the petitioner in the returns nor subjected to assessment. Therefore, the assessment order dated 31.03.2015 was found to be prejudicial to the interest of revenue. Accordingly a view was taken that revision under Section 32 (2) of the VAT Act was warranted.

24. Petitioner filed explanation on 17.12.2019. It was followed by subsequent letters seeking certain information on the allegation made.

25. It is contended that without considering the explanation of the petitioner and without providing an opportunity of personal hearing, Deputy Commissioner, Commercial Tax passed the order dated 14.09.2020 confirming the revision proposed in the show cause notice.

26. It is this order which is impugned in W.P.No.7054 of 2021.

27. Amongst the various grounds urged by the petitioner, it is contended that the assessment order is dated 31.03.2015. Therefore, the revisional order ought to have been passed within

four years i.e., on or before 30.03.2019, in terms of Section 32 (2) of the VAT Act. However, the revisional order was passed on 14.09.2020 which is beyond four years but within six years. In so far the Second Amendment Act is concerned, it is contended that the said amendment is not valid in the eye of law as it was made after the GST regime had come into effect. Therefore, the extended period of limitation of six years instead of four years was not available to the Deputy Commissioner.

28. Deputy Commissioner, Commercial Tax, re-designated as Joint Commissioner (State Tax) has filed counter affidavit. After making averments on merit, it is contended that the Deputy Commissioner was justified in passing the revisional order under Section 32 (2) of the VAT Act. Due notice was given to the petitioner. Information required by the petitioner were sought for from the Regional Vigilance and Enforcement Officer but the same was not received. As such those could not be furnished to the petitioner. Nonetheless, petitioner also did not submit any details/documents, books of accounts etc., in his defence.

29. It is stated that Section 32 was amended and limitation for revision has been extended from four years to six years with effect from 17.06.2017 by the Ordinance dated 17.06.2017 which was

replaced by the Second Amendment Act which is in force. Therefore, contention of the petitioner that the amendment was carried out during GST regime lacking legal sanctity has been denied. The impugned notice and revisional order were passed within the limitation period of six years. Therefore, those are legal and valid.

30. In its reply affidavit petitioner has stated that the limitation as per Section 32 of the VAT Act is only four years. Original assessment order having been passed on 31.03.2015, the revisional order ought to have been made on or before 30.03.2019, whereas the impugned order of revision is dated 14.09.2020; thus, being barred by limitation. The Second Amendment Act extending limitation from four years to six years is contrary to the Constitution (101st Amendment) Act, 2016.

31. In W.P.No.7893 of 2020, petitioner is a partnership firm engaged in the business of manufacturing different kinds of plant and machinery etc. Petitioner was registered as a dealer under the then Andhra Pradesh General Sales Tax Act, 1957 and thereafter under the Andhra Pradesh Value Added Tax Act, 2005. After bifurcation of the State, petitioner continued as a registered VAT dealer under the VAT Act. For the period from 01.04.2010 to

31.10.2011, covering the entire financial year 2010-2011 and partly the financial year 2011-12 petitioner filed returns under the VAT Act. After availing the input tax credit to which it was entitled, it paid the taxes due at the prescribed rate.

32. Commercial Tax Officer conducted audit and on completion thereof passed the assessment order dated 24.03.2014.

33. Deputy Commissioner, Commercial Tax issued pre revision show cause notice dated 09.11.2017 proposing to revise the assessment made by the Commercial Tax Officer and to levy additional tax of Rs.1,03,26,998.00 on the grounds mentioned therein.

34. Petitioner filed detailed reply dated 06.03.2018 to the pre revision show cause notice. However, the Deputy Commissioner did not consider such reply of the petitioner and passed the revisional order on 05.03.2020 levying additional tax of Rs.1,03,26,998.00 by imposing tax at a higher rate. Following the revisional order, the assessing authority passed the consequential order dated 07.03.2020 giving effect to the revisional order.

35. Aggrieved, present Writ Petition has been filed.

36. It is contended that under Sub-section (3) of Section 32 of the VAT Act, limitation prescribed for passing revisional order was four years from the date of service of the original order sought to be revised. Referring to the Second Amendment Act, it is stated that by the aforesaid amendment, the period four years appearing in Sub-section (3) of Section 32 amongst other provisions was substituted by the period six years. In other words, the limitation period to complete the revision was extended from four years to six years. Since the original assessment order was passed and served on 24.03.2014, as per the four years limitation period the last date for passing order of revision was 23.03.2018 but the impugned order was passed on 05.03.2020. Referring to the amended provision extending limitation to six years, it is stated that the last date as per the amended provision was 23.03.2020. If the Second Amendment Act is held to be un-constitutional, the additional two years of limitation would not be available to the respondents and consequently the revisional order dated 05.03.2020 would be beyond limitation. It is in that context that *vires* of the Second Amendment Act has been put to challenge.

37. Therefore, petitioner seeks a declaration that the Second Amendment Act is un-constitutional and consequently to declare

the revisional order dated 05.03.2020 as being barred by limitation and thereafter to quash the same as well as the consequential order dated 07.03.2020.

38. Likewise, in all the Writ Petitions forming part of the present batch, the challenge is either to the revisional order passed during the extended period of limitation or to the notices to show cause issued during the extended period of limitation of six years as to why the orders of assessment should not be revised. Additionally, constitutionality of the Second Amendment Act has been questioned.

39. Let us now briefly highlight the submissions made by learned counsel for the parties. Leading the arguments on behalf of the petitioners, Ms. S.Ravi, learned senior counsel, has at the outset, referred to what he termed as the 'list of important dates'. He pointed out that on 08.09.2016 the Constitution (101st Amendment) Act, 2016 (referred to hereinafter as 'the Constitution Amendment Act') received the assent of the President and was published in the official gazette. 16.09.2016 was the appointed date when various provisions of the Constitution Amendment Act came into force. He then referred to 27.05.2017 when the Telangana State Legislature enacted the TGST Act while repealing

the VAT Act except for the goods listed in Entry 54 of List II of the VII Schedule. Ordinance No.2 of 2017 was promulgated by the Governor of Telangana under Article 213 of the Constitution of India on 17.06.2017 whereby limitation was extended from four years to six years. 01.07.2017 is the date on and from which TGST Act became enforceable. Section 174 of the TGST Act repealed the VAT Act in respect of all goods except those mentioned in the substituted Entry 54 of the State List. On 29.11.2017 the Second Amendment Act received the assent of the Governor whereafter it was published in the Telangana Gazette on 02.12.2017 giving retrospective effect from 17.06.2017.

40. Mr. S.Ravi, learned senior counsel, submits that prior to the Constitution Amendment Act coming into force, States had legislative competence to levy Value Added Tax (VAT) on sales of all goods except newspapers in the course of intra-State trade pursuant to Article 246 of the Constitution read with Entry 54 of List II of the VII Schedule. Constitution Amendment Act has amended the Constitution of India to redistribute the legislative powers to give effect to the new GST regime based on cooperative federalism-pooled sovereignty. The Second Amendment Act was adopted on 02.12.2017 with retrospective effect from 17.06.2017

enlarging the period of limitation more particularly under Sections 21 and 32 of the VAT Act from four years to six years. He submits that after the Constitution Amendment Act, State of Telangana did not have the legislative competence to enact the Second Amendment Act for all goods either on the basis of the erstwhile legislative scheme prior to the Constitution Amendment Act or on the basis of Article 246 read with Entry 54 of List II, as amended, or under Article 246 A or in terms of Section 19 of the Constitution Amendment Act or on the principle of pooled sovereignty or on the basis of Ordinance No.2 of 2017 or in terms of Section 174 of the TGST Act.

41. Elaborating on the above aspect, Mr. Ravi submits that the Second Amendment Act seeks to retrospectively amend the VAT Act to enlarge the limitation period with retrospective effect to assess tax in respect of those assessment years when it had legislative competence to impose VAT on all goods except newspapers. However, he points out that the Second Amendment Act was passed on 02.12.2017 after the date of enforcement of the Constitution Amendment Act. Referring to a decision of the Supreme Court in **A.Hajee Abdul Shukoor Vs. State of Madras**[1]

[1] **AIR 1964 SC 1729**

he submits that though the State Legislature is competent to enact laws having retrospective operation, its competence to make a law for a certain past period depends on its present legislative power and not on what it possessed at the period of time when its enactment is to have operation. On 02.12.2017 State of Telangana did not have the legislative competence to enact the Second Amendment Act.

42. Proceeding further he submits that there is no savings clause in the Constitution Amendment Act saving legislative competence of the State based on the erstwhile distribution of legislative powers. He submits that Section 6 of the General Clauses Act, 1897 does not apply to the provisions of the Constitution of India since Constitution of India is not an enactment. In this connection, learned senior counsel has placed reliance on a division bench decision of the Gujarat High Court in **Reliance Industries Limited Vs. State of Gujarat**[2]. Therefore, the State cannot rely upon the erstwhile legislative scheme reflected in pre-amended Entry 54 of List II prior to 16.09.2016 for legislative competence on the ground that the Second Amendment Act is retrospective and intended to deal with VAT demands prior

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[2] **2020 82 GSTR 32 (Guj.)**

to the coming into force of GST. Thus, Section 6 of the General Clauses Act, 1897 cannot be pressed into service to save the pre-amended Entry 54 of List II.

43. While on legislative competence, Mr. Ravi submits that after the Constitution Amendment Act, Entry 54 of List II is confined to only five petroleum products and alcohol for human consumption. States have lost legislative competence after 16.09.2016 to make laws imposing VAT on other goods i.e., goods generally. To support his above submission, learned senior counsel has placed reliance on the following decisions:

> **Reliance Industries Limited Vs. State of Gujarat (2 supra)**,
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> **Hindalco Industries Limited Vs. State of Kerala[3],** and
>
> **Jain Distillery Private Limited Vs. State of U.P[4].**

44. According to him, there is no provision in the Constitution Amendment Act which postpones or dilutes the effect of amendment in Entry 54 List II of VII Schedule. On and from 16.09.2016, the State Legislature is competent to make laws providing for tax on sale of alcoholic liquor for human consumption and a range of petroleum products only but not

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[3] **2020 74 GSTR 116 (Ker)**
[4] **2021 (10) TMI 583 (All)**

goods in general. If this distinction is not adhered to, the Constitution Amendment Act would become otiose. Thus, the Second Amendment Act could not have been enacted for all goods. If the constitutionality of the Second Amendment Act is to be saved, then it has to be read down as applying only to the five petroleum products and alcohol for human consumption.

45. Adverting to Article 246 A of the Constitution of India, as inserted by the Constitution Amendment Act, he contends that under Article 246A simultaneous power is available to both Parliament and State Legislatures to legislate regarding taxes on supply of goods and services. Elaborating on this aspect, he has placed reliance on the decision of the Supreme Court in **Union of India Vs. VKC Footsteps India Pvt. Limited[5].** He also refers to the decision of the Gujarat High Court in **Reliance Industries Limited (2 supra)**. According to him, Article 246A requiring simultaneous legislation by both Parliament and State Legislatures is based on the principle of pooled sovereignty / cooperative federalism. Further, he submits that all such legislations must be based on recommendations of the GST Council. Therefore, he contends that legislative competence of

[5] **2021 SCC OnLine SC 706**

Telangana State Legislature for enacting the Second Amendment Act cannot flow from Article 246A.

46. Mr. Ravi also highlighted the transitional provisions contained in Section 19 of the Constitution Amendment Act and points out that the said provision is in *pari materia* to Article 243-ZF of the Constitution which was brought in as a transitional provision regarding the law relating to municipalities inserted by Part IXA of the Constitution of India. Relying upon the decision of the Supreme Court in **Bondu Ramaswamy Vs. Bangalore Development Authority[6],** he submits that Section 19 only suspends constitutional invalidity or postpones such invalidity for a period of one year to enable the competent legislatures to remove the inconsistency by amending or repealing such law to bring them in consonance with the post amended provisions. Object of such transitional provision is to provide for a transition by suspending invalidity of inconsistent legislation for a period of one year to enable the competent legislatures to amend / repeal their laws to bring them in consonance with post amended provision. Therefore, Section 19 of the Constitution Amendment Act does not eclipse the amendment to Entry 54 of List II or confer legislative

[6] **(2010) 7 SCC 129**

competence upon the State for making amendments to the VAT Act *qua* goods other than alcohol for human consumption and the five petroleum products. Therefore, what Section 19 provides is that the State can continue to levy tax under the VAT Act for the window period of one year or till the VAT Act is amended or repealed whichever is earlier. This transitional provision does not enable the States to make amendments to the VAT Act in contravention of the amended Entry 54 of List II. He submits that Section 19 of the Constitution Amendment Act cannot be understood as a source of legislative power, nor as a saving provision in respect of legal competence to amend the VAT Act. To buttress this point he has pressed into service the division bench decision of the Gujarat High Court in **Reliance Industries Limited (2 supra)**. According to him, even the single bench of Kerala High Court in **Sheen Golden Jewels (India) Pvt. Limited Vs. State Tax Officer**[7] has taken similar view though the said decision is relied upon by the respondent.

47. Even assuming but not admitting that Section 19 empowers the State Legislatures to make amendments to the VAT Act in respect of assessment limitation for all goods in general as if Entry

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[7] **2019 SCC OnLine Ker 973**

54 had not yet been amended, even then also the Second Amendment Act having been passed on 02.12.2017 was beyond the one year period in terms of Section 19 of the Constitution Amendment Act and therefore invalid.

48. Mr. Ravi further submits that legislative competence cannot be derived on a general principle of sovereignty without any constitutional provision providing for such legislative competence. He submits that Article 246 read with Entry 54 of List II, Article 246A and Section 19 of the Constitution Amendment Act have inbuilt restrictions regarding the subjects in respect of which the State Legislatures can legislate.

49. Turning his attention to Ordinance No.2 of 2017, he submits that legislative competence must be traceable from the Constitution. It cannot flow from a previous piece of legislation. Thus any reliance placed on the Ordinance to support legislative competence of the Second Amendment Act would be wholly misplaced. As a matter of fact, the Ordinance was promulgamated on 17.06.2017 within the one year window period permissible under Section 19 of the Constitution Amendment Act. However, that by itself will not confer competence on the State Legislature to enact the Second Amendment Act which was passed after expiry

of the one year window period. On the day of enacting the Second Amendment Act, the State Legislature had lost its competence for making law in respect of other goods barring the goods mentioned in the amended Entry 54 of List II. State Legislature must have the competence both on the date of enactment i.e. 02.12.2017 and also on the day when it was brought into force retrospectively i.e. 17.06.2017.

50. Referring to Article 213 (3) of the Constitution of India he submits that the Ordinance would be *ultra vires* for the very same reason for which the Second Amendment Act is *ultra vires*. He further submits that life of the Ordinance was only six weeks from date of convening of the State Legislature. This period, he submits, was till 08.12.2017. Even assuming that the State Legislature was competent to enact and apply the Ordinance *qua* the goods not mentioned in amended Entry 54, such operation could not have continued beyond 08.12.2017 as per Article 213 of the Constitution. Clarifying the position, he submits that the Ordinance was not challenged because the Ordinance was repealed by the Second Amendment Act and is no longer in existence. Besides, the Second Amendment Act was brought into force with effect from 17.06.2017 which was the date of the

Ordinance. Thus, even for the period when the Ordinance was in existence it was the Second Amendment Act which occupied the legislative field and not the Ordinance. Therefore, any reliance placed on the Ordinance would be misplaced and the fact that the Ordinance was not challenged would have no legal bearing.

51. Finally Mr. Ravi refers to Section 174 of the TGST Act. Section 174 of the TGST Act provides for repeal and savings. It clearly says that on and from the date of commencement of the TGST Act, the VAT Act stood repealed except in respect of goods included in Entry 54 of List II of the VII Schedule. To that extent, Section 174 of the TGST Act vindicates the stand of the petitioners. Mr. Ravi submits that Section 174 of the TGST Act was brought into force with effect from 01.07.2017. The effect of repeal would be that the VAT Act with respect to all goods other than those mentioned in amended Entry 54 of List II stood obliterated and was not in existence any more on and from 01.07.2017. From 01.07.2017 the VAT Act was alive only in respect of the goods mentioned in the amended Entry 54 of List II. The same would also apply to the date 02.12.2017 when the Second Amendment Act was enacted. Therefore, the Second

Amendment Act can only be in respect of the VAT Act as existing on 02.12.2017, even if given retrospective effect from 17.06.2017.

52. Summing up his arguments, Mr. Ravi submits that both the Ordinance as well as the Second Amendment Act are unconstitutional being devoid of legislative competence. He submits that division bench of the Gujarat High Court in **Reliance Industries Limited (2 supra)** and a later single bench decision of the Kerala High Court in **Hindalco Industries Limited (3 supra)** have struck down VAT legislations enacted post 16.09.2016. He submits that he would adopt the detailed reasonings given by the bench in those two cases.

53. As a corollary to the above he submits that as the VAT Act was repealed on 01.07.2017 except for five petroleum products and alcohol for human consumption, no amendment to the repealed law is permissible. Therefore, the Second Amendment Act made on 02.12.2017 to amend the VAT Act which already stood repealed and was non-existent as on 02.12.2017 except for five petroleum products and alcohol for human consumption would be impermissible in law.

54. Mr. Viswanath, learned counsel for some of the petitioners, while adopting the arguments advanced by Mr.S.Ravi, learned

senior counsel, submits that the State Legislature passed the Telangana Goods and Services Tax Bill, 2017 on 16.04.2017. It received the assent of the Governor on 25.05.2017 whereafter the Telangana Goods and Services Tax Act, 2017 (already referred to as 'the TGST Act') was published in the Telangana Extraordinary Gazette on 27.05.2017. He thereafter submits that the Ordinance was promulgated on 17.06.2017 whereas the Second Amendment Act was made on 02.12.2017 giving retrospective effect from 17.06.2017. He submits that the Second Amendment Act is unconstitutional as the State Legislature had lost its competence to make such amendments after the Constitution Amendment Act came into force from 16.09.2016. On and from 16.09.2016 only concurrent jurisdiction could be exercised simultaneously by the Central Government as well as by the State Government insofar GST is concerned; that apart, exercise of power under Article 246 A can only be carried out on the recommendation of the GST Council.

55. Adverting to Section 19 of the Constitution Amendment Act, he submits that it is a transitional provision and a transitional provision cannot be used for unintended or oblique purpose.

56. Referring to Article 213 (3), Article 246 (3) read with Entry 54 of List II and placing reliance on **State of Bombay Vs. R.M.D. Charmarbaugwala**[8] and **Krishna Kumar Singh Vs. State of Bihar**[9]**,** he submits that both the Ordinance as well as the Second Amendment Act in their application to goods other than the five petroleum products and liquor for human consumption are void for want of power. While highlighting the difference between amendment to the Constitution and amendment to other laws, he submits that post the Constitution Amendment Act coming into effect from 16.09.2016, legislative power which flows from Entry 54 of List II ceased to have effect from 16.09.2016 in respect of goods other than the petroleum products and liquor for human consumption. Being a constitutional amendment, Section 6 of the General Clauses Act, 1897 would not be applicable. He also submits that the Ordinance and the Second Amendment Act cannot be traced to Article 246A. Further, in view of Section 174 of the TGST Act, amendment of a repealed Act is not possible. He also places reliance on **Hindalco Industries Limited (3 supra)** and **Reliance Industries Limited (2 supra)**.

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[8] **AIR 1957 SC 699**
[9] **(2017) 3 SCC 1**

57. Mr. K.P. Amarnath Reddy, learned counsel for some of the petitioners, submits that extension of limitation for making assessments, reassessments and revision under the VAT Act from four years to six years by virtue of the Second Amendment Act is not valid as the parent VAT Act was repealed following the Constitutional Amendment Act. That apart, amendment to the VAT Act for such extended limitation was made by issuance of an Ordinance under Article 213 in June, 2017, which was validated by the State Legislature in December, 2017, only after introduction of the TGST Act on 01.07.2017. Therefore, the Second Amendment Act is not sustainable in law after repeal of the VAT Act on 30.06.2017. In addition to the judgments in **Reliance Industries Limited (2 supra)** and **Hindalco Industries Limited (3 supra)**, he additionally places reliance on the decision of the Kerala High Court in **Baiju A.A. Vs. State Tax Officer[10].** Insofar Section 174 of the TGST Act is concerned, he submits that the said section only saves operation of the VAT Act with respect to the business transactions made prior to 01.07.2017.

58 Mr. B.S.Prasad, learned Advocate General for the State of Telangana, submitted that the State Legislature is competent to

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[10] **2020 (1) KLT 233**

make laws for saving the repealed Acts under Section 19 of the Constitution Amendment Act. Accordingly, Section 174 was included in the TGST Act as a measure to save the repealed Acts, including the VAT Act. He submits that Section 174 saves operation of the VAT Act in respect of transactions made prior to 01.07.2017. Insofar the VAT Act is concerned, the same was amended by the Second Amendment Act prior to the effective date of repeal by way of an Ordinance dated 17.06.2017. Article 13 (3) of the Constitution of India states that law includes Ordinance as well. Section 6 (b) of the General Clauses Act, 1897 also makes it clear that repeal of an Act shall not effect the previous operation of any enactment so repealed or anything done thereunder. According to him, reliance placed by the petitioners on the decision of the Kerala High Court in **Hindalco Industries Limited (3 supra)** and on the Gujarat High Court decision in **Reliance Industries Limited (2 supra)** would be of no assistance to the petitioners as in those cases there was no Ordinance or legislative enactment pertaining to the State VAT Acts prior to introduction of GST.

59 Elaborating further Mr. B.S.Prasad submits that the Ordinance was promulgamated by the Governor of Telangana on

17.06.2017 whereby the time limit for assessments and revisions was extended from four years to six years before annulment of VAT Act. The Ordinance became an Act i.e. the Second Amendment Act on 02.12.2017. Prior to that, the Ordinance was approved by the legislative assembly of the State of Telangana within six months from the date of the Ordinance. Referring to Article 213 (2) of the Constitution of India, he submits that an Ordinance promulgated by the Governor would have the same force and effect as an Act of the legislature unless such an Ordinance is not placed before the legislative assembly or rejected by the legislative assembly when placed before it within the stipulated time. Insofar the present case is concerned, the Ordinance was placed before the legislative assembly and the assembly approved the same. Therefore, in the light of the above constitutional provision, the limitation to make an assessment or reassessment or revision is six years and not four years. According to him, the Ordinance issued and the subsequent legislative Act for prolonging the limitation made such extension of limitation valid. Therefore, the proceedings initiated under the VAT Act in respect of the petitioners are valid, being within limitation. Insofar decision of the Kerala High Court in **Baiju AA (10 supra)** is concerned, the same would not be applicable to the facts of the

present case inasmuch as amendment to the Kerala VAT Act was made long after annulment of the Kerala VAT Act. Insofar the present case is concerned, the Ordinance was promulgated prior to 01.07.2017 when the VAT Act was still in force.

60 Mr. Prasad, learned Advocate General, asserts that Telangana State was competent to promulgate the Ordinance on 17.06.2017 and thereafter to pass the Second Amendment Act on 02.12.2017 in respect of goods not covered by amended Entry 54 of List II. Power and competence of the State in this regard is traceable to Article 246 of the Constitution read with Section 19 of the Constitution Amendment Act; the savings provision in Section 174 of the TGST Act; Article 246A of the Constitution; and Sections 8 and 8A of the Telangana General Clauses Act, 1891.

61 Mr. Prasad submits that State is only securing and protecting the revenue due to it by enlarging the duration by which the dealers can be assessed etc., but not imposing any new tax or levy. Legislation being a sovereign function of the State, thus, the Second Amendment Act cannot be questioned as being without competence.

62 State has the power to enforce the Second Amendment Act with retrospective effect. State has the power to even take away

vested rights of the assessees i.e. even where assessments become barred by time under the pre-amended provision. State can enlarge the limitation even for such time barred assessments and take away vested rights. Looked at from this perspective, the Second Amendment Act cannot be said to be arbitrary, not to speak of being manifestly arbitrary.

63 Provisions for enlarging time limitation on assessments etc., are only procedural aspects of levy and assessment of tax. These are not substantive provisions. Assessing Officers are competent to adjudicate on limitation since it is a mixed question of fact and law.

64 Referring to **Hindalco Industries Limited (3 supra)**, he submits that decision of the Kerala High Court, as expressed in the said case, is distinguishable. In the said decision, Kerala High Court did not deal with the effect of Section 19 of the Constitution Amendment Act and the savings provision under the State GST Act. As a matter of fact, State of Kerala had enacted the impugned law after the permissible window period of one year allowed under Section 19 of the Constitution Amendment Act. Likewise, Mr.Prasad submits that decision of the Gujarat High

Court in **Reliance Industries Limited (2 supra)** would also have no persuasive value for this Court.

65 Mr. Prasad, learned Advocate General, relied on a decision of the Supreme Court in **Tirumalai Chemicals Limited Vs. Union of India**[11] to contend that while right of appeal may be a substantive right, the procedure for filing the appeal including the period of limitation cannot be called as substantive right. An aggrieved person cannot claim any vested right in procedure; that he should be governed by the old provision relating to the period of limitation. Procedural law is retrospective, meaning thereby, that it may apply even to acts or transactions under the repealed Act. Time and again it has been held and clarified by the Supreme Court that every litigant has a vested right in substantive law but no such right exists in procedural law. According to Mr. Prasad, law of limitation is generally regarded as procedural and its object is not to create any right but to prescribe periods within which legal proceedings be instituted for enforcement of rights which exists under the substantive law. Statutes of limitation are retrospective insofar those apply to all legal proceedings brought after their operation for enforcing cause of action accrued earlier,

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[11] **(2011) 6 SCC 739**

but they are prospective in the sense that they neither have the effect of reviving the right of action nor do they have the effect of extinguishing a right of action subsisting on that day.

66 Learned Advocate General has also placed reliance on a Supreme Court decision in **Fuerst Day Lawson Limited Vs. Jindal Exports Limited**[12] in support of the proposition that when there is an Ordinance which is followed by an Act on the same subject matter, the Act will come into force in continuation of the Ordinance. In that case, a gazette notification was issued on 22.08.1996 which appointed 22nd day of August, 1996 as the date on which the Act in question would come into force. The said gazette notification was issued in exercise of the powers conferred by Section 1 (3) of the Arbitration and Conciliation Act, 1996. In the facts of that case, it was held that while the Act came into force on 22.08.1996, for all practical and legal purposes, it would be deemed to have been effective from 25.01.1996, when the Ordinance was promulgated, particularly, when the provisions of the Ordinance and the Act are similar there being nothing in the Act so as to make the Ordinance ineffective. The Act being a continuation of the Ordinance, would be deemed to have been

[12] **(2001) 6 SCC 356**

effective from 25.01.1996 when the first Ordinance came into force.

67 Mr. Prasad has also placed heavy reliance on **Manish Kumar Vs. Union of India**[13] wherein Sections 3, 4 and 10 of the Insolvency and Bankruptcy Code (Amendment) Act, 2020 was challenged. He submits that when a legislation is challenged, more particularly, a constitutional amendment on the ground of being manifestly arbitrary, it would be incumbent upon the petitioners to show or demonstrate that something was done by the legislature capriciously, irrationally and / or without adequate determining principle. He submits that wide latitude is allowed to the legislature in enacting a law. The freedom to experiment must be conceded to the legislature, particularly in economic laws. If problems emerge in the working of laws and which require legislative intervention, the Court cannot be oblivious of the power of the legislature to respond by stepping in with necessary amendments. Since the law, in this case, the Second Amendment Act has been enacted to augment the revenue of the State, the constitutional Court will lean heavily in favour of such a law. The law under scrutiny is an economic measure. In economic matters,

[13] **(2021) 5 SCC 1**

wider latitude is given to the law makers, which is based on sound principle. Mr. Prasad asserts that even a vested right can be the subject matter of retrospective law. No doubt, such a law must pass master Articles 14, 19, 21 and 300A of the Constitution of India. Therefore, the issue really boils down to whether the impugned enactment is manifestly arbitrary or not. If it is not, question of interference by the Court would not arise.

68 Learned Advocate General has referred to and relied upon the decision of the Kerala High Court in **Sheen Golden Jewels (India) Pvt. Limited (7 supra)** in great detail.

69 Mr. Prasad has also referred to an article titled *'Transitional Provisions In Commercial Legislations: An Analysis'* by Priyal Parikh according to which the view taken by a majority of Courts is that the revenue authorities retain the power to levy appropriate taxes under the erstwhile indirect tax laws for events prior to the introduction of GST.

70 Mr.S.Ravi, learned senior counsel for the petitioners in reply submits that the State has not addressed the following crucial aspects raised by the petitioners:

> i. Effect of amendment of Entry 54 by Section 17 of the Constitution Amendment Act,

ii. Effect of repeal of VAT Act for all other goods except the goods mentioned in the amended Entry 54 of List II as per Section 174 of the TGST Act,

iii. Competence of the State as on 02.12.2017 to pass the Second Amendment Act, given the requirements of the present legislative competence as on that date;

iv. Requirement of simultaneous levy by Parliament and State Legislature for legislative competence under Article 246A,

v. Objective and effect of Section 19 of the Constitution Amendment Act,

vi. State did not at all make any endeavour to show any distinguishing feature in the judgment rendered by the Gujarat High Court in **Reliance Industries Limited (2 supra)** and why the same should not be applied to the present case.

71 Mr. Ravi contends that it is not the stand of the petitioners that the State has no competence whatsoever to promulgate the Ordinance or to enact the Second Amendment Act. State does have the power and competence in respect of the goods specifically mentioned in the amended Entry 54 but not goods in general. It is the contention of the petitioners that other than the goods mentioned in amended Entry 54, the State does not possess legislative competence. This crucial aspect was not countered by the State.

72 Mr. Ravi submits that it is not the argument of the petitioners that the Ordinance or the Second Amendment Act are manifestly arbitrary or that those cannot be given retrospective effect. Therefore, the argument advanced by the learned Advocate

General based on the principles of manifest arbitrariness or retrospectivity are not at all germane to adjudicate on the issues raised by the petitioners.

73 Besides reiterating reliance on **Reliance Industries Limited (2 supra)** and **Hindalco Industries Limited (3 supra)**, Mr.Ravi has also pressed into service a decision of the Allahabad High Court in **Jain Distillery Private Limited (4 supra).**

74 Insofar extension of time limit in tax matters is concerned, Mr.Ravi submits that time limits are a fetter on the jurisdiction of the departmental authorities. Enlargement of time under the Second Amendment Act in extending the limitation period amounts to conferring jurisdiction on departmental authorities that did not exist earlier. Therefore, such an amendment is not merely for securing old liabilities but impacts the rights of assessees, thus being a fresh legislation which is devoid of legislative competence.

75 Insofar reliance placed by learned Advocate General in **Tirumalai Chemicals Limited (11 supra)** it is submitted that the said decision is of no application to the present batch of cases. He submits that the question for determination in that case was whether the limitation to file appeal against order for violation of

provisions of Foreign Exchange Regulation Act, 1973 (FERA) would be governed by the appellate mechanism under the Foreign Exchange Regulation Act, 1973 or under the Foreign Exchange Management Act, 1999. The above decision has no relevance insofar the present batch of writ petitions is concerned where the challenge is primarily to the competence of the State Legislature to enact the Second Amendment Act after the Constitution Amendment Act.

76 Regarding **Fuerst Day Lawson (12 supra)** relied upon by the learned Advocate General, Mr. Ravi submits that in the present batch of cases petitioners are primarily concerned with the validity of the Second Amendment Act and not the Ordinance. Even if it is assumed that the State had the competence to promulgate the Ordinance in June, 2017 before onset of GST with effect from 01.07.2017, by the time the Second Amendment Act was passed, the State had lost its competence for legislating on goods in general, except for petroleum products and liquor for human consumption as mentioned in the amended Entry 54 of List II. However, he submits that though the Ordinance has not been specifically challenged, nonetheless, it is clear that on and from 16.09.2016 when the Constitution Amendment Act came into

force, the Ordinance could not have been promulgated. Thus, both the Ordinance and the Second Amendment Act cannot be sustained after 16.09.2016. Again in this judgment question of legislative competence of the State to promulgate an Ordinance followed by an Act on the same subject matter was not in issue. He submits that an Ordinance as well as an Act are two pieces of legislation. Legislative competence of each has to be separately determined in the light of the Constitution and the point of time when those were enacted. Insofar **Manish Kumar (13 supra)** is concerned, he submits that it is not the case of the petitioners that the Second Amendment Act should be struck down on the ground of being manifestly arbitrary. That apart, while there can be no dispute to the proposition that a wider latitude should be allowed to the legislature while legislating economic laws, it is also equally clear that while making such law, the Legislature or the Parliament cannot transgress the constitutional limits. In the instant case, the challenge to the Second Amendment Act is purely on the ground of legislative competence; rather lack of legislative competence. Petitioners are not questioning the legislative wisdom in extending the limitation for making assessments, reassessments, revisions etc., from four years to six years, but have questioned the Second Amendment Act on the

ground that the State did not have the legislative competence to enact the same.

77 Insofar **Sheen Golden Jewels (India) Pvt. Limited (7 supra)** is concerned, learned senior counsel submits that a division bench of the Gujarat High Court in **Reliance Industries Limited (2 supra)** has distinguished the said decision. In **Sheen Golden Jewels (India) Pvt. Limited (7 supra)** petitioners had challenged validity of Section 174 of the Kerala Goods and Services Tax Act, 2017 which is *pari materia* to Section 174 of the TGST Act, on the anvil of Section 19 of the Constitution Amendment Act. According to Mr.Ravi, petitioners herein are not questioning validity of Section 174 of the TGST Act. Rather, according to the petitioners, Section 174 of the TGST Act only supports what is being contended by the petitioners.

78 The article, *'Transitional Provisions in Commercial Legislation: An Analysis'* follows the same logic given by the Kerala High Court in **Sheen Golden Jewels (India) Pvt. Limited (7 supra)**. That apart, the article also relied upon the decision of the Gauhati High Court in **Lakshminarayan Sahu Vs. Union of India**[14] which dealt with validity of show cause notices for service tax after Section

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[14] **2018 SCC Online Gau 1457**

174 of the State GST Act was brought in. Mr. Ravi submits that according to the aforesaid article, Section 19 of the Constitution Amendment Act has elements of both transitional as well as savings clause. However, he contends that Section 19 of the Constitution Amendment Act only suspends invalidity of the inconsistent legislation for a period of one year or till the inconsistent legislations are amended or repealed. He asserts that Section 19 is neither a source of power nor a savings provision. It is only a transitional provision.

79 Mr.S.R.R.Viswanath, learned counsel for some of the petitioners also made submissions replying to the arguments advanced by the learned Advocate General. While admitting that learned Advocate General was only partly correct in submitting that time limitations are procedural and not substantive, he, however, submits that in tax jurisprudence time limitations prescribed for making assessments, reassessments, revisions etc are jurisdictional in nature and are thus fetters on the taxing authorities. In this connection, he has placed reliance on a decision of the Supreme Court in **S.S.Gadgil Vs. ITO[15].** Referring to **Tirumalai Chemicals Limited (11 supra)** relied upon by the

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[15] **53 ITR 231**

learned Advocate General, he submits that in the said case Supreme Court was dealing with the limitation prescribed for filing appeals, which is of entirely different nature.

80 Mr. Viswanath submits that two dates are extremely crucial. Firstly, 16.09.2016 when the Constitution Amendment Act came into force. Secondly, 27.05.2017 when the TGST Act was enacted. The Ordinance as well as the Second Amendment Act were made subsequent to the enactment of the TGST Act. Therefore, learned Advocate General is not right in saying that the Ordinance was promulgated prior to coming into force of the TGST Act. Thus, he would submit that neither the Governor nor the State Legislature had legislative competence to promulgate the Ordinance or to make the Second Amendment Act after 16.09.2016 and also after 27.05.2017.

81 Referring to Section 19 of the Constitution Amendment Act, Mr. Viswanath submits that the window provided by Section 19 was completely exhausted on 27.05.2017 when the TGST Act was enacted and Section 174 thereof partially repealed the VAT Act. There is no merit in the argument of the learned Advocate General that Section 19 of the Constitution Amendment Act could be invoked even after 27.05.2017 and that the Ordinance and the

Second Amendment Act owe their genesis to Section 19. He further submits that neither the Ordinance nor the Second Amendment Act can be traced to Article 246A of the Constitution.

82 Insofar decision of the Kerala High Court in **Sheen Golden Jewels (India) Pvt. Limited (7 supra)** is concerned, he submits that in the said case the challenge was made to Section 174 of the Kerala Goods and Services Tax Act, 2017 which is *pari materia* to Section 174 of the TGST Act. Petitioners herein are not challenging validity of Section 174 of the TGST Act. He, therefore, submits that there is no merit in the arguments advanced by the learned Advocate General.

83 Submissions made by learned counsel for the parties have received the due consideration of the Court.

84 We shall first deal with the issue relating to legislative competence. Heading of Article 246 of the Constitution of India is subject matter of laws made by Parliament and by the Legislatures of States. Clause (I) says that notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I (Union List) of the VII Schedule to the Constitution of India. As per Clause (2), notwithstanding anything in Clause (3), Parliament

and subject to Clause (I), the Legislature of any State also have power to make laws with respect to any of the matters enumerated in List III (Concurrent List) in the VII Schedule. In terms of Clause (3), subject to Clauses (1) and (2) the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II (State List) in the VII Schedule. Clause (4) clarifies that Parliament has power to make laws with respect to any matter for any part of the territory of India not included in any State notwithstanding that such matter is a matter enumerated in the State List.

85 Thus, the power to make laws either by the Parliament or by the State Legislatures is traceable to Article 246 of the Constitution of India. The Lists in the VII Schedule defines and limit the respective competence of the Union and the States. The various entries in the three lists of the VII Schedule are not sources of legislative power. These are legislative heads demarcating the field of legislation; of course, being the field of legislation, the entries should be given the widest possible amplitude.

86 Prior to the Constitution Amendment Act i.e., prior to 16.09.2016, Entry 54 of List II was as follows:

> *"54: Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92 A of List I".*

86.1 It was on the strength of Entry 54 of List II as it then existed, that the VAT Act was enacted.

87 After the Constitution Amendment Act came into force with effect from 16.09.2016, Entry 54 of List II now reads as follows:

> "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".*

88 Thus, on and from 16.09.2016, the competence of the State Legislature got truncated; it had competence to enact law only on the fields mentioned in Entry 54 as substituted i.e., regarding taxes on sale of petroleum crude, high speed diesel, motor spirit (petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption. However, there is a further restriction in as much as the taxes should not be on sale of such goods in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.

89 The Second Amendment Act, as already noticed, enhances the limitation period from four years to six years with respect to assessment, reassessment, revision etc. It covers all general goods and is not confined to the five petroleum products and

alcoholic liquor for human consumption as mentioned in the substituted Entry 54 of List II. Therefore, State Legislature of Telangana did not have the competence post 16.09.2016 to legislate the Second Amendment Act which could be traceable to Article 246 read with Entry 54 of List II of the VII Schedule to the Constitution.

90 The Constitution Amendment Act also inserted a new article immediately after Article 246 with effect from 16.09.2016. As per the new Article 246-A, it provides for special provision with respect to goods and services tax. Article 246 A is extracted hereunder:

> *"246A. Special provision with respect to goods and services tax:*
>
> *(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.*
>
> *Explanation.---The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of Article 279A, take effect from the date recommended by the Goods and Services Tax Council."*

91 Clause (I) of Article 246-A starts with a *non-obstante* clause. It says that notwithstanding anything contained in Article 246 (distribution of legislative powers) and Article 254 (dealing with

inconsistency between laws made by Parliament and laws made by Legislatures of State), Parliament and subject to clause (2), the Legislature of every State have power to make laws with respect to goods and services tax (GST) imposed by the Union or by such State. As per clause (2) Parliament has exclusive power to make laws with respect to GST where the supply of goods or of services or both takes place in the course of inter-State trade or commerce. The Explanation clarifies that provisions of Article 246A in respect of GST shall take effect from the date recommended by the GST Council in terms of Clause (5) of Article 279-A.

92 Thus what Article 246A provides is that both Parliament and the Legislature of every State have power to make laws with respect to GST imposed by the Union or by such State except in the case of GST where the supply of goods or of services or both takes place in the course of inter-State trade or commerce in which case Parliament has the exclusive competence. Of course, such enactment will take effect from the date of recommendation by the GST Council.

93 Article 366 of the Constitution of India defines various expressions which finds place in the Constitution. Clause (12)

defines "goods" to include all materials, commodities and articles. Clause (12A) which was inserted by the Constitution Amendment Act with effect from 16.09.2016 defines "goods and services tax" (GST) to mean any tax on supply of goods or services or both except taxes on the supply of alcoholic liquor for human consumption. Clause (26A), also inserted by the Constitution Amendment Act with effect from 16.09.2016, defines "services" to mean anything other than goods.

94 Article 246 A of the Constitution of India came up for analysis before the Supreme Court in **VKC Footsteps India Private Limited (5 supra)**, Supreme Court has held as follows:

> *"34. Article 246A has brought about several changes in the constitutional scheme:*
>
> *(i) Firstly, Article 246A 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;*
>
> *(ii) Secondly, the provisions of Article 246A are available both to Parliament and the State Legislatures, save and except for the exclusive power of Parliament to enact on inter-State trade or commerce; and*
>
> *(iii) Thirdly, Article 246A embodies the constitutional principle of simultaneous levy as distinct from the principle of concurrence. Concurrence, which operated within the fold of the Concurrent List, was regulated by Article 254".*

95 Thus, according to the Supreme Court, Article 246A defines the source of power as well as the field of legislation with respect to GST, obviating the need to travel to the VII schedule. This

power is available both to Parliament as well as to the State Legislatures except in the course of supply of goods or services or both in the course of inter-State trade or commerce. What Article 246A embodies is the principle of simultaneous levy by both the Parliament and by the concerned State Legislature, distinct from the principle of concurrence.

96 The nature of Article 246A of the Constitution of India was examined by the division bench of the Gujarat High Court in **Reliance Industries Limited (2 supra)** whereafter it has been held as follows:

> *"82. The issue can also be looked into from a different angle. Article 246A of the Constitution of India has been inserted in the Constitution of India to provide for integrated power to the Union of India and the States to make a common law to levy tax on the "goods and services". Article 246A is not akin to the "concurrent List" enumerated in List II in Schedule VII of the Constitution of India which empowers, either the Union or the State, to make laws with respect to levy of tax on either the goods or services. The Parliament in its wisdom did not incorporate power to make laws with respect to the "goods and services tax" in the "Concurrent List" enumerated in List III in Schedule VII of the Constitution of India but inserted a new article 246A in the Constitution of India to confer an integrated power, to both the Union and the State, which is to be exercised simultaneously by both, to make a common law to levy tax on the "goods and services". The purpose of this Constitutional amendment was perhaps to have a uniform "goods and services tax" law throughout the country.*
>
> *83. It prima facie appears that the power conferred by article 246A of the Constitution of India is to be exercised by both the Union and the States concurrently to ensure uniform "goods and services tax" law all over the country. The Union of India or States cannot separately exercise power given by article 246A of the Constitution of India independent of each other unlike the power given by the "Concurrent List" enumerated in List III in Schedule VII of the Constitution of India".*

97 In **Baiju A.A. (10 supra)** the challenge before a single bench of the Kerala High Court was to the legality of the notices and assessment orders issued in connection with the assessments under the Kerala Value Added Tax Act, 2003 for the assessment years 2010-2011 and 2011-2012. The challenge was made on the ground that the concerned authorities did not have the jurisdiction to issue the notices and assessment orders since the amendments introduced to Section 25 (1) of the Kerala Value Added Tax Act, 2003 through the Kerala Finance Acts of 2017 and 2018 notified on 19.06.2017 and 31.03.2018 respectively did not contemplate a retrospective operation of the amended provisions. Section 25 of the Kerala Value Added Tax Act, 2003 deals with assessment of escaped turnover. In case of escaped turnover for any reason the assessing authority could determine to the best of his judgment the turnover which had escaped assessment to tax at any time within five years from the last date of the year to which the return relates. As per the last proviso the period for completion of assessment was extended up to 31.03.2016. By the Kerala Finance Act of 2017, the period of limitation under Section 25 (1) for proceeding to determine escaped turnover was enhanced from five years to six years and in the last proviso the extension was made up to 31.03.2018. Thereafter, by the Kerala Finance

Act, 2018, in the last proviso, the extension was made up to 31.03.2019.

98 One of the questions framed by the Kerala High Court was whether after the Constitution Amendment Act and repeal of the Kerala Value Added Tax Act on 22.06.2017, the State Legislature retained any residual power of legislation so as to amend the provisions of Section 25 (1) through the Kerala Finance Act, 2018. After due consideration Kerala High Court held as follows:

> 19. As already noticed above, the amendments effected to Section 25 (1) of the KVAT Act, through the Kerala Finance Act 2017, were before the repeal of the KVAT Act with effect from 22.06.2017. The provision as it stood then, and in particular the third proviso thereto, authorised the re-opening of past assessments till 31.03.2018. The amendment effected through the Kerala Finance Act, 2018, with effect from 01.04.2018, enlarged the period for re-opening past assessments from 31.03.2018 to 31.03.2019. Under ordinary circumstances, and based on my findings above as regards the effect of the amendments brought into the third proviso to Section 25 (1) by the Kerala Finance Act, 2017, the legislative measures should have sufficed to justify a reopening of past assessments up to 31.03.2019, notwithstanding that the amendment itself was effective only from 01.04.2018. However, the intervention of the CAA 2016, and the consequent repeal of the KVAT Act with effect from 22.06.2017, has a bearing on the legality of the 2018 amendment. A distinction does exist between the saving of rights, privileges, immunities and liabilities under a repealed enactment, through a savings clause inserted in the new enactment traceable to the same legislative power, and an amendment brought in to a repealed enactment after the legislative power itself is taken away. While the legislative power justifying both actions, prior to the CAA 2016, could have been traced to Article 246 of our Constitution, read with the relevant entry in the VIIth Schedule thereto, the position changed when there was a fundamental shift in the nature of the tax levy and a fresh conferment of legislative power to legislate in respect of the new levy. After the CAA 2016, the State Legislatures stood denuded of their power to legislate in respect of taxes on sale or purchase of goods, that was covered under Entry 54 of List II of the VIIth Schedule to the Constitution, and they were instead conferred with legislative powers, to be exercised simultaneously with the Parliament, in respect of taxes on supply of goods or services or both. While the new legislative power could justify the inclusion of a savings clause in the new legislation enacted in respect of the new levy of tax, to save accrued rights, privileges, immunities etc. under the erstwhile enactment, the deletion of Entry 54 of List II automatically denuded the State Legislatures of the power to further

> legislate on the subject of taxes on sale or purchase of goods, except to the limited extent retained under the Constitution. The power to amend a statute being a facet of the legislative power itself, the State Legislature could not have exercised a power to amend the KVAT Act, save to the extent permitted, when it did not retain any residual right to further legislate on the subject of taxes on sale or purchase of goods.

99 According to the Kerala High Court, after the Constitution Amendment Act, the State Legislatures stood denuded of their power to legislate in respect of taxes on sale or purchase of goods covered under Entry 54 of List II of the VII Schedule; rather they were conferred with legislative powers to be exercised simultaneously with the Parliament in respect of taxes on supply of goods or services or both. While the new legislative power could justify the inclusion of a savings clause in the new legislation enacted in respect of the new levy of tax to save accrued rights etc., under the erstwhile enactment, the truncation of Entry 54 of List II automatically denuded the State Legislatures of the power to further legislate on the subject of taxes on sale or purchase of goods, except to the limited extent retained under the Constitution. It has been held that the power to amend a statute being a facet of the legislative power itself, the State Legislature could not have exercised a power to amend the Kerala Value Added Tax Act, 2003 except to the extent permissible when it did not retain any residual right to further legislate on the subject of taxes on sale or purchase of goods.

100 An identical issue came up before another single bench of the Kerala High Court in **HINDALCO INDUSTRIES LIMITED (3 supra)**. Following the same line of reasoning adopted by the previous bench in **BAIJU A.A. (10 supra)** it has been held that after the Constitution Amendment Act, State Legislatures stood denuded of their power to legislate in respect of taxes on sale or purchase of goods that was covered under Entry 54 of List II of the VII Schedule; they have instead been conferred with legislative powers to be exercised simultaneously with the Parliament in respect of taxes on supply of goods or services or both. It has been held as follows:

> *"……………………….After the CAA 2016, the State Legislatures stood denuded of their power to legislate in respect of taxes on sale or purchase of goods, that was covered under Entry 54 of List II of the Seventh Schedule to the Constitution, and they were instead conferred with legislative powers, to be exercised simultaneously with the Parliament, in respect of taxes on supply of goods or services or both. While the new legislative power could justify the inclusion of a savings clause in the new legislation enacted in respect of the new levy of tax, to save accrued rights, privileges, immunities, etc., under the erstwhile enactment, the deletion of Entry 54 of List II automatically denuded the State Legislatures of the power to further legislate on the subject of taxes on sale or purchase of goods, except to the limited extent retained under the Constitution. The power to amend a statute being a facet of the legislative power itself, the State Legislature could not have exercised a power to amend the KVAT Act, save to the extent permitted, when it did not retain any residual right to further legislate on the subject of taxes on sale or purchase of goods".*

101 A division bench of the Allahabad High Court in **M/s. Pankaj Advertising Vs. State of U.P**[16] was examining challenge to the legislative competence to the imposition, collection and realization of advertisement tax under the U.P. Municipalities Act, 1916 on the ground that when there is no provision to impose such tax there can be no power to frame any by-laws in that regard. The power to levy advertisement tax was traceable to Entry 55 of List II. Allahabad High Court noted that the Constitution Amendment Act came into effect from 16.09.2016. U.P. Goods and Services Tax Act, 2017 came into operation with effect from 01.07.2017. The by-laws by which the municipalities intended to levy and collect taxes on advertisement were framed on 12.01.2017 but published on 19.08.2017 i.e., after 01.07.2017 when the U.P.Goods and Services Tax Act, 2017 came into effect. Allahabad High Court also noted that by virtue of the Constitution Amendment Act, Entry 55 of List II was omitted. It was in that context that Allahabad High Court held that after omission of Entry 55 of List II of the VII Schedule to the Constitution of India by the Constitution Amendment Act with effect from 16.09.2016, even the State Legislature did not have the legislative competence to levy or collect taxes on advertisement which was earlier

[16] (2020) 73 GSTR 235 (All)

available under Entry 55. Further, the bench noted that the power to tax earlier vested with the municipalities under Section 128 (2) (VII) of the U.P. Municipalities Act, 1916. Having been omitted by virtue of Section 173 of the U.P.Goods and Services Tax Act, 2017, the municipalities did not have the statutory competence to levy, impose or collect advertisement tax. Further clarifying the position Allahabad High Court held that the State Legislature was invested with the power to make laws in respect of taxes on advertisement vide Entry 55 of List II to the VII Schedule but the said entry was deleted by the Constitution Amendment Act with effect from 16.09.2016. The Constitution Amendment Act vide Section 17 amended the VII Schedule and omitted Entry 55 of List II, thus deleting the power of the State to make laws in respect of taxes on advertisement. Therefore, when the State was denuded of the power to make laws in respect of taxes on advertisement, obviously the municipalities were also divested of the power to impose any tax on advertisement.

102 This line of reasoning has also been followed by a later division bench of the Allahabad High Court in **Jain Distillery Private Limited (4 supra)**. In this case, the Allahabad High Court examined the position as to the competence of the

Parliament and State Legislatures to enact laws to impose duties on excise and to levy tax on sale of alcoholic liquor not for human consumption post the Constitution Amendment Act. It was noted that the express intent of the constitutional change made vide the Constitution Amendment Act was to tax alcohol under the GST regime except alcoholic liquor for human consumption. Thus, alcoholic liquor not for human consumption or industrial alcohol or non potable alcohol would be subject to GST laws only. According to the Allahabad High Court this intent has been expressed through Section 174 (1) (i) of the U.P.Goods and Services Tax Act, 2017. Section 174 (1) (i) of the U.P.Goods and Services Tax Act, 2017 reads as follows:

> *"174. (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act:*
>
> (i) *The Uttar Pradesh Value Added Tax Act, 2008, except in respect of goods included in Entry 54 of the State List of the Seventh Schedule to the Constitution,*
>
> * * *
>
> *are hereby repealed."*

102.1 It was in that context Allahabad High Court held as follows:

> *"61. Since the State Legislature did not attempt to save the UPVAT Act- to tax alcoholic liquor not for human consumption, two direct consequences arise. First, a consequence arises of recognition of the change in the Constitutional scheme, noted above. Second, yet more directly, the State Legislature did not save UPVAT Act to impose tax on any commodity except "alcoholic liquor for human*

> *consumption". Hence, in any case, after the enactment of the UPGST Act, 2017 and in absence of any amendment to Section 174 (1) (i) of that Act, there neither survives nor exists any delegated power with the State Government, to issue the impugned Notification, to impose UPVAT on ENA.*
>
> *62. We cannot help over emphasise the fact that the impugned Notification seeks to overreach the Constitutional scheme, as amended by the 101st Constitution Amendment. By that Constitution Amendment, the only surviving legislative field to impose taxes (saved exclusively with the State Legislatures), finds mention in Entry 54 (as substituted). Relevant to our discussion, it is only with respect to "alcoholic liquor for human consumption". Since ENA is not that, the State Legislature cannot circumvent the Constitutional scheme by introducing a tax on its sale, by describing it as 'non-GST alcohol'.*

102.2 In the ultimate analysis, Allahabad High Court while allowing the Writ Petitions declared that the State had lost its legislative competence to enact laws to impose tax on sale of extra neutral alcohol (ENA) upon coming into effect of the Constitution Amendment Act. Therefore, the attempt to levy tax on ENA post Constitution Amendment Act was held to be *ultra vires* and accordingly interfered with.

103 The division bench of the Gujarat High Court in **Reliance Industries Limited (2 supra)** was examining the challenge to the constitutional validity of Section 84A of the Gujarat Value Added Tax Act, 2003. The challenge was made on the ground that Section 84 A was *ultra vires* and beyond the legislative competence of the State under Entry 54 of List-II of the VII Schedule to the Constitution. The challenge was made also on

the ground that Section 84 A was manifestly arbitrary and un-reasonable and, therefore, violative of Article 14 of the Constitution of India. In the present proceeding, learned counsel for the petitioners had made it very clear that their challenge to the Second Amendment Act is not on the ground of arbitrariness or manifest arbitrariness; it is on the ground of lack of legislative competence. Section 84 A of the Gujarat Value Added Tax Act, 2003 is extracted as under:

> *"84A. Exclusion of period in some cases.-(1) Notwithstanding anything contained in this Act, an issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the appellate authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the appellate authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in section 34 or section 35.*
>
> *(2) Notwithstanding anything contained in this Act, if any decision or order under section 73 or section 75 involves an issue on which the Revision Authority or appellate authority or the High Court has been given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation referred to in section 73 or Section 75".*

104 Gujarat High Court analyzed the provisions of Article 246-A of the Constitution of India and the change in Entry 54 of List II, post the Constitution Amendment Act. It may be mentioned that Section 84 A came to be added to the Gujarat

Value Added Tax Act, 2003 by virtue of the Gujarat Value Added Tax (Amendment) Act, 2018 enacted on 03.04.2018 giving retrospective operation from 01.04.2006. Section 84 A provided for exclusion of the period spent between the date of the decision of the Appellate Tribunal and that of the High Court as well as the Supreme Court in computing the period of limitation referred to in Section 75 of the said Act. Therefore, one of the questions which fell for consideration was whether Section 84 A of the Gujarat Value Added Tax Act, 2003 was *ultra vires* and beyond the legislative competence of the State under Entry 54 of the List II of the VII Schedule. After due analysis Gujarat High Court held as follows:

> *"90. The Entry 54 in List II in Schedule VII of the Constitution of India was amended to extinguish the power of States to levy taxes on sale or purchase of goods except taxes on the sale of petroleum products and alcoholic liquor for human consumption. Therefore, the power to amend any law with respect to levy of tax on the sale or purchase of goods such as "Gujarat VAT Act" could be said to have been abolished with the aforesaid amendment in Entry 54 in List II in Schedule VII of the Constitution of India.*
>
> *91. Having given our earnest consideration to all the relevant aspects of the matter, we have reached to the conclusion that article 246A of the Constitution of India does not save section 84A of the VAT Act from being declared invalid or ultra vires. As noted above, article 246A of the Constitution was inserted by the 101st Constitution Amendment Act with the sole or rather the precise object of subsuming multiple indirect taxes and to confer concurrent power to the Parliament and State Legislature to impose "goods and services tax" in accordance with the recommendations of the Goods and Services Tax Council statute under article 279A of the Constitution of India. The very object of such large scale reform*

was to replace number of indirect taxes being levied by the Union and the State Governments and to remove the cascading effect of taxes and provide for a common national market for goods and services. This is apparent from the statement of objects and reasons referred to by the Supreme Court in Mohit Mineral Pvt. Ltd. [2018] 58 GSTR 1 (SC) : [2019] 2 SCC 599.

92. Further section 18 to the Constitution Amendment Act provides for compensation to the States for the loss of revenue arising on account of the implementation of the goods and services tax for a period of five years. Thus the entire scheme of the Constitution Amendment Act recognizes imposition of only "goods and services tax" under article 246A of the Constitution of India. The phrase the "goods and services tax" is defined under article 366 (29A) to mean any tax on supply of goods or service or both except taxes on the supply of alcoholic liquor for human consumption. Such "supply" cannot be fragmented into different components by the State Legislature and assume power to impose independent tax on the sale of goods without reference to the Goods and Services Tax Council. Such interpretation would be contrary to the entire scheme as well as the object and purpose of the Constitution Amendment Act. In fact the provision providing for compensation to the States for the loss of revenue due to the goods and services tax would also be irrelevant if the State Legislatures are independently empowered to enact sales tax/value added tax legislations by taking recourse to article 246A of the Constitution of India.

93. In fact if the State Legislature has the power to enact the value added tax laws under article 246A of the Constitution of India as argued on behalf of the State, then Entry 54 of List II of the Seventh Schedule to the Constitution which was retained to the extent of six products which are outside the GST regime will be rendered redundant. The very fact that Entry 54 of List II of the Seventh Schedule was retained in so far as the six products are concerned indicates that the sales tax/value added tax enactment is not permissible under article 246A of the Constitution of India. The vociferous argument of the State that article 246A of the Constitution can support the enactment or provision under the VAT Act falls flat in the face of the existence of Entry 54 of List II of the Seventh Schedule to the Constitution of India which survived the 101st Constitution Amendment Act".

105 We are in respectful agreement with the views expressed by the single benches of the Kerala High Court in **Baiju AA (10 supra)**, **Hindalco Industries Limited (3 supra)**, division

benches of Allahabad High Court in **M/s. Pankaj Advertising (16 supra), Jain Distillery Private Limited (4 supra)** and the division bench of Gujarat High Court in **Reliance Industries Limited (2 supra).** Not only the Second Amendment Act cannot be traced to Article 246 of the Constitution read with Entry 54 of List II of the VII Schedule, the same cannot also be sustained as a stand alone legislation of the State under Article 246A of the Constitution in the absence of simultaneous legislation by the Parliament.

106 Let us now deal with Section 19 of the Constitution Amendment Act, which reads as under:

> **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.

107 Section 19 starts with a *non-obstante* clause. It says that notwithstanding anything in the Constitution Amendment Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before commencement of the Constitution Amendment Act, which is inconsistent with the provisions of the Constitution as amended by the Constitution Amendment 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.

108 Thus, the purpose of this provision is to provide for a window or transition by suspending invalidity of inconsistent legislations existing immediately before commencement of the Constitution Amendment Act for a period of one year or till such legislations are amended or repealed, whichever is earlier. The objective appears to be for a transition to the GST regime brought into force by the Constitution Amendment Act. All that Section 19 does is to provide a period so as to eliminate or remove all laws inconsistent with the GST regime within an outer limit of one year period. Section 19 does not and cannot be construed to eclipse the amendments carried out in Entry 54 of List II to the VII Schedule or confer legislative competence upon the State Legislatures for making amendments to the VAT Act in respect of goods other than the five petroleum products and alcohol for human consumption covered by the amended (substituted) Entry 54 of List II.

109 As already discussed above, consequence of amendment of Entry 54 of List II is denuding the State Legislature of the power to levy tax on sale of goods other than those as

provided in amended Entry 54; invalidation of State legislations existing as on 16.09.2016 levying tax on sale of goods other than those finding place in amended Entry 54. Section 19 does not save or postpones deprivation or denuding of legislative competence of State Legislature for levying tax on sale of goods other than those mentioned in amended (substituted) Entry 54 of List II. Section 19 only allows operation and levy of tax under the VAT Act which is inconsistent with the GST regime for a period of one year or until the VAT Act is repealed or amended, whichever is earlier. This would mean that the State could continue to levy tax under the VAT Act for the window period of one year or till the VAT Act was amended or repealed to align it with the GST regime, whichever was earlier. This transitional provision does not enable the State Legislature to make amendments to the VAT Act in contravention of the amended Entry 54 of List II.

110 At this stage, we may refer to Article 243ZF of the Constitution. Part IXA dealing with municipalities was inserted in the Constitution by the Constitution (Seventy-fourth Amendment) Act, 1992 with effect from 01.06.1993. Articles 243 P to Article 243 ZG comprises of Part IXA, all dealing with municipalities. By the aforesaid provisions municipalities and municipal

administration were brought under the umbrella of the Constitution. Article 243 ZF provides for continuance of existing laws and municipalities. This provision is *pari materia* to Section 19 of the Constitution Amendment Act. Article 243 ZF reads as under:

> *243 ZF. Continuance of existing laws and Municipalities:- Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:*
>
> *Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each house of the Legislature of that State.*

111 As per this Article, notwithstanding anything in Part IXA of the Constitution, any provision of law relating to municipalities in force in a State immediately before commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with Part IXA, 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.

112 In **Bondu Ramaswamy (6 supra)**, Supreme Court was considering challenge to acquisition of land for formation of Arkavathi Layout on the outskirts of Bangalore city by the Bangalore Development Authority under the Bangalore Development Authority Act, 1976. It was in that context Supreme Court considered the question as to whether provisions of the Bangalore Development Authority Act, 1976, more particularly, that of Section 15 dealing with the power of the authority to draw up schemes for development of Bangalore Metropolitan area became inoperative, void or was impliedly repealed by virtue of Part IXA of the Constitution. Supreme Court held that Article 243 ZF is a provision enabling continuance of any provision of law relating to municipalities in spite of such provision being inconsistent with the provisions of Part IXA of the Constitution for a specified period of one year or until amended or repealed, whichever is earlier. It was held as follows:

> "Any statute or provision thereof which is inconsistent with any constitutional provision will be struck down by courts. Consequently, if BDA Act or any provision of the BDA Act is found to be inconsistent with any provision of Part IXA of the Constitution, it will be struck down by courts as violative of the Constitution. In regard to any provision of any law relating to municipalities, Article 243ZF suspends such invalidity or postpones the invalidity for a period of one year from 1.6.1993 to enable the competent Legislature to remove the inconsistency by amending or repealing such law relating to municipalities to bring it in consonance with the provisions of Part IXA of the Constitution."

113 As has been held by the Supreme Court, Article 243 ZF suspends such invalidity or postpones the invalidity for a period of one year to enable the competent Legislature to remove the inconsistency by amending or repealing such law relating to municipalities to bring it in consonance with the provisions of Part IXA of the Constitution.

114 On the above analysis we have no hesitation in holding that Section 19 of the Constitution Amendment Act cannot be understood or cannot be construed as a source of legislative power. It is also not a saving provision in respect of suspending legislative competence to amend the VAT Act. This aspect was gone into by the Gujarat High Court in **Reliance Industries Limited (2 supra)** wherein it has been held as follows:

> 79.5. Section 19 of the Constitution (One Hundred and First) Amendment Act, 2016 can also not be a source of power to amend the State VAT laws. First, the power to amend under Section 19 is only for a period of one year from the commencement of the Amendment Act.

115 Even in **Sheen Golden Jewels (India) Pvt. Limited (7 supra)** relied upon by the State, learned single judge of the Kerala High Court held as follows:

> 141. Now, let us examine both Section 19 of the CA Act and Section 174 of the KSGST Act. Section 19 mandates that any inconsistent law relating to tax on goods and services in force in any State before 16.09.2016 (the commencement of the CA Act) shall continue to be in force "until amended or repealed by a competent Legislature or other competent authority". So the States were, first, required to amend the inconsistent

> laws to bring them in harmony with the CA Act. Otherwise, the States must repeal them. And they were given one year for achieving this. If the States do neither, those inconsistent acts stand repealed.
>
> 142. Here, the States acted; they amended a few inconsistent Acts. They also repealed a few more. As with the KVAT Act, the repeal, if it were, has not resulted in its abrogation or annihilation. So the operation of the so-called sunset clause (as provided in Section 19) has not denuded the State's power to enforce the KVAT Act in its amended form. The Act remained, with its remit reduced, though. Thus goes out of reckoning the petitioners' another assertion: that with the repeal of the enactments, the procedural mechanism has disappeared. It has not. The prospectivity of the amendment undisputed, what remains to be examined is the State's power to save what had happened before the CA Act came into force or, more precisely, until one year after that Act came into force. Indeed, the CA Act allowed the State Acts in the same legislative field to coexist for one year: the window period.
>
> 143. So I must hold that Section 19 of the CA Act is— transitional as it may have been—a repealing clause simpliciter, not a saving clause. Nothing more. That job of saving is done by Section 174 of the KSGST Act. Well and truly. So the repeal has not, as Section 174 elaborates, affected "the previous operation of the amended Acts or repealed Acts and orders or anything duly done or suffered thereunder." In other words, the repeal has not affected "any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Acts or repealed Acts or orders under such repealed or amended Acts." Nor has it affected "any tax, surcharge, penalty, fine, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Acts or repealed Acts".

116 Thus, according to the Kerala High Court, Section 19 of the Constitution Amendment Act is a transitional provision. It is not a saving clause. States were required to amend the inconsistent laws to bring them in harmony with the Constitution Amendment Act. If that was not done, then the States were required to repeal such inconsistent laws. For this a window period of one year was given. If the States did neither, those inconsistent laws would then automatically stand repealed.

117 Therefore, from the above analysis we can safely conclude that Section 19 of the Constitution Amendment Act is not a source of power to enable the State Legislature to enact the Second Amendment Act, which is clearly inconsistent with the Constitution Amendment Act.

118 We have already noted that the Constitution Amendment Act, more particularly Sections 1 to 11 and 13 to 20, came into force on and from 16.09.2016. Thereafter Parliament enacted the CGST Act and other related enactments, most provisions of such enactments having come into force on and from 01.07.2017. State of Telangana also enacted the TGST Act. While majority of the sections came into force on 22.06.2017, Section 174 of the TGST Act which provides for repeal and saving came into force on and from 01.07.2017. Section 174 of the TGST Act reads as under:

> *"174. Repeal And Saving:- (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act,*
>
> *(i) The Telangana Value Added Tax Act, 2005 (Act 5 of 2005); except in respect of goods included in the Entry 54 of the State List of the Seventh Schedule to the Constitution,*
>
> *(ii) The Telangana Entertainments Tax Act, 1939 (Act X of 1939);*
>
> *(iii) The Telangana Tax on Entry of Motor Vehicles into Local Areas Act, 1996 (Act 26 of 1996);*

(iv) The Telangana Tax on Entry of Goods into Local Areas Act, 2001 (Act 39 of 2001);

(v) The Telangana Tax on Luxuries Act, 1987 (Act 24 of 1987);

(vi) The Telangana Horse Racing and Betting Tax Regulations, 1358F (Regulation XLIX of 1358F);

(vii) The Telangana Rural Development Cess Act, 1996 (Act 11 of 1996); (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Acts specified in section 173 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in sub-section (1) or section 173 shall not-

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Acts or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Acts or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any tax, surcharge, penalty, fine, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Acts or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any

such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) affect any proceedings including that relating to an appeal, revision, review or reference, instituted before, on or after the appointed day under the said amended Acts or repealed Acts and such proceedings shall be continued under the said amended Acts or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in section 173 and sub-section (1) shall not be held to prejudice or affect the general application of section 8, 8A, 9 and 19 of the Telangana General Clauses Act, 1891 (Act 1 of 1891) with regard to the effect of repeal".

119 Thus, as per Section 174 (1) (i) the VAT Act stood repealed with effect from 01.07.2017 except in respect of goods included in Entry 54 of the State List in the Seventh Schedule. When we refer to Entry 54 of the State List i.e., List II it means the entry as it stood on 01.07.2017. We have already noticed that post the Constitution Amendment Act, Entry 54 of List II has been substituted whereafter the field of legislation under the said entry is confined only to taxes on the sale of petroleum crude, high speed diesel, motor spirit (petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption; further clarifying that this would not include sale of such goods in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods. Therefore, in terms of Section 174 (1) (i) of the TGST Act, the VAT Act stood

repealed with effect from 01.07.2017 except in respect of the goods covered by the amended (established) Entry 54 of List II.

120 As a matter of fact, we may observe that the very presence of Section 174 (1) (i) in the TGST Act buttresses the stand taken by the petitioners.

121 In **Sheen Golden Jewels (India) Pvt. Limited (7 supra)** the question before the single bench of the Kerala High Court was whether the State had the legislative competence to enact Section 174 of the Kerala Goods and Services Tax Act, 2017 and save the past taxation events when Entry 54 List II stood omitted permanently with effect from 16.09.2016. We may mention that Section 174 of the Kerala Goods and Services Tax Act, 2017 is *pari materia* to Section 174 of the TGST Act. The Court was called upon to examine constitutional validity of Section 174 of the Kerala Goods and Services Tax Act, 2017 on the anvil of Section 19 of the Constitution Amendment Act. It was contended that State had no legislative power to over ride Section 19. Kerala High Court took the view that while Section 19 is a transitional provision; the job of saving is done by Section 174. Though Section 174 has repealed the Kerala Value Added Tax Act,

2003, the repeal has not affected the previous operation of the repealed act. In other words, the repeal has not affected any right, privilege, obligation or liability acquired, accrued or incurred under the repealed act. In the above back drop, single bench of the Kerala High Court rejected the contention that the State lacked the competence to engraft Section 174 into the Kerala Goods and Services Tax Act, 2017 and accordingly upheld constitutional validity of Section 174.

122 We see no conflict or contradiction between Section 19 of the Constitution Amendment Act and Section 174 of the TGST Act. While Section 19 has deferred invalidity of inconsistent legislations till such time those are amended or repealed or for a period of one year whichever is earlier, Section 174 of the TGST Act has repealed amongst other enactments the VAT Act with effect from 01.07.2017 except in respect of goods covered by the substituted Entry 54 of List II. Thus Section 174 of the TGST Act is in consonance with Section 19 of the Constitution Amendment Act. The above position only supports the case of the petitioners that the State was denuded of its competence to legislate on GST after 16.09.2016 and certainly after 01.07.2017.

123 Repeal of an enactment would mean that such an enactment is erased from the statute book; it would no longer be in existence. This aspect was gone into by the Gujarat High Court in **Reliance Industries Limited (2 supra)**. It has been held as follows:

"68.Effect of repeal at common law-Repeal obliterates the statute as if it has never been enacted:

68.1 Under the common law, a statute after its repeal is completely obliterated as if it has never been enacted, except as to the transactions past and closed.

68.2 Crates on Statue Law, 7th Edition, at pages 411-412 states the principle as under:

"When an Act of Parliament is repealed, said Lord Tenterden in Surtees v. Ellison 1829 9 (B&C) 750, 752; 7 L.J.K.B. 335, it must be considered (except as to transactions past and closed) as if it had never existed. That is the general rule'. Tindal C. J. states the exception more widely. He says (in Kay v. Goodwin MANU/INOT/0001/1830 : 1830 6 ving 576 ; 8 LJ CP 212); The effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those action which were commenced, prosecuted and concluded whilst it was an existing law."

68.3 Bennion on Saturday Interpretation, 6th Edition, at page 276 explains the effect of repeal as under:

"Effect of repeal:

At common law the repeal of an Act makes it as if it had never been, except as to matters past and closed.....

Thus anything done after the repeal in purported exercise of a repealed provision is a nullity."

68.4 A seven-judge Bench of the Supreme Court in the case of Keshavan Madhava Menon v. State of Bombay,

MANU/SC/0020/1951 : AIR 1951 SC 128 referred to a passage from the Crawford's book on Statutory Construction which reads as under:

"It is well-settled that if a statute giving a special remedy is repealed without a saving clause in favour of pending suits all suits must stop where the repeal finds them. If final relief has not been granted before the repeal went into effect, it cannot be after, if a case is appealed, and pending the appeal the law is changed, the appellate court must dispose of the case under the law in force when its decision was rendered. The effect of the repeal is to obliterate the statute repealed as completely as if it had never existed, except for the purposes of those actions or suits which were commenced, prosecuted and concluded while it was an existing law. Pending judicial proceedings based upon a statute cannot proceed after its repeal. This rule holds true until the proceedings have reached a final judgment in the court of last resort, for that court, when it comes to announce its decision, conforms it to the law then existing, and may therefore, reverse a judgment which was correct when pronounced in the subordinate tribunal from which whence the appeal was taken, if it appears that pending the appeal a statute which was necessary to support the judgment of the lower court has been withdrawn by an absolute repeal." (p.601)

(emphasis supplied)

68.5 Justice G.P.Singh in his Principles of Statutory Interpretation, 12th Edition, 2010, while examining the consequences of repeal has stated as follows (at page 695):

"Under the common law rule the consequences of repeal of a statute are very drastic. Except as to transactions past and closed, a statute after its repeal is as completely obliterated as if it had never been enacted. The effect is to destroy all inchoate rights and all causes of action that may have arisen under the repealed statute. Therefore, leaving aside the cases where proceedings were commenced, prosecuted and brought to a finality before the repeal no proceeding under the repealed statute can be commenced or continued after the repeal."

68.6 The apex court in Mohan Raj v. Dimbeswari Saikia, MANU/SC/8641/2006 : AIR 2007 SC 232, has quoted the above passage with approval in paragraph 23 which is quoted below:

"23. It is now well settled that such Repealing Act shall be construed to have not taken away the accrued right of a person. In G.P.Singh's Principles of Statutory Interpretation, (10th Edn.) 2006 at page 631, it is stated:

"Under the common law rule the consequences of repeal of a statute are very drastic. Except as to transactions past and closed, a statute after its repeal is as completely obliterated as if it had never been enacted. The effect is to destroy all inchoate rights and all causes of action that may have risen under the repealed statute. Therefore, leaving aside the cases where proceedings were commenced, prosecuted and brought to a finality before the repeal, no proceeding under the repealed statute can be commenced or continued after the repeal'."

68.7 The aforesaid principle is reiterated in the Constitution Bench decision of the Supreme Court in the case of Kolhapur Canesugar Works Ltd. v. Union of India MANU/SC/0060/2000 : [2000] 119 ELT (SC).

68.8 Thus, at common law, a statute become non-existent on its repeal, unless saved by some saving provision."

124 Question which therefore follows is whether a repealed act can be amended? Or to put it a little differently, can a repealed act be saved by the General Clauses Act, 1897 or by the Telangana General Clauses Act, 1891?

125 Much reliance has been placed by the learned Advocate General on Sections 8 and 8A of the Telangana General Clauses Act, 1891 in support of his contention that despite repeal of the VAT Act, the State had the competence, firstly, to promulgate the Ordinance and secondly, to enact the Second Amendment Act. According to Section 8, where any Act repeals

any other enactment, then the repeal shall not effect anything done or any offence committed or any fine or penalty incurred or any proceeding taken before commencement of the repealing Act; or reviving anything not in force or existing at the time when the repeal takes effect; or affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or affect any fine, penalty, forfeiture etc, incurred in respect of any offence committed under any enactment so repealed; or affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, fine, penalty, forfeiture or punishment and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such fine, penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed.

126 Section 8 of the Telangana General Clauses Act, 1891 is similar to Section 6 of the General Clauses Act, 1897.

127 Section 8 A of the Telangana General Clauses Act, 1891 says that where any act repeals any enactment by which the

text of any previous enactment was amended by express omission, insertion or substitution of any matter then unless a different intention appears, the repeal shall not affect continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

128 Article 367 of the Constitution of India speaks about the interpretation of the Constitution of India. Clause (I) of Article 367 is relevant. It says that unless the context otherwise requires, the General Clauses Act, 1897, subject to any adaptations and modifications that may be made therein under Article 372, shall apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature.

129 Gujarat High Court in **Reliance Industries Limited (2 supra)** examined this aspect as well and held that General Clauses Act, 1897 applies only for interpretation of the Constitution but in respect of other matters, such as, savings in the case of repeal etc which are unrelated to interpretation may not apply by virtue of Article 367. Section 6 of the General Clauses Act, 1897 or Sections 8/8A of the Telangana General Clauses Act, 1891 would apply only to repeal of an enactment. A Constitution Amendment Act is not or cannot be termed as an

enactment. Therefore, beyond what is stated in Clause (I) of Article 367 of the Constitution, provisions of the General Clauses Act, either the Central Act or the State Act, would not apply to the Constitution, including the Constitution Amendment Act since a Constitution Amendment Act is made by the Parliament in exercise of its sovereign powers under Article 368 of the Constitution. It has been held as follows:

> 71. Applicability of the General Clauses Act, 1897 for the interpretation of the Constitution:
>
> > 71.1 Article 367(1) of the Constitution states that the General Clauses Act, 1897 (subject to the adaptations and modification made under article 372) shall apply for the "interpretation" of the Constitution. The relevant extract is as under:
> >
> > > "367. Interpretation.-(1) 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."
> >
> > 71.2 Thus, the General Clause Act applies only for the interpretation of Constitution. The General Clauses Act defines various terms in section 3. These definitions will apply for the interpretation when these words are employed in the Constitution. Apart from the definition, section 16 (power to appoint to include power to suspend or dismiss), section 21 (power to issue to include power to add to, amend, vary or rescind notification, orders, Rules or bye-laws), etc., which are general rules of construction and which are otherwise in accord with the common law may also apply for the interpretation of the Constitution.
> >
> > 71.3 Therefore, perhaps, the other matters such as the savings in the case of repeal (section 6), revival of repeal enactments (section 7), construction of references to the repealed enactments (section 8), continuation of order issued under the repealed enactment and re-enacted (section 24), etc., which are not related to interpretation may not apply by virtue of article 367.

71.4 Further, section 6 applies only to repeal of an enactment. Enactment is defined under section 3(19) of the General Clauses Act to include regulation or any provision contained in any Act or regulation. However, Constitution is not an enactment. The Constitution is supreme and is, in fact, the foundation of all the enactment. This has been observed by the Law Commission in its 60th Report on the General Clauses Act 1897 in the context of section 8 (construction of references of repealed enactment). The relevant extract of the report is as under:

> "1.30. Effect of section 8 on article 367.-Will section 8 of the General Clauses Act, which provides that when an enactment is repealed and re-enacted, references to the old enactment will be construed as references to that, re-enacted one, make any difference? We do not think so. It should be noted that the words 'unless the context otherwise requires' (in article 367) mean that the General Clauses Act, section 8, is to be excluded. Even by its terms, section 8 of the General Clauses Act will not apply to the Constitution, because expression 'enactment' (which occurs in section 8) would not take in the Constitution, which is not an 'enactment'. The Constitution is supreme and is, in fact, the foundation of all enactments."

71.5 Thus, section 6 of the General Clauses Act 1897 will not apply to the Constitution (contrary view taken by the Allahabad High Court in the case of Farzand v. Mohan Singh, MANU/UP/0018/1968 : AIR 1968 All 67 (73). However, no reasoning has been given to apply section 6 of the General Clauses Act, 1897 to the Constitution).

71.6 The above principle about the non-applicability of the General Clauses Act, 1897 is relevant and applicable even to the Constitutional Amendment Acts as they are made by the Parliament in exercise of its constituent powers under article 368 and not in exercise of normal legislative powers under article 245 of the Constitution.

71.7 The question as to whether section 6 applies to the Constitution is relevant to determine whether after the repeal of the entry in the legislative List, the laws made in pursuance of such legislative powers can be saved. That provision has presently been made under section 19 of the Constitution (One Hundred and First) Amendment Act, 2016. Thus, con-textually also section 6 will not apply to the present case.

130 Once it is held that the VAT Act stood repealed with effect from 01.07.2017 except for the limited categories of goods specified in substituted Entry 54 of List II, question of amending

the repealed act in respect of those goods by virtue of the Second Amendment Act would not arise.

131 Though there is no challenge to the Ordinance, nonetheless we may also examine the same since it is the contention of the State that the Ordinance was promulgated during the window period and the subsequent Second Amendment Act is given effect to from the date of promulgamation of the Ordinance, thereby making it a valid piece of legislation.

132 It was strongly argued by learned Advocate General that when the Ordinance was promulgated, State of Telangana had the legislative competence to so promulgate the Ordinance and the Second Amendment Act which was made subsequently was nothing but a continuation of the law as promulgated by way of Ordinance since it was given effect to from the date of promulgamation of the Ordinance.

133 To appreciate the above contention, we may note that the Constitution Amendment Act came into force on and from 16.09.2016. Section 19 of the Constitution Amendment Act provided for a window period to the States to remove any inconsistent enactments by way of amendment or repeal or until expiration of one year from such commencement whichever was

earlier. Telangana Ordinance No.2 of 2017 was promulgated by the Governor of Telangana on 17.06.2017 to further amend the VAT Act. Though the Ordinance was promulgated after coming into force of the Constitution Amendment Act on 16.09.2016, it was so promulgated within the window period of one year as provided by Section 19 of the Constitution Amendment Act. At this stage we may mention that following the Constitution Amendment Act, State of Telangana enacted the TGST Act with effect from 01.07.2017.

134 Before we deal with the Telangana Ordinance No.2 of 2017, we may note that power of the Governor to promulgate ordinance is traceable to Article 213 of the Constitution of India. Article 213 provides as follows:

> ***"213. Power of Governor to promulgate Ordinances during recess of Legislature***.—*(1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:*
>
> *Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if—*
>
> *(a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the legislature; or*
>
> *(b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or*
>
> *(c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.*
>
> *(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the legislature of the State assented to by the Governor, but every such Ordinance—*

(a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council; and

(b) may be withdrawn at any time by the Governor.

Explanation.—Where the Houses of the Legislature of a State having a Legislative Council are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void:

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him."

135 While clause (1) provides that if the Governor is satisfied when the Legislative Assembly of a State is not in session or where there is a Legislative Council in a State, the same is not in session, that circumstances exist which call for immediate action, he may promulgate such Ordinance. Clause (2) clarifies that an Ordinance so promulgated under Article 213 of the Constitution shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor. However, every such Ordinance shall be laid before the Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature. Clause (3) says that if an Ordinance makes any provision which would not be valid if

enacted as an Act of the Legislature assented to by the Governor, it shall be void.

136 As noticed above, the Ordinance was promulgated by the Governor on 17.06.2017. As per preamble to the Ordinance, it is stated that Government of India had enacted the CGST Act and Government of Telangana had enacted the TGST Act. But both the Acts had not been brought into force. Referring to the provisions of the VAT Act, it is stated that it empowers the State Government to levy tax on alcoholic liquor for human consumption and on petroleum products. According to the Constitution Amendment Act, levy of tax on those petroleum products and alcoholic liquor for human consumption is within the competence of the State Legislature. It further stated that repeal of the VAT Act except in respect of the goods included in Entry 54 of List II of the VII Schedule by the TGST Act, which was yet to be brought into force, would not affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such tax; surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment and any such investigation etc.,

may be instituted, continued or enforced and any such tax, surcharge etc, may be levied or imposed as if those Acts had not been so amended or repealed. Such repeal would not also affect any proceedings including those relating to appeal, revision, review or reference instituted before, on or after the appointed day under the said amended Acts or repealed Acts and such proceedings shall be continued under the amended Acts or repealed Acts. Therefore, it was considered necessary to strengthen certain provisions of the VAT Act to overcome any limitations to help effective revenue realization. Therefore, it was decided to amend certain provisions of the VAT Act by undertaking a legislation. Since it was decided to give effect to such decision immediately and as the Legislature of Telangana was not in session, therefore, the Governor, in exercise of powers conferred by Clause (1) of Article 213 of the Constitution promulgated the Ordinance which basically extended the limitation from four years to six years in respect of assessments, reassessments, revision etc.

137 It is not necessary for us to go into the aspect as to whether the Ordinance was laid before the Assembly or not and as to whether it had ceased to operate after six seeks from

reassembly of the Legislature. It may also not be necessary for us to labour on the aspect that the Second Amendment Act though published in the Telangana Gazette on 02.12.2017, was deemed to have come into force with effect from 17.06.2017 i.e. the date when the Ordinance was promulgated. This is because legislative competence cannot flow from an earlier legislation, be it an ordinance or an enactment. Legislative competence must be traceable to the Constitution. Therefore, no reliance can be placed on the Ordinance in support of the contention that the Second Amendment Act had derived competence from the Ordinance since it was a continuation of the law and had come into force from the date of promulgamation of the Ordinance. Such a line of reasoning, in our considered view, has no legal substance. Therefore, it is immaterial that the Ordinance was not challenged in Court.

138 That apart, the ostensible objective of the Ordinance as could be discerned from the preamble is to save any investigation, assessment, recovery of dues, legal proceedings etc., pending on the date of coming into force of the Constitution Amendment Act which is perfectly understandable and valid. But that does not mean that limitation across the board could be

extended by way of amendment to initiate fresh proceedings, such as, fresh revision proceedings, which otherwise had become time barred.

139 With effect from 16.09.2016 the Constitution was amended by virtue of the Constitution Amendment Act. While Article 246A was inserted immediately after Article 246, the earlier Entry 54 of List II was substituted by the new Entry 54, in the process denuding the States from making any law except on the sale of petroleum crude, high speed diesel, motor spirit (petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption. Thus the States did not have the competence to make law to levy VAT or such tax on any goods other than the above goods. Section 19 of the Constitution Amendment Act, which can be construed to be a sunset clause, provided for a window of one year to remove the laws inconsistent with the Constitution Amendment Act either by way of amendment or by way of repeal. The window period was given to remove the inconsistencies; not to prolong the inconsistencies. But what the State of Telangana did by promulgating the Ordinance was not to remove the inconsistencies in the VAT Act. As mentioned above, the Ordinance, in fact, introduced certain

provisions extending limitation to enable initiation of fresh proceedings, such as, revisional proceedings which are completely inconsistent with the scheme of the Constitution Amendment Act. On this ground itself, the Ordinance can be said to have no legal consequence.

140 However, by the Second Amendment Act, more particularly, by Section 7 thereof, the Ordinance was repealed. As already stated above, the Second Amendment Act cannot derive legislative competence from the Ordinance. It must derive legislative competence from the Constitution. Unfortunately, after such substitution of Entry 54 of List II, State was denuded of such competence traceable to Article 246. As a stand alone legislation, it cannot derive legitimacy traceable to Article 246A of the Constitution as well. Therefore, the Second Amendment Act made on 02.12.2017 though given retrospective effect from 17.06.2017 cannot be sustained as the same is devoid of legislative competence.

141 Needless to say, way back in 1964, Supreme Court in **A.Hajee Abdul Shukoor (1 supra)** was categorical in holding that while the State Legislature is free to enact laws which could have retrospective operation, its competence to make a law for a certain

past period would, however, depend on its present legislative power and not on what it possessed at the period of time when the enactment would be in operation.

142 Insofar the decisions relied upon by the learned Advocate General are concerned, we have already discussed why those would not be applicable to the facts and grounds of challenge made in this bunch of writ petitions.

143 Finally we may also look into the intention of the Parliament in enacting the Constitution Amendment Act. This is because it would give us a clear idea as to why the Constitution Amendment Act was brought about and why the Second Amendment Act cannot be sustained being completely inconsistent with the scheme of the Constitution Amendment Act and being denuded of its legislative competence. In **Baiju A.A. (10 supra),** Kerala High Court held as follows:

> 20. There is yet another aspect of the matter. It is trite that when a Court judges the constitutionality of a legislative enactment it should try to sustain the validity of the enactment to the extent possible and it should strike down the law only when it is impossible to sustain it, State of Bihar v. Bihar Distillery - [MANU/SC/0354/1997 : JT (1996) 10 SC 854]. At the same time, the Court must proceed to determine the intention of the Parliament, not only from the language used in the statute but also from surrounding circumstances and an understanding of the mischief that was sought to be remedied by the statute. When one applies the said test to the events that took place after the CAA, 2016, it cannot but be noticed that the very purpose of the CAA was to bring about a change in the system of indirect taxation in our

> country through the introduction of a Goods and Service Tax, and the phasing out of the multitude of indirect tax levies, including value added taxes, that were levied and collected by the Centre and the States. Section 19 of the CAA 2016, which is the sunset clause in the said enactment, envisaged the continuation of the erstwhile system of taxation for a period of one year from the date of enactment of the CAA or till such time as the State Legislatures amended or repealed their respective VAT legislations, whichever was earlier. When the State Legislature repealed the KVAT Act, while simultaneously bringing into force the new State GST Act, with a savings clause of limited operation, it effectively acknowledged the absence of any power to legislate thereafter on the subject of tax on sale or purchase of goods, except in respect of the limited commodities for which the said power was retained under the Constitution. In respect of all other commodities, the legislative power of the State was only in respect of taxes on the supply of goods or services or both, a power that had to be exercised simultaneously with the Parliament and not unilaterally or exclusively. Thus, at the time of repeal of the KVAT Act, and simultaneous enactment of the State GST Act with a savings clause therein, the savings clause operated only to save rights, privileges, immunities, action taken etc under the erstwhile enactment as it stood at the time of its repeal, which included the amendments brought in through the Kerala Finance Act, 2017. There could not have been any further legislative exercise by the State legislature in relation to the repealed KVAT Act.

144 We are in respectful agreement with the views expressed by the Kerala High Court in **Baiju A.A (10 supra).** Intention of Parliament in ushering in the GST regime through the Constitution Amendment Act and enactment of the CGST Act and simultaneous enactment of various State GST Acts by the State Legislatures is to avoid multiplicity of taxes by subsuming those indirect taxes in a single tax called GST. It is in this context we have analyzed Section 19 of the Constitution Amendment Act. Viewed thus the amendments brought in by the Second Amendment Act, as discussed above, are wholly inconsistent with

the scheme of the Constitution Amendment Act read with the CGST Act and the TGST Act.

145 Thus, upon thorough consideration of all aspects of the matter, we have no hesitation in holding that the Second Amendment Act is unconstitutional being devoid of legislative competence. It is accordingly declared as such. Consequently, the notices issued and orders passed under Section 32 (3) of the VAT Act which have been impugned in the present batch of writ petitions are hereby set aside and quashed.

146 All the writ petitions are accordingly allowed. However, there shall be no order as to costs.

147 Miscellaneous petitions, if any, pending in all the writ petitions, shall stand closed.

UJJAL BHUYAN, CJ

SMT. JUSTICE P.MADHAVI DEVI

Date:05- 07-2022.
Kvsn/Vrks/Pln

Note: LR copy be marked
(By order)
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