Santosh/Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS. 23 OF 2021, 139, 140, 141, 148, 228, 229 & 350 OF 2022

WRIT PETITION NO. 23 OF 2021

Mr ROHAN LOBO,
Sole Proprietor, age 44 Years ex M/s. Synergy Trade Exchange, having office at Flat No. A-005, House of Lords, Miramar, Goa. ….. Petitioner.

Versus

1. STATE OF GOA,
through its Chief Secretary,
having office at Secretariat,
Porvorim, Goa.

2. COMMISSIONER OF COMMERCIAL TAXES,
Government of Goa,
Vikrikar Bhavan, Panaji — Goa.

3. ASST. COMMERCIAL TAX OFFICER, Commercial Tax Office,
Government of Goa,
Panaji Ward, Panaji — Goa. …. Respondents

WITH

WRIT PETITION NOS.139, 140, 141, 148, 228 & 350 OF 2022

UNITED SPIRITS LTD.
(Erstwhile McDowell & Co. Ltd)
A Company incorporated under

the Companies Act, 1956
With its registered Office at
9th Floor, U.B. Tower, U.B City,
24, Vittal Mallya Rd., Bengaluru-560001
With its Manufacturing Plant
At Bethora, Ponda Goa.

Represented by its Authorized Officer,
Dr. Huma Ali, major of age, married,
resident of Flat No. EHA 706,
Essen Horizon Block A, Phase II,
Jairam Nagar, Dabolim, Goa. …. Petitioner

Versus

1. STATE OF GOA
Through the Chief Secretary,
With office at Secretariat,
Legislative Assembly Complex,
Porvorim, Goa

2. THE COMMISSIONER OF
COMMERCIAL TAXES
With Office at Vikrikar Bhavan,
M.G.Road, Panaji, Goa.

3. The Addl. Commissioner of
Commercial Taxes with office
at Vikrikar Bhavan
M.G.Road, Panaji Goa.

4. The Commercial Tax Officer
Ponda Ward with office at
Tisk Ponda, Goa.

5. The Assistant Commercial Tax Officer
with office at Abubaker Mansion
Kurti Road Ponda Goa. ….. Respondents

WITH
WRIT PETITION NO.229 OF 2022

GLOBAL CONVEYOR SYSTEMS PVT. LTD.
A company registered under the Companies Act, 1956,
With its registered Office at Matruchaya,
Plot No.2, Ocean Residency,
Chicalim, Goa.
Through its authorized representative,
Hussain Khan, Son of Ismail Khan,
44 years of age, resident of H.No.296,
Sasmole, Baina, Vascoda-Gama,
Goa 403802. …. Petitioner

Versus

1. STATE OF GOA
Through the Chief Secretary,
With office at Secretariat,
Legislative Assembly Complex,
Porvorim, Goa

2. THE COMMISSIONER OF
COMMERCIAL TAXES
With Office at Vikrikar Bhavan,
M.G. Road, Panaji, Goa. ….. Respondents

Mr Yogesh Nadkarni with Ms S. Khadilkar, Advocates *for the Petitioner in W.P. No.23/2021.*

***Mr Bharat Raichandani with Mr Rishabh Prasad*, Mr Sudesh Usgaonkar and Ms Marie Rosette Pereira,** ***Advocates** for the Petitioner in W.P. Nos.141, 139, 140, 148, 228 & 350/2022.*

Mr Sudesh Usgaonkar and Ms Marie Rosette Pereira,
***Advocates** for the Petitioner in W.P. No.229/2022.*

Mr D.J. Pangam, Advocate General with
Ms Maria Correia *in WP No.23/2021,*
Ms Sulekha Kamat *in WP No.139/2022,*
Mr S. Parab *in W.P. No.140/2022,*
Mr S. Priolkar *in WP No.141/2022,*
Mr P. Arolkar *in WP No.148/2022,*
Ms Sapna Mordekar *in WP No.228/2022,*
Mr T. Gawas *in WP No.229/2022*
Mr Deep Shirodkar *in WP No.350/2022,*
Additional Government Advocates *for the Respondents – State.*

CORAM : M. S. SONAK &
BHARAT P. DESHPANDE, JJ.

Reserved on : 1st MARCH 2023
Pronounced on : 20th APRIL 2023

JUDGMENT : (*Per M.S. Sonak, J.*)

1. The petitioners in this batch of petitions challenge the non-implementation of this Court's decisions in Writ Petition No.424 of 2018 and connected matters despite Special Leave Petitions against the same being dismissed by the Hon'ble Supreme Court on the specious plea that such decisions *"stand nullified"* or are *"rendered ineffective"* after the passage of the Goa Value Added

Tax (12th Amendment) Act, 2020 (impugned Amendment Act). In the alternative, the petitioners challenge the constitutional validity of the impugned Amendment Act on several grounds, including legislative override, legislative competence, manifest arbitrariness, etc.

2. Since substantially similar issues of law and fact arise in these matters, they are disposed of by a common judgment and order. The petitioners in Writ Petition Nos. 139, 140, 141, 148, 228 and 350 of 2022 (*United Spirits Limited vs State of Goa*) deal with alcohol for human consumption. Therefore, some of the challenges raised in this petition may not be available to these petitioners. However, most of the other challenges are common to all the petitioners. Therefore, with the consent of the learned Counsel for the parties, Writ Petition No.23 of 2021 (*Mr Rohan Lobo vs State of Goa*) is taken as the lead petition since the relevant facts in this petition and the others are more or less the same.

3. The facts and circumstances in which the above challenges arise in the lead petition are set out briefly hereafter.

3.1. The Petitioner is a registered dealer at Panaji ward under the Goa Value Added Tax Act, 2005 (GVAT Act) involved in selling

and purchasing iron ore in the State of Goa.

3.2. The Assessing Officer assessed the Petitioner's returns for 2011-12 and, by an assessment order dated 10.12.2014, determined an amount of ₹3,08,24,730/- as refundable to the petitioner due to the excess tax paid by the Petitioner for the said year.

3.3. By an order dated 06.12.2017, the Commissioner of Commercial Taxes sanctioned a refund of ₹2,49,05,784/- and this amount was actually refunded on 14.12.2017. However, no statutorily prescribed interest at the rate of 8% per annum was paid to the Petitioner.

3.4. After raising several demands for payment of such interest, the Petitioner instituted Writ Petition No.720/2019, which was allowed by judgment and order dated 19.11.2019. Accordingly, the Court issued a mandamus directing the respondents to pay the Petitioner an amount of ₹54,62,665/- together with interest at the rate of 4% per annum to be computed from 14.12.2017 till the date of actual payment within eight weeks.

3.5. The respondents failed to honour the mandamus within the timeline or beyond. At the belated stage, the respondents filed Misc. Civil Application No.154/2020 seeking an extension. An extension of four weeks was granted by order dated 24.02.2020.

However, even during the extended period, neither was the mandamus honoured nor did the respondents bother to seek any further extension of time from this Court.

3.6 The Petitioner and the respondents exchanged correspondence regarding compliance with the Writ of mandamus issued by this Court. Assistant Commissioner's communication dated 23.07.2020 informed the Petitioner that a Special Leave Petition (SLP) had been preferred in the matter, and the request for the honour of the mandamus would be processed after the outcome of the SLP.

3.7. The address of the above communication dated 23.07.2020 was shocking and unfortunate. This is because the Hon'ble Supreme Court had already dismissed the SLP on 08.06.2020, even without any notice to the Petitioner. In any case, the time limit for compliance had already expired, and the Hon'ble Supreme Court had granted no interim relief. Thus, even after the SLP was dismissed, the mandamus was not honoured.

3.8. Accordingly, the Petitioner was constrained to institute Contempt Petition under Stamp Number No.1304/2020. After seeking several adjournments, the Assistant Commissioner of Commercial Taxes filed an affidavit in reply on 05.11.2021.

3.9. In this affidavit, a reference was made to the impugned

Amendment Act, and based thereon, it was submitted that this Court's decision dated 19.11.2019 in Writ Petition No.720/2019 and the mandamus issued therein "*has been rendered ineffective due to the removal of the bases on which the said order was rendered*".

3.10. Accordingly, the Petitioner was constrained to institute the present petition.

PETITIONERS' CONTENTIONS :

4. The learned Counsel for the petitioners made the following submissions in support of their respective petitions:-

4.1 The impugned Amendment is an instance of impermissible legislative override and infringes the doctrine of separation of powers. The fundamental bases of the judicial decisions sought to be nullified or declared ineffective remain substantially untouched by the impugned Amendment Act. Even the Statement of Objects and Reasons to the impugned Amendment Act admits that the impugned Amendment Act was introduced simply because the interpretation in the decisions of this Court was "*different from the interpretation/intensions of the Government of the said provisions of the Act, regarding payment of interest on refund of tax*".

4.2 The learned Counsel for the petitioners submitted that the doctrine of separation of powers is accepted as one of the essential facets of the rule of law under our constitutional scheme. Therefore, based upon the impugned Amendment Act, the State cannot simply refuse to follow the binding judicial decisions of this Court, particularly after the Special Leave Petitions against the same were dismissed by the Hon'ble Supreme Court.

4.3 The learned Counsel for the petitioners rely on several decisions supporting these grounds, including ***Shri Prithvi Cotton Mills Ltd. and Anr. vs. Broach Borough Municipality and Ors.***[1], ***State of Tamil Nadu vs. State of Kerala***[2], ***State of Karnataka & Ors. vs. Karnataka Pawn Brokers Association & Ors.***[3], ***Laghu Udyog Bharati And Anr. vs. Union Of India And Ors.***[4], ***The Commissioner Of Central Excise vs. Mangalam Cement Ltd.***[5] and ***Gujarat Ambuja Cements Ltd. & Anr. vs. Union Of India & Anr.***[6], ***Cauvery Water Disputes Tribunal, In re***[7], ***S.R. Bhagwat & Ors. vs. State of Mysore***[8]

1. 1969 (2) SCC 283.
2. (2014) 12 SCC 696.
3 (2018) 6 SCC 363
4 (1999) 6 SCC 418
5 2005 (187) ELT 5 (SC)
6 (2005) 4 SCC 214
7 1993 Supp (1) SCC 96 (2)
8 (1995) 6 SCC 16

and ***Madras Bar Association vs. Union of India & Anr.***[9].

4.4 The learned Counsel for the petitioners submitted that in terms of Section 19 of the Constitution (101st Amendment) Act, 2016, any law relating to tax and goods on services or 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 the expiration of one year from such commencement, whichever is earlier*. The learned Counsel, therefore, submitted that as of 16.09.2017, the Goa Value Added Tax Act, 2005 (GVAT Act, 2005) would have lapsed. However, the State legislature enacted and introduced Goa Goods and Services Tax Act, 2017, effective from 01.07.2017, to align the tax on goods and services law with the Constitution (101st Amendment) Act, 2016. Therefore, in terms of Section 174 of the Goa Goods and Services Tax Act, 2017, GVAT Act, 2005 was repealed except in respect of goods included in Entry 54 of the State List of Seventh Schedule to the Constitution, viz. petroleum products and alcohol for human consumption.

4.5 The learned Counsel for the petitioners, therefore,

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9 2021 SCC OnLine Sc 463

contended that the State legislature could have never amended the repealed GVAT Act, 2005 without even bothering to revive the same, assuming such revival was possible after 16.09.2017. The learned Counsel for the petitioners relied upon several decisions supporting the contention that a repealed Act cannot be amended without revival. These include ***Reliance Industries Ltd. vs State of Gujarat***[10], ***Sri Sri Engineering Works and Ors. vs. Deputy Commissioner (CT) & Ors.***[11], ***Baiju A.A. vs State Tax Officer, State Goods & Services Tax Department and Anr.***[12], ***State Tax Officer vs Baiju A.A. (WA No.48/2020),*** and ***Jatindra Nath Gupta vs Province of Bihar***[13] .

4.6 The learned Counsel for the Petitioners in Writ Petition Nos.23 of 2021 and 229 of 2022 submitted that post the Constitution (101st Amendment) Act, 2016, effective from 16.09.2016, the Goa Legislative Assembly lacked legislative competence to enact the impugned Amendment Act. He submitted that in terms of Articles 246, 246-A and amended Entry 54 of the State List, the Seventh Schedule to the Constitution had legislative competence to enact tax laws concerning only the five petroleum products specified in

10 2020 SCC OnLine Guj. 694
11 2022 SCC OnLine TS 1367
12 2019 SCC OnLine Ker 5362
13 AIR 1949 FC 175

amended Entry 54 and alcohol for human consumption. He pointed out that the petitioners in these two petitions had no concern with the five specified petroleum products or alcohol for human consumption.

4.7 Learned Counsel pointed out that this position was clarified by the State legislature in Section 174 of the Goa Goods and Services Tax Act, 2017, by which the GVAT Act, 2005 was repealed except in respect of goods included in Entry 54 of the State List of the Seventh Schedule to the Constitution viz. petroleum products and alcohol for human consumption. Again, learned Counsel relied upon several decisions in support of this contention. These include *Reliance Industries Ltd.* (supra), *Sri Sri Engineering Works and Ors.* (supra) and *Baiju A.A.* (supra).

4.8 The learned Counsel for all the petitioners submitted that the impugned Amendment Act is manifestly arbitrary and violates Articles 14 and 265 of the Constitution. Second, they proposed that the impugned Amendment Act is confiscatory and confers unfettered discretion in the sanctioning authority withholding sanction to refund excess tax, almost indefinitely, and without any liability to pay interest. Third, they submitted that the impugned Amending Act retrospectively takes away vested constitutional rights. Finally, they offered that these are good grounds to strike

down the impugned Amendment Act or at least the retrospective effect given to the impugned Amendment Act. Again, the learned Counsel for the petitioners relied upon several decisions supporting these propositions.

STATE'S DEFENCE :

5.1 The learned Advocate General defended the impugned Amendment Act by submitting that the same was a validating Act that had removed the bases of the judicial decisions the petitioners sought implementation of. He offered that the judicial decisions were entirely based on the interpretation of Sections 10 and 33 of the GVAT Act, 2005. Now that these Sections and even some linked Sections were substantially amended with retrospective effect, the bases of the judicial decisions stood altered, thereby rendering the judicial decisions ineffective and unimplementable.

5.2 The learned Advocate General submitted that this is a time-tested and permissible legislative exercise. He relied on ***Goa Foundation and Anr. vs. State of Goa***[14], ***The Government of Andhra Pradesh and Anr. vs. Hindustan Machine Tools Ltd.***[15], ***Easland Combines, Coimbatore vs. Collector of***

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14 (2016) 6 SCC 602

15 (1975) 2 SCC 274

Central Excise[16], ***Bakhtawar Trust and Ors. vs. M.D. Narayan and Ors.***[17], *Shri Prithvi Cotton Mills Ltd.* (supra), ***State of H.P. and Ors. vs. Yash Pal Garg (dead) by Lrs and Ors.***[18], ***I.N. Saksena vs. State of Madhya Pradesh***[19] and ***M/s. Tirath Ram Rajindra Nath, Lucknow vs. State of U.P. and Anr.***[20].

5.3 The learned Advocate General submitted that GVAT Act, 2005, was not entirely repealed by Section 174 of the Goa Goods and Services Tax Act, 2017. Therefore, its amendment was validly brought about by the impugned Amending Act. The learned Advocate General submitted that the repeal provision contains a saving clause that continues to govern the party's right after repeal. He offered that in such a situation, the State legislature could amend the repealed law with retrospective effect to govern the saved transactions. He relied on the ***State of Rajasthan vs. Mangilal Pindwal***[21] and ***Rangubai vs. Laxman Lalji Patil***[22] to support this contention.

5.4 The learned Advocate General submitted that the State legislature had the legislative competence to amend the GVAT

16 (2003) 3 SCC 410
17 (2003) 5 SCC 298
18 (2003) 9 SCC 92
19 (1976) 4 SCC 750
20 (1973) 3 SCC 585
21 AIR 1996 SC 2181
22 AIR 1966 Bom 169

Act, 2005, given the special provisions of Article 246-A of the Constitution. He offers that this provision combines both the source of power and the field of legislation conferring simultaneously competence on the States and the Union Legislatures to enact such taxing statutes. Further, he submits that the Hon'ble Supreme Court settled this issue in the case of the ***Union of India and Anr. vs Mohit Minerals Pvt. Ltd.***[23], ***Union of India and Ors. vs VKC Footsteps India Pvt. Ltd.***[24] and the Full Bench of this Court in ***United Projects vs State of Maharashtra***[25].

5.5. The learned Advocate General finally submitted that no arbitrariness is involved in the impugned Amendment Act. He offered that the bar, if any, is to take away vested constitutional rights and not vested statutory rights. He submitted that the right to obtain interest on refundable excess tax is neither a fundamental nor a constitutional right but only a statutory right. Therefore, there is no bar to restricting such rights by amending the statute.

5.6 The Learned Advocate General submitted that mere absence of any timeframe within which a sanction is to be granted

23 2022 SCC OnLine SC 657

24 (2022) 2 SCC 603

25 2022 SCC OnLine Bom 1458

for a refund of the excess tax does not render the impugned Amendment Act violative of Article 14 of the Constitution. He submitted that in such a situation, power must be exercised within a reasonable period depending upon the facts and circumstances of each case. Therefore, he proposed that no arbitrariness was involved in the impugned Amendment Act. He relied on ***Comorin Match Industries (P) Ltd. vs. State of T.N.***[26], ***Commissioner of Income Tax, Gujarat vs. Gujarat Fluoro Chemicals***[27], and ***Government of India vs. Citedal Fine Pharmaceuticals, Madras and Ors.***[28].

CONSIDERATION OF THE RIVAL CONTENTIONS *:*

IMPERMISSIBLE JUDICIAL OVERRIDE?

6. The first question that falls for consideration is whether the impugned Amendment Act is an instance of impermissible judicial override to reverse or set at nought the judicial decisions of this Court even after SLPs against the same were dismissed by the Hon'ble Supreme Court. The petitioners contend that the Legislature has not removed the fundamental bases of the judicial decisions. On the other hand, the learned Advocate General

26 (1996) 4 SCC 281
27 (2014) 1 SCC 126
28 (1989) 3 SCC 483

argued that the fundamental bases are removed with retrospective effect; therefore, this is not an instance of legislative override.

7. Several decisions of the Hon'ble Supreme Court have fairly settled the legal position of validating statutes. However, there are always issues of application of such principles depending upon facts and circumstances peculiar to the cases that fall for consideration.

8. Since both sides relied strongly on *Shri Prithvi Cotton Mills Ltd.* (supra), reference to this decision at the very outset would be appropriate. This is a leading case on the legal effect of validating statutes, and the principles explained by the Constitution Bench have stood the test of time.

9. The Constitution Bench has held that the Court examining the validity of a validating statute must first examine the issue of legislative competence. *Secondly, granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind, for that would tantamount to reversing the decision in the exercise of judicial power, which the Legislature does not possess or exercise. A Court's decision must always bind unless the conditions on which it is based are so fundamentally*

altered that the decision could not have been given in the altered circumstances. Validation of a tax declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are, in fact, removed, and the tax thus made legal. Therefore, the validity of a validating law depends upon whether the Legislature possesses the competence that it claims over the subject matter and whether, in making the validation, it removes the defect that the Courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax.

10. The super-session of judicial verdicts through legislation sometimes involves the violation of the separation of powers doctrine under the Constitution of India. The Hon'ble Supreme Court considered this issue in ***Government of Kerala, Irrigation Department and Ors, vs James Varghese and Ors.***[29] and *State of Tamil Nadu vs State of Kerala* (supra).

11. In the above decisions, the Hon'ble Supreme Court held that even without the express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India. This doctrine informs the

29. (2022) 9 SCC 593.

Indian Constitutional structure and is an essential constituent of the rule of law. In other words, the doctrine of separation of powers though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of the Indian Constitution.

12. The Hon'ble Supreme Court held that the independence of Courts from the executive and Legislature is fundamental to the rule of law and one of the basic tenets of the Indian Constitution. Separation of judicial power is a significant principle under the Constitution of India. Accordingly, breaching the separation of judicial power may negate equality under Article 14. Separation of powers between three organs —the Legislature, Executive and Judiciary, is also nothing but the consequence of principles of equality enshrined in Article 14 of the Constitution of India. *Thus, legislation can be invalidated based on a breach of the separation of powers since such a breach negates equality under Article 14 of the Constitution.*

13. The Hon'ble Supreme Court further elaborated that the doctrine of separation of powers applies to final judgments of the Courts. *Therefore, the Legislature cannot declare any decision of a Court of law to be void or of no effect. It can, however, pass an*

amending Act to remedy the defects pointed out by the Court of law or on coming to know of it aliunde. In other words, a Court's decision must always bind unless the conditions on which it is based are fundamentally altered that the decision could not have been given in the altered circumstances. Further, suppose the Legislature has power over the subject matter and competence to make a validating law, in that case, it can make such a validating law at any time and make it retrospective. *The validating of the Validating Law, therefore, depends upon whether the Legislature possesses the competence that it claims over the subject matter and whether, in making the validating law, it removes the defect that the Courts had found in the existing law.*

14. On the scope of judicial review and the nature of the inquiry, the Hon'ble Supreme Court pointed out that the law enacted by the Legislature may apparently seem to be partly within its competence. Still, in substance, if it is shown as an attempt to interfere with the judicial process, such law may be invalidated as being in breach of the doctrine of separation of powers. In such a situation, the legal effect of the law on a judgment or a judicial proceeding must be examined closely regarding legislative prescription or direction.

15. In such matters, the questions to be asked are, (i) Does the legislative prescription or legislative direction interfere with the judicial functions? (ii) Is the legislation targeted at the decided case, or whether the impugned law requires its application to a case already finally decided? (iii) What are the terms of law, the issues with which it deals and the nature of the judgment that has attained finality? Suppose the answer to questions (i) and (ii) is in the affirmative, and the consideration of aspects noted in question (iii) sufficiently establishes that the impugned law interferes with judicial functions, in that case, the Court may declare the law unconstitutional.

16. Almost all the other decisions the Counsel for the Petitioners and the learned Advocate General relied upon reiterate or elaborate on the above principles. Therefore, adverting all such decisions might be repetitive.

17. Accordingly, applying the law in *Shri Prithvi Cotton Mills Ltd.* (supra), *State of TN V/s. State of Kerala* (supra) and *James Varghese and Ors.* (supra), the issue as to whether this is a case of impermissible judicial override or a matter of whether the principle of separation of powers has been breached or not will

have to be inquired into.

18. Therefore, to begin with, we must advert to this Court's decision in *United Spirits Limited vs. State of Goa and Ors.* (USL decision) dated 16.10.2019 in Writ Petition No.424 of 2018 because this was the lead decision relied upon to dispose of the other petitions in the batch. Then we propose to consider whether the impugned Amendment Act has removed the defects pointed out by the Court or otherwise altered the fundamental bases of this Court's decisions. In short, the scope of inquiry is whether the impugned Amendment Act is genuinely a validating Act or an instance of impermissible judicial override.

19. In USL, the main issue involved was the date from which simple interest at the rate of 8% per annum would become payable on the amount refundable under the provisions of the GVAT Act. The Court held that such interest would become payable on the 91st day from the expiry of the refund order, where such refund is not paid within 90 days of such determination.

20. To support the above conclusion/decision, the Division Bench of this Court did refer to and rely upon the provisions of Sections 10 and 33 of the GVAT Act. However, such reliance was

not the sole or exclusive basis to support the above conclusion or decision. In addition, the Court referred to the phraseology of Rule 30, the interplay between the Act and Rules, and the need for a harmonious construction. The Court referred to and relied upon the entire scheme of the GVAT Act, including the schematic interpretation of the provisions of Sections 10, 29, 30, 33 and 34 of the GVAT Act and Rule 30 of the Rules made under the said Act. The Court also assessed the effect of the proviso to Section 34(3) of the GVAT Act, under which the standard principle about interest becoming payable from the 91st day of the refund order deviated where there was non-cooperation or lapse on the dealer's part.

21. This Court clearly and unequivocally held that a sanction order under Rule 30 of the said Rules relates back to the date of the refund order made by the Assessing Authority, at least to the extent of the amount referred to in the sanction order. This Court noted that it was not as if the sanctioning authority, for the first time, was determining whether any refund was due. The sanctioning authority merely sanctioned the determinations already made, either wholly or partly. Therefore, a sanction order would essentially relate back to the date of the refund order. This Court also held that the provisions of Section 33(2) of the GVAT

Act and Rule 30 of the said Rules operate within their respective fields as explained in paragraph 50 of the said judgment and order.

22. The reasoning and, consequently, some of the crucial bases for the decisions said to have been rendered *ineffective* by the impugned Amendment Act are found in paragraphs 51 and 52. In these paragraphs, this Court held that unlike in the case of assessment or reassessment, there was no time limit prescribed within which the Revenue was required to obtain sanction under Rule 30 of the said Rules. Therefore, if the Revenue's interpretation of the effect of the sanction order were to be accepted, then the Revenue would virtually be permitted to take undue advantage of its own delays in obtaining or issuing a sanction order under Rule 30 of the said Rules. In paragraph 52, the Court concluded that, therefore, it would be reasonable to proceed on the basis that the 90 days time limit prescribed under Section 33(2) of the GVAT Act is the time limit within which the appropriate assessing authorities must obtain sanction under Rule 30 of the said Rules.

23. This Court held that, for any reason, no sanction was obtained within 90 days from the date of the refund orders under

Section 29 or from the date of receipt of the application for a refund under Section 10(3) of the GVAT Act. In that case, the assessing authorities could not avoid liability or payment of simple interest at the rate of 8% per annum on the specious plea that such liability commences only from the date of expiry of 90 days from the date of sanction or under Rule 30 of the said Rules.

24. In paragraphs 53 and 54, the Court relied upon ***Ranbaxy Laboratories Limited vs. Union of India and others***[30] and ***Union of India and Ors.vs. Hamdard (WAQF) Laboratories***[31] to hold that interest under Section 11-B and 11-BB of the Central Excise Act, 1944 commences from the date of expiry of three months from the date of receipt of an application for refund or on the expiry of three months from the date on which the refund order is made. Accordingly, the Court ruled that interest becomes payable after the expiry of three months from the date of application for refund and payment of such *interest cannot be resisted based on any procrastination by the Authorities.*

25. Thus, it is clear that this Court's decisions, whether in Writ Petition No. 424/2018 or the connected matters, were not solely

30. (2011) 10 SCC 292.

31. (2016) 6 SCC 621.

or exclusively based upon this Court's interpretation of the provision in Sections 10 and 33 of the GVAT Act. The interpretation of the said provisions was one of the bases but not the sole or exclusive base as it was assumed to resist or at least indefinitely postpone payment of any interest on the refunds of excess tax collected by the Revenue.

26. In addition to the above base concerning the interpretation of the provisions of Sections 10 and 33 of the GVAT Act, the Court based its conclusion/decision on at least six other bases.

27. **Firstly**, the schematic interpretation of the provision of Sections 10, 29, 30, 33 and 39 of the GVAT Act and Rule 30 of the said Rules; **Secondly**, on the harmonious construction between Sections 10 and 33 on the one hand and Rule 30 of the said Rules, on the other; even if we assume that the amendments to Sections 10 and 33 marginally affected the interpretation of the two provisions, the effect was only marginal. Besides, the other bases referred to hereafter were not in the least dented by the amendments.

28. **Thirdly** and significantly, the Court based its decision on the principle that the Revenue could not avoid payment of

interest from the 91st day of the refund order or application date by unreasonably delaying the sanction order or otherwise based on any procrastination by the authorities as was observed in *Ranbaxy Laboratories Ltd.* (supra) and *Hamdard (WAQF) Laboratories* (supra). This fundamental base had nothing to do with the interpretation of the provisions of Sections 10 and 33 of the GVAT Act;

29. **Fourthly**, this Court ruled that the sanction order in terms of Rule 30 of the said Rules would "**relate back**" to the date of the refund order, at least to the extent of the amount referred to in the sanction order made under Rule 30 of the said Rules. Thus, one of the fundamental bases of this Court's conclusion/decision was that the delay in issuing the sanction order would not operate to the prejudice of an Assessee who had paid excess Tax and the assessing Authority had already determined the refundable amount. To prevent the Revenue from taking undue advantage of primarily ministerial delays in issuing the sanction orders, this Court ruled that a sanction order, whenever issued, would relate back to the date of the refund order so that Assessee was not deprived of interest on the excess tax paid by him. The impugned Amendment Act has not even touched this finding about relating back which attained finality after the dismissal of SLPs by the

Hon'ble Supreme Court.

30. **Fifthly** and again, to ensure that no interest is denied to an Assessee due to procrastination by the authorities to issue a sanction order, this Court held that the 90-day time limit provided in Section 33(2) of the GVAT Act was, in fact, the time limit within which the assessing authorities "*must obtain sanction in terms of Rule 30 of the said Rules*"; Even this finding remains relatively untouched except that now it could be contended that the time limit under Section 10 or 33 is about 180 days. Accordingly, the principle remains unaffected by the impugned Amendment Act.

31. **Sixthly**, this Court also held that if, for any reason, a sanction order under Rule 30 of the said Rules was not obtained within these 90 days, the Assessing Authorities could not avoid liability for payment of simple interest at the rate of 8% per annum on the specious plea that such a liability commences only from the date of expiry of 90 days from the date of the sanction or under Rule 30 of the said Rules. Again, the principle remains unaffected by the impugned amendment Act.

32. The fact that the impugned Amendment Act has not

altered most of the bases of the judicial decisions or that its sole object was to legislatively override the judicial decisions without any serious attempt to remove the defects pointed out is evident even from the Statement of Objects and Reasons concerning the impugned Amendment Act, 2020. The Statement of Objects and Reasons throws light on the necessity and the object of introducing the impugned Amendment Act and is transcribed below:

> *"Statement of Objects and Reasons*
>
> *The Bill seeks to suitably amend the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005), in light of the recent judgment of the honorable High Court based on the interpretation of section 33 of Goa Value added Tax Act, 2005 read with Rule 30 of the Goa Value Added Tax Rules, 2005, which in different from the interpretation /intentions of the Government of said provisions of the Act, regarding payment of interest on refund of tax.*
>
> *The Advocate General in its opinion tendered to the Government has suggested certain Amendment to the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005) in order to do away with the effect of such an interpretation and to save Revenue of the State.*
>
> *The Bill seeks to retrospectively bring into effect the amendments of the proposed Bill notwithstanding contained in any order, judgment, decree, directions of any authority, tribunal or Court or any other instrument*

> ***having force of law and shall apply to all cases from the date of enactment of the Goa Value Added Tax (Act 9 of 2005).***
>
> *The Bill seeks to fix the time limit of giving refund from 3 months from the date of the order of the sanctioning authority in case of an application for refund under sub-section (3) of section 10.*
>
> *The Bill also seeks to insert sub-section (10) to section 29 so as to fix time limit for assessing authority to submit refund proposal to competent sanctioning authority.*
>
> *Further the Bill seeks to amend sub-section (2) of section 33 so as to fix the time limit of giving refund from 90 days from the date of the order of the sanctioning authority in case of an application for refund under sub-section (3) of section 10.*
>
> *This Bill seeks to achieve the above object."*

33. The above Statement of Objects and Reasons reflects the following:-

(a) that the impugned Amendment was "*in light of recent judgment* of the honourable High Court based on interpretation of Section 33 of Goa Value added Tax Act, 2005 read with Rule 30 of the Goa Value Added Tax Rules, 2005, *which is different from the interpretation/intentions of the Government of the said provisions of the Act, regarding payment of interest on refund of Tax*";

(b) That the Advocate General, in his opinion, tendered to the Government had suggested certain amendments to the GVAT Act "*in order to do away with the effect of such an interpretation and to save revenue of the State*";

(c) That the Bill seeks to *retrospectively* bring into effect the amendments of the proposed bill "*notwithstanding contained in any order, judgment, decree, directions of any authority, tribunal or court or any other instrument* having the force of law and shall apply to all cases from the date of enactment of the Goa Value Added Tax (Act 9 of 2005)";

(d) The Bill seeks to fix the time limit of giving a refund "*from three months from the date of the order of the sanctioning authority* in case of an application for a refund under sub-section (3) of section 10";

(e) The Bill also seeks to amend sub-section (2) of Section 33 so as to fix the time limit of giving refund "*from 90 days from the date of the order of the sanctioning authority* in case of an application for refund under sub-section (3) of Section 10";

(f) The Bill also seeks "to insert sub-section (10) to section 29 *so as to fix time limit for assessing authority to submit refund proposal to competent sanctioning Authority*";

(g) The Bill seeks to "*achieve the above object*."

34. Therefore, the Bill that ultimately culminated into the impugned Amendment Act proceeded on the basis that this Court's decisions were solely and exclusively premised on the wordings of unamended Sections 10 and 33. Once they were altered, the judicial decisions would become ineffective, and the State would stand relieved of the obligation to implement them. The clear intention was to legislatively overrule or reverse the judicial decisions simply because the Court's interpretation and findings did not align with the Government's viewpoint. The fundamental base about the arbitrariness involved in the State drawing undue advantage from the tardiness and procrastination of its own officials was never addressed. This fundamental defect continues. Such an exercise does not qualify as some genuine validation Act.

35. The impugned Amendment Act comprises five sections and is transcribed below for the convenience of reference :

"Notification

7/16/2020-LA

The Goa Value Added Tax (Twelfth Amendment) Act, 2020 (Goa Act 15 of 2020), which has been passed by the Legislative Assembly of Goa on 27-07-2020 and assented to by the Governor of Goa on 12-08-2020, is hereby published for the general

information of the public.

Dnyaneshwar Raut Dessai, Joint Secretary (Law). Porvorim, 17th August, 2020.

The Goa Value Added Tax (Twelfth Amendment) Act, 2020

(Goa Act 15 of 2020) [12-08-2020]

AN

ACT

further to amend the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005).

B.E. it enacted by the Legislative Assembly of Goa, in the Seventy-first Year of Republic of India as follows:

1. Short title and commencement. - (1) This Act may be called the Goa Value Added Tax (Twelfth Amendment) Act, 2020.

(2) It shall come into force at once except sections 2, 3 and 4, which shall be deemed to have come into force on 1st April, 2005,

2. Amendment of section 10. - In section 10 of the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005) (hereinafter referred to as the "principal Act"), in sub-section (3), for the expression "shall be refunded in the prescribed manner within 3 months from the date of filing of application claiming the refund", the expression "shall upon an "application made by such exporter be refunded in such manner within a period of ninety days from the date of the

sanction order of such authority, as prescribed" shall be substituted.

3. Amendment of section 29. - In section 29 of the principal Act, after sub-section (9), the following sub-section shall be inserted, namely:

"(10) Where any order passed under this section, results in refund of any amount of tax, interest or penalty and no appeal, review or revision is filed against such order within the time limit specified in this Act, the Appropriate Assessing Authority shall after expiry of time limit for filing of appeal, review or revision shall submit the complete proposal for sanction of refund, within a period of 90 days from the date of expiry of such period to the sanctioning authority as prescribed.".

4. Amendment of section 33. - In section 33 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:

"When any amount refundable to any dealer or person under an order made under any provisions of this Act, including refund admissible to an exporter under sub-section (3) of section 10, is not refunded within a period of ninety days, -

(a) where the amount to be refunded does not exceed rupees fifty thousand, from the date of order of refund; or .

(b) where the amount to be refunded exceed rupees fifty thousand, from the date of,-

(i) sanction of amount refundable by the sanctioning authority as prescribed; or

(ii) sanction of amount refundable by the

sanctioning authority to an exporter under sub-section (3) of section 10,

the authority shall pay such person simple interest at the rate of eight percent per annum on the said amount from the date immediately following the day of expiry of the said ninety days to the day of refund:

Provided that the interest calculable shall be on the balance of the amount remaining after adjusting out of the refundable amount any tax, penalty or other amount due under this Act, for any year by the person on the date from which such interest is calculable.";

5. Validation — Notwithstanding anything contained in any judgement, order, decree or direction of any Court, Tribunal or other Authority to the contrary, no interest on refund Shall be paid or payable under the provisions of the principal Act before the date of commencement of the Goa Value Added Tax (Twelfth Amendment) Act, 2020 and every action taken or things done including non-payment of interest on refund shall be deemed to be in accordance with the provisions of the principal Act as amended by this Act, and shall be valid and shall be deemed to have always been validity done and accordingly,—

a) no suit, appeal, application or other proceedings shall lie or be maintained or continued in any Court or before any Tribunal, officer or other Authority, for payment of interest on refund under the provisions of the principal Act before its Amendment under this Act;

b) no Court, Tribunal, officer or other Authority

shall enforce any decree or order directing the payment of interest on refund under the provisions of the principal Act before its Amendment under this Act.

Secretariat,
Porvorim Goa
Dated :17-08-2020

CHOKHA RAM GARG
Secretary to the Government of Goa
Law Department
(Legal Affairs)."

36. The primary amendment applies to Sections 10 and 33 of the GVAT Act, 2005. Because the judicial decisions (that are now sought to be rendered ineffective) had provided that interest on excess and found refundable tax was to be paid from the 91st day of the "*refund order*" under Sections 10 and 33 of the GVAT Act, 2005, the impugned Amendment Act now provides that such interest would become payable from the 91st day of "*sanction order*". The other bases, which were fundamental, have not been touched by the impugned Amendment Act.

37. Apart from the wordings of unamended Sections 10 and 33 of the GVAT Act, 2005, the foundation of the judicial decisions of this Court, as affirmed by the Hon'ble Supreme Court, was that the Revenue could reap no undue advantage from its own delays or due to the procrastination of its officials. The Court felt such a situation would be arbitrary, and even the statutory scheme did not support such a construction. Therefore, the

Court thought that the 91st day from the sanction order could not be the starting point for the statutorily prescribed interest on excess refundable tax payable to the Assessee. The Court, therefore, held that the sanction order had to be obtained within 90 days of the refund order. The Court also held that in case of any delay in getting the sanction order, such order, as and when obtained, would relate back to the refund order. All these findings supported the fundamental premise that the State could not deny an Assessee interest on the excess tax refundable by taking undue advantage of the procrastination and delay of its Officials. Unfortunately, this fundamental premise or base of judicial decisions remains untouched by the impugned Amendment Act. Instead, the entire attempt is to perpetuate the arbitrary situation or the defect pointed out by the judicial decisions and yet decline to comply with the binding judicial decisions.

38. Therefore, the impugned Amendment Act can not be called a legitimate validating Act. Instead, this is an impermissible legislative override to overrule or reverse judicial decisions in exercising legislative powers. The doctrine of separation of powers is breached in such a process. This doctrine is an essential constituent of the rule of law and Article 14 of the Constitution. Accordingly, such an exercise is unconstitutional, as explained by

the Hon'ble Supreme Court in *Shri Prithvi Cotton Mills Ltd.* (supra), *State of TN V/s. State of Kerala* (supra) and *James Varghese and Ors.* (supra).

39. Despite the impugned Amendment, this Court could have and perhaps would have taken the view that the Revenue cannot extract any undue advantage based on the procrastination of its officials. Such a view would be entirely consistent with the law laid down in *Ranbaxy Laboratories Limited* (supra) and *Hamdard (WAQF) Laboratories* (supra). Such a view would be consistent with the harmonious interpretation of the provisions of the Act, and the said Rules. Such a view would be consistent with the schematic understanding that the sanction order in terms of Rule 30 of the said Rules would relate back to the date of the refund order made by the Assessing Authority. Such a view would be consistent with the finding that 90 days time limit provided in Section 33(2) of the GVAT Act (even after its Amendment) would be the time limit within which the appropriate Assessing Authority must obtain sanction in terms of Rule 30 of the said Rules. Finally, such a view could be taken by adverting to the Constitutional provisions in Articles 14, 265 and 300-A.

40. Therefore, we cannot accept the contention that the

impugned amendments to Sections 10 and 33 of the GVAT Act were sufficient to knock off the base or the fundamental premise of this Court's decisions as affirmed by the Hon'ble Supreme Court. In particular, the Amendment has not even touched the aspect of scope and object of Rule 30 of the said Rules. The Amendment has not even touched the discrepancy arising from the refund to be made forthwith from the date of the sanction order as provided in Rule 30 of the said Rules. The impugned Amendment has not even dealt with the findings, based upon the interpretation of the scheme of the GVAT Act and the said Rules about the sanction order relating back to the date of refund order made by the Assessing Authority at least to the extent of the amount referred to in the sanction order. The impugned Amendment has not even dealt with this Court's finding that 90 days time limit provided in Section 33(2) of the GVAT was the time limit within which the appropriate Assessing Authority had to obtain sanction in terms of Rule 30 of the said Rules.

41. More importantly, the impugned Amendment Act has not even dealt with the findings recorded by this Court that the Revenue could not deny interest on the excess tax retained by it based on its own procrastination or by taking undue advantage of its own officers delaying sanction. These findings relate to the

principles of non-arbitrariness enshrined in Article 14 of the Constitution, which eschews arbitrariness in the State's action. Further, these findings relate to Article 265 of the Constitution which provides that no tax shall be levied or collected except by authority of law. Retention of excess paid tax without liability to pay interest on unreasonably delayed refunds would affect the principle enshrined in this Article apart from arbitrariness.

42. Retention of an excess tax unreasonably and without liability to pay any interest by taking undue advantage of the procrastination by the authorities in making a sanction order would amount to arbitrariness, which Article 14 of the Constitution shuns. Similarly, acknowledging the liability to refund excess tax, but postponing the actual refund almost indefinitely or unreasonably without liability to even pay interest, might involve infringement of Article 265 of the Constitution. By this method, the Revenue could freeze the interest for the period during which the Revenue Authorities fail to make a sanction order for a tax refund, which the Assessing Authority already determined as excess and, consequently, refundable.

43. The findings in the judgment and order dated 16.10.2019 about the scope and the object of sanction, about sanction order

relating back to the date of the refund order, at least to the extent of the amount referred to in the sanction order, the 90 days' time limit provided in Section 33(2) of the GVAT Act, even the time limit within which the appropriate assessing authorities must obtain the sanction, the denial of interest on refund based on procrastination by the Authorities, rejection of interest by the Revenue Authorities by taking advantage of their own delays, are all findings and observations that are relatable to the facet of non-arbitrariness enshrined in Article 14 of the Constitution of India and the principle that no tax shall be levied or collected except by authority of law as enshrined in Article 265 of the Constitution of India. Therefore, such findings have not been and could not have been nullified by the impugned Amendment Act.

44. Moreover, because they relate to the provisions in Articles 14 and 265 of the Constitution, such findings could not have been nullified or watered down by simply amending the requirements of the GVAT Act. Accordingly, notwithstanding the attempt, we think the impugned Amendment Act has not displaced the base or all the bases of this Court's decisions. Some dent to one of the bases is not the same as a complete obliteration of all the grounds or premises on which the two decisions were founded. Therefore, notwithstanding the form of the impugned

Amendment, the same cannot be regarded as a proper validating Act sufficient to render the two decisions ineffective, as claimed by the State Government in its affidavit. Based upon the impugned amendments, therefore, the State Government cannot avoid the obligation of complying with the directions in the judgment and decision.

45. The learned Advocate General argued that a Court's judgment could be nullified if the decision is based on a statutory provision and the relief is granted based on the interpretation of such statutory provision. He submitted that the competent Legislature could amend the statute based on which the judgment is delivered and upon which relief is granted to the party. He, however, submitted that where a judgment or a mandamus is granted not based on a statute but independent of a statute, such a judgment cannot be overruled by legislative intervention. Written submissions were also filed, precisely transcribing such arguments. In the written submissions, it was contended that if a statute is struck down as unconstitutional and relief is granted to the party, the State Legislature cannot enact an identical statute which is contrary to the ruling/ratio of the judgment as regards the interpretation of the Constitution.

46. Broadly, we agree with the submission of the learned Advocate General. However, as noted above, the judgment and order dated 16.10.2019 in Writ Petition No.424/2018 were not based solely or exclusively on interpreting the provisions of Sections 10 and 33 of the GVAT Act. Therefore, by amending the provisions of Sections 10 and 33 of the GVAT Act, the decision's bases were not removed or obliterated. There were other provisions considered as well by the Court. The Court considered the scheme of such provisions and the interplay between the GVAT Act and the said Rules. No attempt was made to amend all the statutory provisions or rules.

47. In any case, some of the critical findings in the judgment and order were based upon the constitutional provisions in Articles 14 and 265. In particular, the critical findings and observations about the Revenue being precluded from taking undue advantage of its own procrastination or delays, or the findings about sanction order relating back to the refund order or the requirement of obtaining sanction order within 90 days' time limit prescribed in Section 33 of the GVAT Act, are all findings and observations relatable to the principle of non-arbitrariness enshrined in Article 14 and the principle that no tax should be levied or collected except by authority of law as provided by

Article 265 of the Constitution. Therefore, even based on the legal submissions of the learned Advocate General, we hold that this is a case of impermissible judicial override. Accordingly, based upon the impugned amendments, the Respondents cannot refuse to comply with the directions in the judicial decisions that have attained finality.

48. In ***Laghu Udyog Bharati And Anr. vs Union Of India And Ors.***[32], ***The Commissioner Of Central Excise vs Mangalam Cement Ltd.***[33] and ***Gujarat Ambuja Cements Ltd. & Anr. vs Union Of India & Anr.***[34], the Hon'ble Supreme Court has held that where the entire basis of a judgment is not removed in the amended statute, then the amended statute would still be struck down on the deficiencies pointed out by the Court. Further, unless the entire deficiencies are removed, a binding decision of the Court cannot be held to be nullified or rendered ineffective. The State cannot refuse to follow such binding decisions based upon part removal of deficiencies or by partly altering the basis of the judicial decisions.

49. The Hon'ble Supreme Court stalled a similar attempt at

32 (1999) 6 SCC 418
33 2005 (187) ELT 5 (SC)
34 (2005) 4 SCC 214

nullifying a judicial decision in the ***State of Karnataka & Ors. Vs Karnataka Pawn Brokers Association & Ors.***[35] In this case, the main issue was whether the amendments made to the Karnataka Moneylenders Act, 1961 and the Karnataka Pawnbrokers Act, 1961, in the year 1998, providing that the security deposit furnished by the moneylenders and pawnbrokers in terms of Sections 7-A and 4-A of the Acts respectively shall not carry interest, was constitutional, legal and valid.

50. The Division Bench of the Karnataka High Court upheld the provisions' validity. But relying upon ***Jagdamba Paper Industries (P) Ltd. vs Haryana SEB***[36] held that the moneylenders/pawnbrokers were entitled to interest on the security deposits at the prevailing interest rate the scheduled banks paid on a fixed deposit for one year. Furthermore, the Division Bench held that though there was no specific provision providing for payment of interest, there was no prohibition on the payment of interest. Therefore, non-providing of any interest on such a security deposit would be arbitrary and violative of Article 14 of the Constitution of India. No appeal was filed against this decision by the State of Karnataka, but the

35 (2018) 6 SCC 363

36 (1983) 4 SCC 508

moneylenders and pawnbrokers filed an appeal which was dismissed.

51. The State of Karnataka amended the two Acts with retrospective effect. Regarding amended Sections 7-A and 4-A of the said Acts, the security deposit amount was directed to carry no interest. Based upon such retrospective amendments, the State declined to implement the Court's direction for interest payment.

52. The Hon'ble Supreme Cort upheld the High Court's decision striking down the amendments. The Court held that the judicial decision sought to be legislatively overturned was based on the premise that there was no prohibition on paying interest on refundable security deposits. Regarding whether the impugned amendments could undo the effect of such a decision, the Hon'ble Supreme Court relied upon ***Shri Prithvi Cotton Mills Ltd. & Anr. vs. Broach Borough Municipality & Ors.***[37], ***Cauvery Water Disputes Tribunal, In re***[38] and ***S.R. Bhagwat & Ors. vs. State of Mysore***[39].

53. The Hon'ble Supreme Court held that on analyzing such

37 (1969) 2 SCC 283

38 1993 Supp (1) SCC 96 (2)

39 (1995) 6 SCC 16

judgments, the Legislature has the power to enact validating laws and amend laws with retrospective effect. *However, this can be done to remove causes of invalidity.* When such a law is passed, the Legislature corrects the errors pointed out in a judicial pronouncement. Resultantly, it amends the law by removing the mistakes committed in the earlier legislation, which removes the basis and foundation of the judgment. If this is done, the same does not amount to statutory overruling. However, the Legislature cannot set at nought the judgments which have been pronounced by amending the law not to make corrections or remove anomalies but to bring in new provisions that did not exist earlier. The Legislature may have the power to remove the basis or foundation of the judicial pronouncement. Still, by introducing a new provision, the Legislature cannot overturn or set aside the judgment, that too retrospectively. The mandamus issued by the Court binds the Legislature. A judicial pronouncement is always binding unless the very fundamentals on which it is based are altered, and the decision could not have been given in the altered circumstances. Therefore, by introducing an amendment, the Legislature cannot overturn a judicial pronouncement and declare it to be wrong or nullity.

54. The Hon'ble Supreme Court, by applying the above

principles, held that when *Manakchand Motilal's* case (supra) was decided, there was no provision providing for payment of interest or prohibiting payment of interest. Therefore, there was no error pointed out by the Court that the State Legislature could have corrected. The impugned amendments, thus, did not in any way alter the basis of the judgment. By giving retrospective effect to the amended provisions, the State had attempted to nullify the Writ of mandamus issued by the Courts in favour of the respondents. The mandamus could not have been set at nought by giving retrospective effect to the amended provisions. This would be a direct breach of the doctrine of separation of powers as laid down in *State of Tamil Naidu V/s. State of Karnataka* (supra). The impugned Acts were held to be illegal in so far as they were given retrospective effect.

55. Similarly, in *S.R. Bhagwat vs State of Mysore* (supra), the Division Bench of the Karnataka High Court had allowed five Writ Petitions. It directed the petitioners to be promoted and given all the consequential financial benefits. This decision had attained finality, and in pursuance, all the petitioners were granted promotions. However, consequential monetary benefits were denied to them. Therefore, the petitioners instituted contempt petitions. The State applied for adjournments, and after

the contempt petitions were adjourned from time to time, the State resorted to its legislative powers. It issued an impugned ordinance, culminating in the impugned Act seeking to take away the financial benefits granted to the petitioners.

56. Therefore, the petitioners filed a petition directly before the Hon'ble Supreme Court under Article 32 of the Constitution seeking a declaration that the impugned Act in so far as it sought to confiscate the financial benefits made available to the petitioners by the Writ of mandamus issued by the High Court was null and void, as it amounted to the legislative overruling of binding judicial decisions.

57. The Hon'ble Supreme Court, after considering the rival contentions, concluded that Section 11(2) of the impugned Act was clearly ultra vires the powers of the State Legislature as it encroached upon the judicial field and tried to overrule the judicial decision binding between the parties. Section 11(4) of the impugned Act was also read down accordingly. The Court ruled that it is now well settled by a catena of decisions that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which, in substance, over-rules such judgment and is

not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect.

58. The Hon'ble Supreme Court noted that the High Court had not struck down any legislation sought to be reenacted after retrospectively removing any defect by the impugned provisions. The Hon'ble Supreme Court pointed out that this was a case where the High Court had given certain benefits to the petitioners on an interpretation of the existing law. The order of mandamus was sought to be nullified by enacting the impugned provisions in a new statute. The Court held that this would be clearly an impermissible legislative exercise.

59. The Hon'ble Supreme Court referred to the "*overriding effect clause*", based upon which the State sought to deny consequential financial benefits to the petitioners and held that the State had tried to get out of the binding effect of the decision by resorting to its legislative power. The judicial decisions which had become final against the State were sought to be done away with by enacting the impugned provisions. Such an attempt cannot be said to be a permissible legislative exercise. Instead, it

must be held to be an attempt by the State Legislature to legislatively over-rule binding decisions of competent Courts against the State. Such an exercise of legislative power cannot be countenanced. Accordingly, the writ petitions were allowed, and the State was directed to pay all the financial benefits to the petitioners as directed by the Division Bench decision, which had attained finality.

60. Recently, in ***Madras Bar Association vs. Union of India & Anr.***[40], the Hon'ble Supreme Court considered several decisions on the issue of permissible legislative overruling. The Court reiterated that the permissibility of legislative override in this country should be in accordance with the principles laid down by the Supreme Court, which were then culled out as under:

> *a) The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment. Such a law can be retrospective. The retrospective Amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution.*
>
> *b) The test for determining the validity of validating legislation is that the judgment pointing*

40 2021 SCC OnLine Sc 463

out the defect would not have been passed if the altered position as sought to be brought in by the validating statute existed before the Court at the time of rendering its judgment. In other words, the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed.

c) Nullification of mandamus by an enactment would be an impermissible legislative exercise [See: S.R. Bhagwat (supra)]. Even interim directions cannot be reversed by a legislative veto [See: Cauvery Water Disputes Tribunal (supra) and Medical Council of India vs. State of Kerala & Ors.[41]*].*

d) Transgression of constitutional limitations and intrusion into the judicial power by the Legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India."

61. The precedents in *Karnataka Pawn Brokers Association and S.R. Bhagwat (Supra)* address legal and factual issues similar to the present case. The State of Goa has attempted to replicate the Karnataka model, assuming it could be called a 'model' after the Hon'ble Supreme Court struck down the legislative exercise as an instance of impermissible legislative overruling. Based on these precedents, we believe the impugned Amendment Act must suffer

41 (2019) 13 SCC 185

the same fate. Based upon the impugned amendment Act, the State cannot ignore the binding judicial decisions in these cases.

62. Most decisions relied upon by the Learned Advocate General concerned genuine validation Acts where the defects pointed out by the judicial decisions were removed and the fundamental bases of the judicial decisions altered. Again, most of these decisions reiterate the principles in *Shri Prithvi Cotton Mills Ltd (Supra)* and other decisions referred to above. Accordingly, by accepting the propositions of law in such decisions, the impugned Amendment Act cannot be regarded as a validation Act as contemplated by such decisions.

63. For all the above reasons, we hold that the impugned Amendment Act is an impermissible legislative override. Therefore, based upon the impugned Amendment Act, the respondents cannot decline to implement this Court's decisions in Writ Petition No.424/2018 and connected matters. These decisions have attained finality after SLPs against the same were dismissed by the Hon'ble Supreme Court. Accordingly, notwithstanding the impugned Amendment Act, which is an instance of impermissible legislative override, the respondents will have to comply with the directions in this Court's decisions in

Writ Petition no.424/2018 and connected matters.

64. Given our finding on the first question that arose for determination, it may not be necessary for us to go into the other issues raised in these petitions. However, we propose briefly touching upon these issues and recording our *prima facie* observations on some of them.

AMENDMENT TO A REPEALED/LAPSED STATUTE WITHOUT ITS REVIVAL :

65. The impugned Amendment Act purports to amend the GVAT Act, 2005, with retrospective effect. This Amendment was made in 2020. Before that, the Goa State Legislative passed the Goa GST Act, 2017, which entered force on 01.07.2017.

66. Section 174 of the Goa GST Act, 2017, repealed explicitly with effect from 01.07.2017, the GVAT Act, 2005, except in respect of goods included in Entry 54 of the State List of the Seventh Schedule to the Constitution. The goods that the petitioners in Writ Petition No.23/2021 and 229/2022 deal with are not included in Entry 54 of the State List of the Seventh Schedule to the Constitution. Therefore, at least, *prima facie,* qua such goods, the GVAT Act, 2005 stood repealed with effect from

01.07.2017.

67. The impugned Amendment Act of 2020 purports to amend the repealed GVAT Act 2005 without any provision to revive the repealed Act. The Division Bench of the Gujarat High Court in *Reliance Industries Ltd.* (supra) and the Division Bench of the Telangana High Court in *Sri Sri Engineering Works and Ors.* (supra) in a similar factual situation have held that the Legislature was not competent to amend the repealed law, in any case, without reviving the same.

68. The two Division Benches of the Gujarat and Telangana High Court relied on the principle that repeal at common law obliterates the statute as if it was never enacted except for past and closed transactions. The Gujarat High Court, after referring to decisions of the Hon'ble Supreme Court, Craies on Statute Law, 7th Edition at pages 411-412, Bennion on Statutory Interpretation, 6th Edition at Pg 276 and Justice G.P. Singh in his Principles of Statutory Interpretation, 12th Edition 2010 concluded that at common law, a statute becomes non-existent on its repeal, unless saved by some saving provision.

69. The arguments based on the General Clauses Act or the provisions of Section 19 of the Constitution (101st Amendment)

Act, 2016 on the effect of repeal were also turned down by the Division Bench of the Gujarat High Court to conclude that there was no question of purporting to amend a repealed law which stood obliterated post the repeal and in the absence of any appropriate sanctioning clause. The learned Advocate General made similar arguments in the present cases.

70. The Division Benches also relied upon the decision of the Federal Court in *Jatindra Nath Gupta* (supra), wherein it was held that it is competent to the Legislature in exercising its plenary powers to revive or reenact legislation which has already expired by lapse of time. The Legislature is also competent to legislate with retrospective effect, but neither of these things seems to have been done in the present case. The Legislature proceeds on the footing that the old Act was alive at the date. Then the new Act was passed, and the new Act merely purports to amend one of the provisions of the old Act. There could be no amendment of an enactment which is not in existence. From the fact that the Legislature purports to amend an Act, it could not be held as a matter of construction that the Legislature intended to renew a dead Act or make a new enactment on the same terms as the old with retrospective effect. To the same effect are the

observations in ***Kalyanam Veerabhadrayya vs. The King***[42].

71. Therefore, at least *prima facie,* the impugned Amendment Act of 2020 concerning goods other than those included in Entry 54 of the State List of Seventh Schedule to the Constitution is ultra vires, unconstitutional and void.

72. The learned Advocate General, however, submits that the Supreme Court decision in *Mangilal Pindwal* (supra) holds that even a repealed law can be amended with retrospective effect to govern past transactions. Further, he submits that this was a case of only partial repeal to which the principles in *Jatindra Nath Gupta* (supra) or *Kalyanam Veerabhadrayya* (supra) would not apply.

73. The Division Bench of the Gujarat High Court in *Reliance Industries Ltd.* (supra) has distinguished *Mangilal Pindwal* (supra). Further, at least prima facie, the distinction based upon partial repeal cannot be accepted. Under Section 174 of the Goa GST Act, the GVAT Act, 2005, in so far as it relates to goods other than those included in Entry 54 of the State List of the Seventh Schedule to the Constitution, stands wholly repealed. As noted in Writ Petition no.23/2021 and 229/2022, the petitioners

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42 1949 SCC OnLine Mad 255

were unconcerned with the goods in amended Entry 54. Besides, Section 19 of the Constitution (101st Amendment) Act, 2016, which starts with a non-obstante clause, provides for lapsing of State Legislation to the extent the same is inconsistent with the constitutional amendments. If the Goa GST Act, 2017 were not enacted, the GVAT Act, 2005 would stand lapsed effective from 16.09.2017 to the extent of the inconsistency. Even the learned Advocate General did not go as far as to contend that a lapsed enactment can also be amended by a retrospective amendment without any clause for revival.

74. Therefore, at least *prima facie,* the impugned Amendment Act, 2020, in so far as it applies to goods other than those included in amended Entry 54, would be ultra vires, null and void. Therefore, based upon the impugned Amendment Act, the relief granted to the petitioners in Writ Petition No.23/2021 and 229/2022 could not have been withheld.

LEGISLATIVE COMPETENCE :

75. Regarding legislative competence, we must refer to the Constitution (101st Amendment) Act, 2016, which entered force on 16.09.2016. This Amendment brought about several changes, including the insertion of Article 246-A and the substitution of

new Entry 54 in List II to the Seventh Schedule to the Constitution of India.

76. The Division Benches of the Gujarat High Court, Telangana High Court, Kerala High Court and Allahabad High Court have held that post the Constitution (101st Amendment) Act, 2016, the State Legislatures lost legislative competence to make laws on taxes on sales or purchases of goods other than the six specified goods in substituted Entry 54, List II of the Seventh Schedule to the Constitution. Even in respect of the six specified goods, the State Legislature would lack the legislative competence to tax sales in the course of inter-State trade or commerce or sales in the course of international trade or commerce of such goods.

77. In *Mohit Mineral Private Ltd.* (supra) or *VKC Footsteps India Pvt. Ltd.* (supra), the Hon'ble Supreme Court has held that Article 246-A defines the source of power as well as the field of legislation (with respect to goods and service tax) obviating the need to travel to the Seventh Schedule. Further, Article 246-A embodies the constitutional principle of the simultaneous levy as distinct from the principle of concurrence, which is operated within the fold of the Concurrent List. However, the issue about the State Legislature having a legislative competence to enact tax

laws in respect of goods not included in the substituted Entry 54 did not directly arise for consideration in *Mohit Mineral Private Ltd.* (supra) or *VKC Footsteps India Pvt. Ltd.* (supra).

78. In *Mohit Minerals Pvt. Ltd.* (supra), the bone of contention was whether an Indian importer could be subjected to the levy of Integrated Goods and Services Tax on the component of ocean freight paid by the foreign seller to a foreign shipping line on a reverse charge basis. In *VKC Footsteps India Pvt. Ltd.* (supra), the Hon'ble Supreme Court was concerned with the divergence between the views of the Gujarat High Court on the one hand and the Madras High Court on the other, on the question of whether Explanation (a) to Rule 89(5) which denied the refund of "unutilized input tax" paid on "input services" as part of "input tax credit" accumulated on account of inverted duty structure is ultra vires the provision of Section 54(3) of the CGST Act, 2017. In both these decisions, the Hon'ble Supreme Court held that Article 246-A defines the source of power as well as the field of legislation obviating the need to travel to the Seventh Schedule and, further, this provision embodies the constitutional provisions of the simultaneous levy by the Parliament and the State Legislatures.

79. The Full Bench of the Bombay High Court in *United Projects* (supra) did make some observations on this issue. However, the decision of the Division Bench of the Gujarat High Court in *Reliance Industries Ltd.* (supra) was not dissented from but only distinguished in paragraph 124 by observing that the said judgment "*clearly indicates that Section 84A considered by the Gujarat High Court in the said judgment was incorporated by the said Legislature w.e.f 3rd April, 2018. The Amendment came into effect on 16th September, 2016. The said Amendment carried out by the State of Gujarat was carried out after one year to the said constitutional amendment i.e. on 3rd April, 2018. On 1st July, 2017, the Gujarat GST Act had already come into force. The said judgment of the Gujarat High Court in the case of Reliance Industries Ltd. Vs. State of Gujarat and others (supra) is thus clearly distinguishable on the facts and would not assist the case of the petitioner*".

80. Thus, on facts, the present cases are similar to the facts before the Gujarat High Court. The primary Amendment in the Maharashtra Act was enacted within one year of the coming into force of the Constitution (101st Amendment) Act, 2016. However, Gujarat and the Goa amendments were after one year, i.e., 2018 and 2020 respectively. Further, there is a similarity

between Section 174 of the Gujarat GST Act, 2017 and Section 174 of the Goa GST Act, 2017. The Maharashtra VAT Act, 2002 was never formally repealed after the Constitution (101st Amendment) Act, 2016, entered into force though some exercise was undertaken to align its provisions with the constitutional amendments.

81. Therefore, based upon the Division Bench decisions of Gujarat, Telangana, Kerala and Allahabad, the petitioners in Writ Petition No.23/2021 and 229/2022 have an arguable case based even on legislative competence. This ground may however not be available to the petitioners in the remaining petitions.

MANIFEST ARBITRARINESS :

82. In ***Union of India V/s. Tata Chemicals Ltd.***[43], the Hon'ble Supreme Court, precisely in the context of interest payment on refund of excess tax, held that when such amount is refunded, it should carry interest. Interest is a kind of compensation for using and retaining the money collected unauthorisedly by the Revenue. When the collection is illegal, there is a corresponding obligation on the Revenue to refund such amount with interest since they retained and enjoyed the money

43 (2014) 6 SCC 335

so deposited. The Court held that the refund due and payable to the Assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the Assessee's lawful monies with accrued interest for the period of undue retention of such monies. Having received the money without right and retained and used it, the State is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which *ex ae quo et bono* ought to be refunded, the right to interest follows, as a matter of course.

83. In ***Sandvik Asia Ltd. vs Commissioner of Income Tax I, Pune and Ors.***[44], the Hon'ble Supreme Court considered the issue of whether, on general principles, the Assesse ought to have been compensated for the inordinate delay in receiving monies properly due to it. The Bombay High Court had held that no interest was payable because there was a serious dispute between the parties, which was ultimately resolved by the Court in 1997.

44 (2006) 2 SCC 508

However, the Hon'ble Supreme Court reversed the Bombay High Court by observing that no authority can ever accept an obligation to make a payment and simply refuse to pay. In each and every case, an authority must at least claim to act in accordance with the law and hence claim that it has no obligation to pay for some reason or another. When the claims of the authority are found to be unsustainable or erroneous by the Courts, it follows that the authority has acted wrongfully in the sense of not being in accordance with the law and compensation to the party deprived must follow. If the decision of the High Court is upheld, it would mean that there can never be any wrongful retention by an authority until this Court holds that their stand is not in accordance with the law.

84. In *Sandvik Asia Ltd.* (supra), the Court noted that where interest was granted after a substantial lapse of time, interest must normally follow. The Court noted that while charging interest from the assesses, the Department first adjusts the amount paid towards interest so that the principal amount of tax payable remains outstanding. Therefore, they are entitled to charge interest until the entire outstanding is paid. But when it comes to granting interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence, as

the Department always contends that it is liable to pay interest only up to the date of refund of tax while they take benefit of assessees' funds by delaying the payment of interest on refunds without incurring any further liability to pay interest, the Court found that such a stand on behalf of the Department was discriminatory in nature causing great prejudice to lakhs and lakhs of assessees. The Hon'ble Supreme Court referred to *"compensation"* as defined in P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edn., 2005 and held that the Court has to consider all relevant factors while awarding the rate of interest on compensation.

85. The correctness of the decision in *Sandvik Asia Ltd.* (supra) came up for consideration before the Three Judge Bench in ***Commissioner of Income Tax, Gujarat vs. Gujarat Fluoro Chemicals***[45]. The Bench, however, explained that there was no conflict between *Sandvik Asia Ltd.* (supra) and ***Godavari Sugar Mills Ltd. vs. State of Maharashtra***[46]. All these cases were considered in ***Union of India and Ors. vs Willwood Chemicals Private Limited & Anr.***[47] in which it was held that wherever a statute is silent about interest, and there is no express bar about

45 (2014) 1 SCC 126
46 (2011) 2 SCC 439
47 (2022) 9 SCC 341

payment of interest, any delay in paying the compensation or enhanced compensation for acquisition would require an award of interest at a reasonable rate on equitable grounds.

86. The State of Goa does not dispute liability to refund the excess tax amount in the present cases. The State does not even dispute the liability to pay interest at 8% per annum. However, the State contends that interest would not become payable from the 91st day of the refund order but the 91st day of the sanction order. As noted earlier, no time limit for making the sanction order is fixed. No reasons are required to be provided for any delay in making the sanction order. Thus, the State contends that it can, based upon its Officers' tardiness or procrastination, retain the excess tax amount for an indefinite period or at least an unreasonably lengthy period without obligation for payment of any interest. At least, *prima facie,* such a provision would be arbitrary and unreasonable given the reasoning in the decisions of the Hon'ble Supreme Court on the issue of the necessity to pay interest by way of compensation where tax refunds are unduly delayed.

DEPRIVATION OF VESTED CONSTITUTIONAL RIGHTS WITH RETROSPECTIVE EFFECT

87. Further, in the facts of the present case, by giving retrospective effect to the impugned Amendment Act, the right to the interest which was crystallized in the petitioners' favour is sought to be taken away. The learned Advocate General's only contention was that the right to receive interest was not fundamental or constitutional but only a statutory right which could always be taken away. He relied on ***CMD/Chairman, Bharat Sanchar Nigam Limited & Ors. vs. Mishri Lal & Ors.***[48].

88. In *CMD/Chairman, Bharat Sanchar Nigam Limited & Ors.* (supra), the Hon'ble Supreme Court held that the expression "*vested right*" could only mean a vested constitutional right since a constitutional right cannot be taken away by an Amendment of rules. The Court relied upon the Constitution Bench ruling in ***Railway Board vs C.R. Rangadhamaiah***[49] in which it was held that pension is no longer treated as a bounty but was a valuable constitutional right under Articles 19(1)(f) and Article 31(1) of the Constitution, which were then available. Since this was a

48 (2011) 14 SCC 739

49 (1997) 6 SCC 623

constitutional right, the Amendment of the rules could not take it away. The Constitution is the supreme law of the land. Hence, a constitutional right can only be taken away by amending the Constitution, not the rules or the statute.

89. The provisions providing interest on delayed refund of excess tax collected by the Revenue created statutory and constitutional rights. Even though Article 19(1)(f) is no longer a fundamental right under the Constitution, Article 300-A provides that no person shall be deprived of his property save by the authority of law.

90. Therefore, by depriving the Assessee of interest on excess tax paid, the State is depriving the Assessee of his property save by authority of law. Besides, there is a constitutional bar under Article 265 about the levy and collection of taxes except by the authority of the law. Even Article 14 would shun the retention of excess taxes determined as refundable either indefinitely or for unreasonably lengthy periods only due to the tardiness of revenue officers making sanction orders without liability to pay any interest on the delayed periods. Therefore, this is also a case of taking away vested constitutional rights with retrospective effect. The grant of retrospective effect is consequently liable to be

interfered with.

MISCELLANEOUS :

91. Very belatedly and after these matters were reserved for orders, the Additional Commissioner of Commercial Taxes filed an affidavit on 13.04.2023. We are unsure whether copies of such affidavit were furnished to the learned Counsel for the petitioners. However, paragraph 2 of the affidavit states that the same is filed for the limited purpose of bringing certain facts on record that have recently come to her knowledge.

92. In paragraph 3 of the affidavit, she states that if any parties claim interest on tax refunds based upon the unamended Value Added Tax Act, the State may have to pay interest in an estimated amount of ₹69.64 crores. Similarly, it is stated, though not clearly, that the accrued liability for payment of interest (possibly to the petitioners in these petitions) would be in the range of ₹30.61 crores.

93. In effect, therefore, the affidavit acknowledges that the State/Department, based upon the procrastination and delays of its own Officers, has deprived parties, including the petitioners, of interest at the statutory rate and the object of the impugned

Amendment Act was to perpetuate this situation. However, even this affidavit does not even bother to furnish any reasons or causes for the inordinate delay in either making refunds or sanction orders by the departmental officers.

94. Independent of the impugned Amendment Act's validity or applicability to the petitioners' case, this Court could and is directing interest payment to the petitioners as determined in the earlier judicial decisions. This is because even under the impugned Amendment Act, the State is not absolved from making sanction orders within a reasonable period. The learned Advocate General submitted that the provisions of the impugned Act may not be struck down simply because no period within which sanction orders must be made may have been specified. He submitted that even where no time limit is prescribed, the concept of reasonable time must be read into such provisions. He agreed that powers must be exercised within a reasonable time even where no time limit may have been prescribed. He even relied on decisions in support of such contentions.

95. In all these cases, there is no explanation whatsoever for the unreasonable delay in issuing the sanction orders. Even in the latest affidavit, no such explanation was even attempted to be

offered. As noted earlier, refund amounts were already determined by the assessing authorities. Therefore, there could have been no difficulties in issuing the sanction orders within some reasonable period. In the earlier decisions in the petitions instituted by the Petitioners, the Court had found that reasonable time would be about ninety days from the refund order. This finding, as noted earlier, was not even dented by the impugned Amendment Act. The Hon'ble Supreme Court confirmed this finding.

96. Therefore, by simply not issuing sanction orders or delaying the issue of sanctions indefinitely or unreasonably, the State cannot arbitrarily deprive the parties' interest by way of compensation. Such a deprivation, as noted earlier, would fall foul of Articles 14, 265 and 300-A of the Constitution of India.

97. Therefore, even independent of the validity or applicability of the impugned Amendment Act, a mandamus in terms of the earlier judicial decisions must reissue for the payment of interest on delayed refunds.

CONCLUSIONS AND RELIEF :

98. Thus, we hold that the impugned Amendment Act is an impermissible judicial override defying the doctrine of separation

of powers. Moreover, by granting retrospective effect to the impugned Amending Act, the vested constitutional rights of the petitioners have been taken away. On these two grounds and without relying on *prima facie* findings on the other issues, we hold that the respondents cannot, based upon the impugned Amending Act, deny any of the petitioners the benefits of the earlier judicial decisions in Writ Petition No.424/2018 and connected matters. The SLPs against such decisions were already dismissed. These Judicial decisions have neither been nullified nor rendered ineffective based on the impugned Amendment Act.

99. Accordingly, we allow these petitions and direct the respondents to implement the judicial decisions in the earlier Writ Petitions instituted by the petitioners within four weeks in terms of the following chart:-

Sr. No.	Present Writ Petition	Earlier Writ Petition
1	Writ Petition No.23 of 2021	Decision dated 19.11.2019 in Writ Petition No.720 of 2019.
2	Writ Petition No.139 of 2022	Decision dated 26.11.2019 in Writ Petition No.674 of 2018.
3	Writ Petition No.140 of 2022	Decision dated 16.10.2019 in Writ Petition No.427 of 2018 read with order dated 24.02.2020.

4	Writ Petition No.141 of 2022	Decision dated 16.10.2019 in Writ Petition No.424 of 2018 read with order dated 24.02.2020.
5	Writ Petition No.148 of 2022	Decision dated 26.11.2019 in Writ Petition No.673 of 2018
6	Writ Petition No.228 of 2022	Decision dated 16.10.2019 in Writ Petition No.425 of 2018 read with order dated 24.02.2020
7	Writ Petition No.229 of 2022	Decision dated 16.10.2019 in Writ Petition No.428 of 2018
8	Writ Petition No.350 of 2022	Decision dated 16.10.2019 in Writ Petition No.426 of 2018 read with order dated 24.02.2020.

100. The respondents are directed to deposit in this Court the amounts in terms of the above referred earlier decisions together with interest within four weeks from today. Upon deposit, the petitioners would be at liberty to withdraw the said amounts after furnishing bank details to the Registry so that the amounts can be directly transferred to their bank accounts.

101. The rule is made absolute in all these petitions in the above terms.

102. However, there shall be no order for costs.

BHARAT P. DESHPANDE, J.   M.S. SONAK, J.