Ratification is no substitute for recommendation – Notifications travelling beyond GST Council recommendations are ultra vires

The Hon'ble Madras High Court (Madurai Bench) in ***M/s. Guru and Co. v. Union of India & Ors. [W.P.(MD) Nos. 14115, 14116, 14117, 14118, 14119, 14120, 14208, 18602 & 26403 of 2022 dated June 15, 2026]*** declared *Notification No. 27/2017-Central Tax (Rate), Notification No. 27/2017-Integrated Tax (Rate), Notification No. 28/2017-Central Tax (Rate) and Notification No. 28/2017-Integrated Tax (Rate), all dated September 22, 2017,* as ultra vires the parent statute insofar as they incorporate the expression "enforceable right in a court of law", and held that Notifications issued by the Central Government under Section 9 and Section 11 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) cannot travel beyond the recommendations of the GST Council, and that the GST Council, whose power under Article 279A of the Constitution of India is only to make recommendations, does not possess any power to ratify Notifications already issued by the Government. Consequently, the Show Cause Notices issued to the suppliers of pulses as a fallout of the invalid Notifications were set aside.

Facts:

M/s. Guru and Co. and other petitioners (**"the Petitioners"**) are suppliers of pulses such as Moong Dhal and Thoor Dhal, selling their products under brand names which were not registered under the Trade Marks Act, 1999 or the Copyright Act, 1957.

Notification No. 1/2017-Central Tax (Rate) dated June 28, 2017 levied Central Tax @ 2.5% on "dried leguminous vegetables, shelled, whether or not skinned or split (put up in unit container and bearing a registered brand name)" vide Entry No. 25 of Schedule I. Correspondingly, Notification No. 2/2017-Central Tax (Rate) dated June 28, 2017, read with the Corrigendum dated July 12, 2017, exempted such goods other than those put up in unit containers and bearing a registered brand name. Since the Petitioners were dealing in goods not carrying a registered brand name, they were not liable to GST.

As only registered brand names fell within the tax net, several assessees de-registered their brand names but continued to trade using the very same brand names, thereby escaping the tax liability. This mischief was debated in the 21st GST Council Meeting held on September 09, 2017, wherein the Council approved the proposal that, in addition to the three conditions recommended by the Fitment Committee, a fourth condition be added, namely, a mark or name in respect of which an actionable claim is available shall be deemed to be a registered brand name.

Thereafter, the Central Government issued Notification Nos. 27/2017-Central Tax (Rate), 27/2017-Integrated Tax (Rate), 28/2017-Central Tax (Rate) and 28/2017-Integrated Tax (Rate), all dated September 22, 2017 (**"the Impugned Notifications"**), amending Notification Nos. 1/2017 and 2/2017-Central Tax (Rate). The amended entries covered goods bearing a brand name on which an "actionable claim or enforceable right in a court of law" is available, and further appended an Annexure laying down the procedure for voluntarily foregoing such actionable claim or enforceable right. The Government of Tamil Nadu issued a pari materia amendment vide G.O.(Ms) No. 114 dated September 22, 2017. The Impugned Notifications were subsequently ratified in the 22nd GST Council Meeting held on October 06, 2017.

Based on the Impugned Notifications, Show Cause Notices dated March 31, 2022 (**"the Impugned SCNs"**) were issued to the Petitioners demanding GST. Aggrieved, the Petitioners filed writ petitions before the Hon'ble Madras High Court seeking to declare the Impugned Notifications as ultra vires Article 279A of the Constitution of India and to quash the Impugned SCNs as null and void.

The Revenue contended that the recommendations of the GST Council are not binding in the sense that the Government is not bound to reproduce a mirror image of the recommendations in the notification, that the Impugned Notifications merely captured the actual intention and object of the 21st GST Council Meeting by rectifying drafting mistakes, and that the Notifications were, in any event, duly ratified in the 22nd GST Council Meeting.

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Issues:

- Whether Notifications issued by the Central Government under Sections 9 and 11 of the CGST Act can go beyond the recommendations made by the GST Council?
- Whether the GST Council has the power to ratify any Notification issued by the Central Government either under Section 9 or Section 11 of the CGST Act?

Held:

The Hon'ble Madras High Court in ***W.P.(MD) Nos. 14115 of 2022 & batch*** held as under:

- Observed that, the language of Sections 9 and 11 of the CGST Act mandates that a notification must be issued "on the recommendations" of the GST Council, i.e., the notification should be preceded by the recommendation. Since the Hon'ble Supreme Court in ***Union of India v. Mohit Minerals Private Limited [(2022) 10 SCC 700]*** held that the Government, while exercising its rule-making power under the CGST and IGST Acts, is bound by the recommendations of the GST Council, the very same yardstick applies to statutory notifications issued under Sections 9 and 11, as both rules and notifications stand on the same pedestal of subordinate legislation and are required to be laid before the Parliament under Section 166 of the CGST Act.
- Noted that, a bare comparison of the Impugned Notifications with the Council's recommendation shows that the words "enforceable right in a court of law", along with the Annexure prescribing the procedure for voluntarily foregoing such right, are additions. The expressions "actionable claim" and "enforceable right in a court of law" are not synonymous – while actionable claims may be enforceable rights, the vice versa may not hold good – and such additions materially enlarge the scope of the levy.
- Held that, the additions lack the foundation of recommendation and are not "on the recommendation" of the GST Council. Thus, the Impugned Notifications issued by the

Central Government as well as the State Government are ultra vires the parent statute insofar as they incorporate the expression "enforceable right in a court of law". Minus this expression, the notifications are intra vires.

- Observed that, relying on ***Marathwada University v. Seshrao Balwant Rao Chavan [(1989) 3 SCC 132]*** **and** ***Brunda Infra (P) Ltd. v. Commissioner of Central Tax [(2025) 139 GSTR 657 (Telangana)]*****,** ratification cannot be equated to recommendation, since ratification assumes an invalid act which is retrospectively validated. The statutory authority cannot travel beyond the power conferred, and any action without power is ab initio void and cannot be ratified.

- Held that, Article 279A of the Constitution empowers the GST Council only to make recommendations on the matters enumerated in Article 279A(4). Neither the Constitution nor any statute has invested the GST Council with the power of ratification, and such bodies have no inherent power of review or ratification. Hence, the ratification made by the GST Council in its 22nd Meeting is without jurisdiction.

- Held that, since the Impugned SCNs are a fallout of the Impugned Notifications, they are liable to be set aside and stand set aside, with liberty to the Department to issue fresh show cause notices, if they can be issued, in terms of the Impugned Notifications to the extent they have been held valid.

<u>Our Comments:</u>

Section 9 of the CGST Act is the charging provision, which levies central tax on all intra-State supplies of goods or services or both at such rates "as may be notified by the Government on the recommendations of the Council". Similarly, Section 11 of the CGST Act empowers the Government to grant exemption from tax, again only "on the recommendations of the Council". Article 279A(4) of the Constitution of India provides that the GST Council shall make recommendations to the Union and the States on, inter alia, the goods and services that may

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be subjected to or exempted from GST and the rates of tax. The expression "on the recommendations of the Council" is, therefore, a jurisdictional pre-condition for the exercise of the notification power – the recommendation must precede the notification and the notification must conform to it.

The judgment builds upon the celebrated ruling of the Hon'ble Supreme Court in ***Union of India v. Mohit Minerals Private Limited [(2022) 10 SCC 700]*,** wherein it was held that the recommendations of the GST Council are the product of a collaborative dialogue between the Union and the States and, while they are not binding on the Parliament or the State Legislatures in the making of primary legislation, the Government is bound by such recommendations while exercising its rule-making power under the CGST and IGST Acts. The Madras High Court has now logically extended this principle to statutory notifications issued under Sections 9 and 11, holding that what applies to the rule-making power applies equally to the power to notify. The Court also applied the well-settled parameters for striking down subordinate legislation laid down in ***State of Tamil Nadu v. P. Krishnamurthy [(2006) 4 SCC 517]*,** including failure to conform to, or exceeding the limits of authority conferred by, the enabling Act.

On the ratification issue, the view taken by the Hon'ble Madras High Court is in pari materia with the decision of the Hon'ble Telangana High Court in ***Brunda Infra (P) Ltd. v. Commissioner of Central Tax [(2025) 139 GSTR 657]*,** which, in the context of the notifications extending limitation under Section 168A of the CGST Act, held that ratification cannot be equated with recommendation and that ratification accorded after the issuance of a notification will not breathe life into it. Both decisions draw strength from ***Marathwada University v. Seshrao Balwant Rao Chavan [(1989) 3 SCC 132]*,** wherein it was held that the principle of ratification has no application to the exercise of statutory powers, and from ***Maharashtra State Mining Corporation v. Sunil [(2006) 5 SCC 96]* and *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji [(1971) 3 SCC 844]*,** which affirm that an authority constituted under the

Constitution or a statute possesses no inherent powers beyond those expressly or impliedly conferred.

However, a contrary line of reasoning also exists. A learned Single Judge of the Madras High Court in ***Tata Play Limited v. Union of India [W.P. No. 17184 of 2024 & batch dated June 12, 2025]*** held that a recommendation of the GST Council for issuance of a notification under Section 168A of the CGST Act is mandatory but not binding on the Government, which view was affirmed by the Division Bench in ***Oasys Cybernetics Pvt. Ltd. v. State Tax Officer, Veppery Assessment Circle [(2025) 36 Centax 228 (Mad.)]***. Given the divergent views of various High Courts on the interplay between the Council's recommendation and the Government's notification power under Section 168A, the issue is presently pending before the Hon'ble Supreme Court in ***SLP (C) No. 4240 of 2025,*** and the final word on the subject is awaited.

The present ruling is a significant win for suppliers of pulses, cereals and flours sold under unregistered brand names. It reaffirms two foundational propositions of the GST architecture: first, that the Government cannot, in the guise of implementing a Council recommendation, unilaterally enlarge the scope of the levy by adding expressions that were never recommended; and second, that the GST Council, being a creature of Article 279A, can only recommend prospectively and cannot retrospectively validate an act done without authority. Taxpayers facing demands founded on the expression "enforceable right in a court of law" in the amending notifications of September 22, 2017 may evaluate the applicability of this ruling to their pending proceedings, while noting that the levy qua brand names carrying an actionable claim, being duly recommended, remains intact.

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