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Examining the Decisions of the GST Council and the Veracity of their Clarifications and Amendments with special reference to Food Sector

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ABSTRACT

In recent years with the litigation on indirect taxation rising, the judiciary and AARs have adopted a proactive role to pronounce significant rulings in this realm. These pronouncements are being adopted by the GST council in its further meetings in an obscure manner without proper analysis and justifications. To research in this regard the researcher has taken the amendments, clarifications, and GST meeting discussions from the 31st GST Council till the 51st GST Council into consideration. The researcher has taken the “food sector” as the sample space, as the ultimate aim of the researcher is to take this analysis to a larger set of audience, considering this, taking the food sector will make the work more feasible as it is the only sector where any layman can connect to. In the course of the research, the researcher has identified the most disputed food products and has analysed the course of ambiguities prevailing in those products.

Keywords: GST council, Food Sector, Amendments, Clarifications, GST meetings.

I. INTRODUCTION

The introduction of the Goods and Services, as one nation one tax witnessed enormous objections from various state governments. After various considerations the new taxation system was agreed; this marked the cooperative federalism obtaining a new form, pool sovereignty. Further to show that the central government values the state’s suggestions, the GST Council, a quasi-legislative –cum – administrative body¹ was formed under Art 279A as an apex body to recommend Policies of GST which comprises the Union Finance Minister as the Chairperson, the Union Minister of State in charge of Revenue or Finance, the Minister in charge of Finance or Taxation or any other Minister nominated by each state government. In recent years with the litigation on indirect taxation rising, the judiciary and AARs has adopted its proactive role to pronounce rulings in this realm. These pronouncements are being

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selectively adopted by the GST council in its further meetings in an obscure manner without proper analysis and justifications. To research in this regard the researcher has taken the amendments, clarifications and GST meeting discussions of food sector as the sample space. The scope of the research is restricted to “*food sector*” and that from 31st GST council meeting till 51st GST council. In the course of the research the researcher has identified the most disputed products among the lot and has analyzed the course of ambiguities prevailing in those products. The ultimate aim of the researcher is to take this analysis to a larger set of audience and considering this taking food sector will make the work more feasible as it is the only sector where any layman can connect too, thus the aim of the researcher can be reached ultimately.

(A) Statement of problem:

The doctrine of checks and balances “*mandates each organ of the government to act upon other organs in a way that prevents each organ from becoming totalitarian and encourages them to uphold their constitutional duties*”.² Further, the constitution mandates each organ to be conscious of the enormous responsibility that rests on them to ensure that institutional respect and comity are maintained.³ But this ruling always gets overlooked by the GST council the body which is supposed to function effectively in recommending GST policies under Art 279A. In recent times the GST council has adopted the practice of blindly incorporating the rulings of the judiciary. One such notable area is the changes in the realm of taxation of rental services for residential purposes. With the advent of GST, the rental services for residential purposes were exempted as per Notification No. 12/2017- Central Tax (Rate) but this led to various litigation issues as the term “Residential dwelling” was undefined in the regime of Indirect taxation. In the case of Taghar Vasudev Ambrish v. Appellate Authority,⁴ 42 rooms were rented by the lessee for hostel purposes. The Karnataka HC ruled that the “*exemption notification does not require the lessee itself to use the premises as a residence, and hence, as long as the dual conditions of a residential dwelling and end-use for residential purposes are fulfilled, the service remains exempt*”. With this emerging model, the 47th GST council adopted that, residential rental services will not be covered under the exemption notification “*when the residential dwelling is rented to a registered person*” and will be taxed at 18% under Reverse Charge mechanism. The researcher doesn’t question this new amendment, but the 47th Council meeting did not provide any justification for this amendment, just stating “Not much justification”,⁵ this statement questions the authority of the GST council as an apex body to

² L.R Coelho by LR v. State of TN AIR 2007 SC 861

³ Shri Prithvi Cotton Mills and Anr v. Broach Borough Municipality & Ors (1969) 2 SCC 283

⁴ Taghar Vasudev Ambrish v. Appellate Authority W.P 14891 2021

⁵ Agenda for 47th GST Council Meeting 28-29 June, Vol 23, 2022.

recommend GST policies. Further in the course of amendments, the GST council has again obscurely adopted the ruling of *Seema Gupta v. Union of India*,⁶ which exempted the taxation of residential rental services of the registered person if it is in his personal capacity. If this continues then the demarcation of powers will be forgotten and GST council loses its values vested by the constitution. This leads to the violation of the doctrine of checks and balances as the GST council either blindly adopts the ruling of the Judiciary or just issues new notifications to fill the ambiguities temporarily without providing sufficient clarifications. So, it is high time the GST council's decisions are questioned and it should be pushed to relook its obscure amendments and clarifications. In this paper the researcher will analyse the GST Council's Clarification Notifications and amendments from meetings the food sector and with this aid the researcher will examine the veracity of GST Council as an apex constitutional body in recommending GST policies under Art 279A

(B) RESEARCH OBJECTIVE:

1. To analyse the GST Council's Clarification Notifications and amendments from meetings as a consequence of judicial pronouncements and AAR rulings in the Food sector
2. To examine the veracity of the decisions of the GST council as an apex constitutional body in recommending GST policies under Art 279A

II. GST DECISIONS: A BLIND FOLLOW (OR) A FLY MECHANISM

(A) Ice cream:

The AAR Gujarat In re HRPL Restaurants (P.) Ltd,⁷ ruled that *"the supply by restaurants of only pre-packaged ice cream that is readily available and not prepared on-site, will be subject to GST at a rate of 18%"*, this means that even if the ice cream is sold from one of the applicant's outlets, it will be taxed at the same rate as ice cream sold from a standalone ice cream parlor". From this ruling it is quite evident that ice cream served at ice cream parlors will attract GST at 18% and it is considered as sale of goods. The AAR relied on Circular 164/19/2021 which was an outcome of 45th GST Council Meeting⁸. The said circular states that, *"Ice cream parlors sell already manufactured ice-cream and they do not have a character of a restaurant as ice-cream parlors do not engage in any form of cooking at any stage, so it cannot be taxed at 5 %. Their activity entails supply of ice cream as goods and not as a service, even if certain ingredients*

⁶ *Seema Gupta v. Union of India* W.P 10986, 2022

⁷ In re HRPL Restaurants (P.) Ltd, GUJ/GAAR/R/2023/08

⁸ Agenda for 45th GST Council Meeting, Vol. 2, 17th September 2021

of service are present".⁹ It is evident that the GST council has acknowledged the fact that there is element of service present but it has ignored it.

This notification is the outcome of blindly following the ruling of Madras High Court in the case of Anjappar Chettinad A/C Restaurants v. Jt. Commissioner, Office of the Commissioner of GST and Central Excise¹⁰ in this case the court has emphasized on the necessity of "cooking" element to classify certain outlets as restaurants. Following this ruling the GST council has held that the cooking should be carried on the spot to classify something as restaurant, this seems erroneous on the part of the council as all restaurants don't cook in their spot rather most of the restaurants cook food in a central kitchen and then transfer it to the restaurant and supply the same there. Even after such ambiguities and confusion the GST council hasn't defined the term "cooking".

The notification has considered cooking/making of ice cream as an essential qualification for a "restaurant service". To analyze this statement the researcher has referred to Para 4(xxxii) of the Explanation in CTR Notification 11/2017¹¹ which explains, 'restaurant services'¹² and from the explanation it is evident that the term "cooking" has nowhere been mentioned. Further the Explanatory Notes to the Scheme of Classification of Services, available on the CBIC website explains Service Code 996339¹³ and there is per se mention of "services of ice-cream parlors and cake serving places" so it is evident that the ice cream parlors are considered as services, so the notification stating it as a "sale of good" is erroneous.

To substantiate this further the researcher has referred to the case of Hatsun Agro Product Ltd., where it was held that "*ice creams, chocolates, ice cream cakes and pizza cakes made as per the orders of the customers and served in IBACO outlets are covered under Heading 9963 and liable to tax at 5%.*"¹⁴ The Telangana AAR Sri Venkateshwara Agencies, has gone one step further and has held that "*resale of already manufactured ice creams by an ice cream parlor*

⁹ CBIC, Clarifications regarding applicable GST rates & exemptions on certain services-reg, 164/19/2021, 06th October 202.

¹⁰ Anjappar Chettinad A/C Restaurants v. Jt. Commissioner, Office of the Commissioner of GST and Central Excise duty, (2021) 51 GSTC 125 Mad

¹¹ Government of India Ministry of Finance (Department of Revenue), 11/2017-Central Tax (Rate), 28th June, 2017

¹² Restaurant service is a "means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied."

¹³ This service code includes services provided by refreshment stands, fish-and- chips stands, fast-food outlets without seating etc; services of ice-cream parlours and cake serving places; provision of meals and snacks prepared on the premises dispensed through vending machines; dining car services; mobile food services, i.e. preparing and serving food and beverages for immediate consumption from motorized vehicle or non-motorized carts".

¹⁴ Hatsun Agro Product Ltd., KAR ADRG 68/2019, 21st September 2019

comes under restaurant services".¹⁵

The above analysis stands as evidence for how the GST council has blindly followed the ruling of an HC in order to escape the flooding cases on this regard. The GST council is supposed to analyze the situation and provide and issue notification accordingly but rather it has adopted a tentative fly mechanism.

(B) Fryums:

The case of classification of fryums as pappad has been a long pending ambiguity in the realm of GST. In this regard a discussion was held in 48th GST council,¹⁶ which led to issuance of Circular no. 189/01/2023-GST "*clarifying the classification of extruded products such as "fryums" under CTH 1905 90 30 and by virtue of the classification, the goods attract 18% GST*".¹⁷ Whereas if the fryums are classified as pappad it would attract NIL rate as it is exempted vide Sl. No. 96 of notification No.2/2017-Central Tax (Rate).¹⁸

The 2023 notification is an outcome of GST council waiting for a favorable judgment so that it could blindly adopt it and that has happened. In the case of *in re Alisha Gruh Udyog*, the AAR authority held that "*The main ingredients of papad and impugned products were more or less similar. However, Sl. No. 96 of Notification No. 2/2017-Central Tax (Rate) would cover only papad products that shall be supplied in ready to cook condition. Therefore, such fryums would be classifiable under tariff item 1905 90 40 and would attract GST at 18%*".¹⁹ The case doesn't seem to provide any other clarification with regard to unfried fryums which are not in ready to eat form. So, to find the interpretation of the term pappad the researcher refers to the case of *Shiv Shakti Gol Finger v. Asstt. Commissioner*²⁰ where SC held had held that "*Gole papad manufactured out of Maida, Salt Starch, Papad Soda, Alum and Food color, can be considered as "papad"*" and had provided a wide interpretation to the genus pappad.

Further in the case of *State of Karnataka vs. M/s. Vasavamma Stores*²¹ the HC has ruled that "*fryums of different shapes shall be regarded as "pappad"*". Even after such certain decision prevailing the GST council has ruled according to its convenience, further the clarification provided by GST council is not sufficient as it has stated that "*As per Market Survey in Delhi and Ahmedabad by CGST field formation 'papad' and 'fryums' are purchased as separate items*

¹⁵ Sri Venkateshwara Agencies TSAAR/ 02/2020, 2nd March, 2020

¹⁶ Agenda for 48th GST Council Meeting, Vol 1, 17th December 2022

¹⁷ CBIC, Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 48th meeting held on 17th December, 2022 –reg.,189/01/2023-GST,13 January 2023

¹⁸ Government of India Ministry of Finance (Department of Revenue), 2/2017-Central Tax (Rate), 28th June 2017

¹⁹ *In re Alisha Gruh Udyog*, GUJ/GAAR/R/66/2020, 17th September 2020

²⁰ *Shiv Shakti Gol Finger v. Asstt. Commissioner* (1996) 9 SCC 514

²¹ *State of Karnataka vs. M/s. Vasavamma Stores* (2010) 60 VST 19 Karn,

by the consumers, and both terms are generally not used interchangeably". It is understood that the GST council has partially adopted the common parlance test but when there is a SC court ruling which makes it evident, doesn't it seem negligible in the part of GST council to ignore other tests such as "popular meaning test", "trade and commercial parlance test", "technical meaning test" and end user test which are in favor of classifying fryums as pappad and further the sample space adopted by the council to arrive at its clarification is not sufficient and the evidence for the same has not been produced before the quorum.

(C) Fresh fruits and nuts / dried fruits and nuts

The products of Fresh fruits and nuts / dried fruits and nuts were under scrutiny for long time. The ambiguity in its classification was never addressed by the GST council. It was only in 2021 after the ruling of in re Juzi Fruits Private Limited,²² the GST council after the 45th meeting released a notification 163/19/2021-GST,²³ on 6th oct 2021 which is almost 2 months from the ruling of AAR, to clarify the ambiguity after several requests from the Fitment committee for years.

The clarification provided in the notification was similar to the lines of the above AAR ruling. Till date the main issue was why there has been different rate when both the dry and fresh fruits and nuts fall under entry number 0901 and 0802. Only after the ruling it was established that *"The general Explanatory Notes to chapter 08 mentions that this chapter covers fruit, nuts intended for human consumption. They may be fresh (including chilled), frozen (whether or not (including dehydrated, evaporated or freeze-dried). Thus, HS chapter differentiates between fresh, frozen and dried fruits and nuts. They continue to be fresh even if chilled. However, fruit and nuts do not qualify as fresh, once frozen (cooked or otherwise), or intentionally dried"*. It is evident from the ruling that the AAR has differentiated the term "chilled" and "frozen" and accordingly differentiated fresh and dried, this was adopted by the GST council in its notification 163/19/2021-GST. So, after the clarification the current standing is, exemption is only when the fruits and nuts are not frozen and dried, if so, they are taxable at @ rate of 5 % / 10%. This ruling does seem reasonable and legally feasible, but the question here arises is why the GST council has remined silent for theses much days and only after the ruling of AAR they have clarified in similar lines, these questions the working nature of the council.

²² In re Juzi Fruits Private Limited, KAR ADRG 49/2021

²³ Government of India Ministry of Finance Department of Revenue, Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021 at Lucknow-reg, 163/19/2021-GST, 6th October 2021.

III. GST COUNCIL'S SELECTIVE ADOPTION

In the course of the research the researcher has identified that the GST council has been constantly pressing on each GST council meetings to reduce the rate of Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice'; Malt based Nonalcoholic beverages [Fruit Beer] and Scented sweet supari. This has been done even after certain AAR and Courts have ruled in classifying these products under entries which attracts even mor higher rate of GST. The below analysis will substantiate this further;

(A) Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice:

This product currently falls under entry 2202 attracting 28% + 12% cess. The GST council in its 45th GST council meeting decided to classify this product under [2202 90 20] fruit juice which attracts a lesser rate of 12%.²⁴ The researcher would like to bring it to the notice that, the entry of 2202 was already ambiguous as there were enormous variation on GST rates under the heading.²⁵ Further with market getting flooded by "carbonated beverages with fruit juice", the ambiguities intense.

Even after such prevailing confusions the GST council has happily ignored it and were enthusiastically discussing on reducing the rate of "Carbonated Beverages of Fruit Drink" or "Carbonated Beverages with Fruit Juice". The fitment committee too commented on the lines of researcher , asking the council to clarify the ambiguities prevailing and further asked the council to create a separate description to address "Carbonated Fruit Beverages of Fruit Drink" and "Carbonated Beverages with Fruit Juice" prescribing a rate of GST rate of 28% plus a compensation cess of 12%, which was eventually created vide Sl. No. 12B of Schedule –IV of Notification No. 1/2017- CT(R) & Entry at Sl. No. 4B of Notification No. 1/2017- CC(R).²⁶

Even after the comments from the Fitment committee, the quorum doesn't seem to leave this matter, again proposal to reduce the rate of the "Carbonated Beverages with Fruit Juice" from 28% + 12% cess to 12% was placed in the 47th GST council meeting, which was again deferred by the fitment committee.²⁷ This doesn't stop here, the council again placed the request in the 48th meeting, this time it was with a consideration stating "*Lower GST levy for these beverages may be considered given that it contains at least 5% fruits content*".

²⁴ Agenda for 45th GST Council Meeting, Vol. 2, 17th September 2021

²⁵ Aerated water, lemonade attract 28% + 12% cess; Fruit pulp or fruit juice based drinks, classified under 2202 99 20 attracts 12% GST and Non-alcoholic beer and other such beverages attracts 18% GST under 2202 99 90

²⁶ Government Of India Ministry Of Finance Department Of Revenue, Sl. No. 12b Of Schedule –IV Of Notification No. 1/2017- Ct(R) & Entry At Sl. No. 4b Of Notification No. 1/2017- Cc(R), 28th June 2017

²⁷ Agenda for 47th GST Council Meeting 28-29 June, Vol 2, 2022.

On the other side the Judiciary and AARs too joined hands with the Fitment committee and classified many disputable carbonated drinks under 28% + 12% cess and it also made the classification as fruit juice more narrow. In the case of the Parle Agro (P) Ltd. v. Commissioner of Commercial Taxes, Trivandrum, where SC observed that “*“Appy Fizz” an carbonated drink, merits classification under the category which inter alia included fruit juice since it contains 12.7% m/m of apple juice content (more than the fruit juice quantity prescribed under the FSS Regulations)*”.²⁸ This case has brought in the FSS regulations into consideration, which has really made the job tough for GST council in reducing the tax rate.

(B) Scented Sweet Supari:

For yet another good the GST council has been constantly working on to reduce the rate of taxation. Scented sweet supari²⁹ is classified as “Betel Nut product”, falling under tariff item 2106 90 30 and attracts 18% GST. This good falls similar to the above-mentioned goods in terms of impacts it causes to the human body and at times the impact is even worsen. This good has been consistently discussed in most of the GST council meetings since the 31st council meeting.³⁰ But till then it has been denied by the Fitment committee in all the council meetings when the recommendation of the same has been sought.

Further the GST council doesn’t seem to provide any reason for such reduction rather they would like to classify it as areca nuts under 0802 80 which attracts a rate of mere 5% and the same was questioned by Fitment committee and the council did not provide proper substantiation for the same. In the 45th GST council meeting the Fitment committee stated that “*The request to reduce GST on scented sweet supari has already been put before during (31st and 37th meeting) and has not been recommended*”,³¹ with this comment the committee requested the council to provide sufficient clarification. Considering the requests, the clarification was provided by vide Circular No. 163/19/2021-GST, “*Scented sweet supari falls under tariff item 2106 90 30 as “Betel nut product” known as “Supari” and attracts GST rate of 18% vide entry at S. No. 23 of Schedule III of notification No. 1/2017-Central Tax (Rate) dated June 28, 2017*”³²

In the name of clarification, the circular just provides a worded format of the rate, the researcher doesn’t consider it to be a clarification in any regard and the same was ruled by CAAR in the

²⁸ Parle Agro (P) Ltd. v. Commissioner of Commercial Taxes, Trivandrum, (2017) VIL 20 SC

²⁹ Scented Sweet Supari a superior grade betel nuts which is considered to be a effective mouth freshner.

³⁰ Agenda for 31st GST Council Meeting, Vol 2, 22nd December 2018

³¹ Agenda for 45th GST Council Meeting, Vol. 2, 17th September 2021

³² CBIC, Clarifications regarding applicable GST rates & exemptions on certain services–reg, 164/19/2021, 06th October 2021.

case of Shreedhra Agro LLP Vs Commissioner of Customs, where the appellate authority held that “*the said circular [Circular No. 163/19/2021-GST dated October 06, 2021] does not provide any reasons for such clarification*”. From this it is evident that the GST council is clueless on both the regard why it is classified under 2106 90 30 attracting 18% rate currently and why a need for reduction, which provides the degree of negligence on the part of the council. On the other hand the Judiciary is too strong in not reducing the GST rate of sweet supari, in the case of M/S Great Nuts Impex Pvt Ltd v. Commissioner Of Customs Delhi “*The Supplementary Note 2 of Chapter 21 of the Customs Tariff, which specifically states that the items covered under the subheading “Betel nut product known as “Supari”” would mean “any preparation containing betel nuts,”*”³³ so it should not be treated as betel nuts per se, it is a product which has betel nut as a component in its preparation, so it has to classified under 2106 90 30 rather than 0802 80 as areca nuts which attracts as a lesser GST. This ruling has been selectively ignored by the council, if this interpretation is adopted in no way in the near future, they would be successful in reducing the rate of the product.

(C) Malt based Non-Alcoholic beverages:

In such another case the GST council again started pressing in each GST meeting to reduce the tax rate of Malt based Non-Alcoholic beverages (i.e., fruit beer) from 18 % to 12% under the heading [2202 91 00]. Again, GST council erred to provide the proper reason for such reduction and the fitment committee deferred in this regard. Again, on the other side the AAR Karnataka came up with a ruling in In re United Breweries Limited,³⁴ but this time the AAR went a step further and classified the product under fruit juice-based drinks which attracts a much higher rate of GST. Here in this case the non-alcoholic malt drink ‘Kingfisher Radler’ is classified as a fruit juice-based drinks of chapter heading 2202, under Entry 12B of Notification No. 1/2017.³⁵ Accordingly the product attracts GST @ 28% along with Compensation Cess of 12% in terms of Sl.No.12B of Schedule IV to the Notification No. 1/2017-Central Tax. This ruling was backed up with sufficient arguments and the arguments revolved around the composition of the malt, fruit and the court ruled that it is not a nonalcoholic beer nor a nonalcoholic beverage and the fruit content is more than the malt content so it is right to be classified as a “fruit juice-based drinks” and attracts 28% + 12% cess. This ruling had the proper reasoning to increase the rate of Malt based Non-Alcoholic beverages from 18 % to 28% + 12% cess by classifying it as “fruit juice-based drinks”. This ruling was again selectively ignored by the council and

³³ M/S Great Nuts Impex Pvt Ltd v. Commissioner Of Customs Delhi, (2023) DHC

³⁴ In re United Breweries Limited, KAR/ADRG/32/2022, 14th September 2022.

³⁵ Government of India Ministry of Finance (Department of Revenue), 1/2017-Central Tax (Rate), 28th June, 2017

they are still on their march to reduce the rate of fruit beer.

(D) Khari:

The GST rate on Khari has always been in a realm of confusion and the current rate seems too high for a product like Khari. Such issues exist as there is no specific entry for this product and till date it has been levied 18% tax under HS 1905 but there are certain products under this heading which are levied concessional GST rate of 5% vide Notification No. 1/2017-Central Tax (Rate),³⁶ it provides GST of 5% on “*Rusks, toasted bread and similar toasted products*”. There has been a long-standing request from the industry and GST practitioners to consider Khari under the category of “similar toasted products” so it can be levied a reduced tax of 5%. Khari has ‘similar’ ingredients like toast and similar manufacturing process. In common parlance Khari and toast are considered to be a similar and consumed interchangeably. Here the term “similar products” mentioned under the entry provides the scope to classify Khari under the heading. In the case of Wood Craft Products Ltd,³⁷ observed that Sc held that *"The word "similar" is expansive and not restrictive like "same"". From the ruling it is evident that the product need not be identical the similarity of the product is enough to classify it under the heading of “similar toasted products”. These requests were laid around the time of 47th,³⁸ & 48th³⁹ and 50th GST council⁴⁰ which coincided with the covid pandemic but the meeting doesn't come up with any desired result. This reduction is considered to be important as the products like Khari are the only affordable meal for millions of Indians especially during this covid. The researcher defers the reasoning but the researcher would like to bring the selective hearing of the GST council as stated above they were more proactive in reducing the rates of fruit beer, carbonated drinks, sweet supari but they selectively ignored to put out considerable efforts to reduce the rate of product like Khari which is a day meal for millions.*

(E) Cream Bread:

This product too faces the similar problem as faced by Khari. This product slightly varies from bread as a subtle amount of cream is applied over it, other than this the ingredients and preparation process is same. As similar to Khari there were requests from enormous stakeholders to consider cream bread as bread under Notification no. 2/2017-Central Tax (Rate),⁴¹ so it can be exempted from tax which is considered to be a needed move during the

³⁶ Government of India Ministry of Finance (Department of Revenue), 1/2017-Central Tax (Rate), 28th June, 2017

³⁷ Collector Of Central Excise v. Wood Craft Products Ltd (1995) 3 SCC

³⁸ Agenda for 47th GST Council Meeting 28-29 June, Vol 2, 2022.

³⁹ Agenda for 48th GST Council Meeting, Vol 1, 17th December 2022

⁴⁰ Agenda for 50th GST Council Meeting, Vol 1, 11th July 2023

⁴¹ Government of India Ministry of Finance (Department of Revenue), 2/2017-Central Tax (Rate), 28th June, 2017

covid times as it is currently taxed at the rate of 18%. According to the notification “ *bread, branded or otherwise, ‘ except when served for consumption and pizza bread’ is exempted”* . From this it is evident that, all bread will be covered under this as the entry per se excludes a few so it is inclusive of all types of breads other than the ones which are per se excluded. Further adding cream will never change the nature of the main product, so it is eligible to be classified as bread and it can be exempted from tax. Further in the case of Signature International Foods India (P) Ltd, Nashik,⁴² the Maharashtra AAR ruled that “Pita Bread” is covered by the expression ‘bread’ as mentioned under Entry No. 97 of Exemption Notification (Notification No. 2/2017-Central Tax. Comparing to Pita Bread, a mediterranean flatbread with various stuffings, the Cream Bread is more similar to “bread” but it has is not been interpreted as bread. The most dismal part is, there has been no considerable efforts from the GST council to work on the same which has proper legal position to get exempted from tax

IV. GST DECISIONS: A MIXED BAG OF NEGLIGENCE AND ERROR

(A) Meat, Bones and Flesh:

The 47th GST Council,⁴³ has decided to increase the GST rate of Meat, Bones Flesh from NIL to 5%. The council reasoned that “*these items are exported in large quantities, and it is claimed that such exports are funding hawala business*”. But to the dismay the council’s decision was out of ignorance as the members were not aware of the fact that exports do not attract GST (are zero rated). Their ignorant decision was finally rescued by the Fitment committee which stated the same and ruled that “*GST rate change is not a solution to this problem*”. This incident is more than enough to determine how informed the GST council is.

(B) Meat and Dairy products:

In the same meeting the quorum decided to increase the GST rate of meat and dairy products from NIL to 28% + compensation cess. The council reasoned that “*the consumption of meat and dairy products is sought to be discouraged as it adversely impacts environment, human health and accentuates problem of hunger*”. This reasoning of GST council is totally erroneous as it is against the mere objective of taxation. “*As the objective of taxation in India is to balance the needs of the government with the needs and interests of the taxpayers, and to promote the overall economic well-being and prosperity of the country.*”⁴⁴ The fitment committee too held

⁴² Signature International Foods India (P) Ltd, Nashik, GST-ARA-26/2018-19/B-91, 20th August 2018

⁴³ Agenda for 47th GST Council Meeting 28-29 June, Vol 2, 2022.

⁴⁴ Abhyudhaya Singh, *Objectives and Implications of Taxation in India*, Tax Guru, Objective and Implication of Taxation in India (taxguru.in) (accessed on 20th Oct 2023)

that “*taxation may not be the tool for the purpose*”.⁴⁵

V. CONCLUSION

The doctrine of checks and balances mandates each organ of the government to act upon other organs in a way that prevents each organ from becoming totalitarian and encourages them to uphold their constitutional duties. Further, the constitution mandates each organ to be conscious of the enormous responsibility that rests on them to ensure that institutional respect and comity are maintained. But this ruling always gets overlooked by the GST council the body which is supposed to function effectively in recommending GST policies under Art 279A. From the above analysis it is evident that the GST council is selectively adopting the judicial and AAR rulings according to its convenience. This takes the researcher to the arguments heard in the case of Mohit Minerals.⁴⁶ The above analysis to an extent confirms that the GST Council is “*exercising monopoly, acting arbitrarily*”. Further the obscure adoptions of the decisions, pushes the researcher to analyse the reason behind the same but considering the nature of the paper the researcher has forced himself not to dwell into it as most of them are political in nature. The obscure and erroneous works of GST council violates the separation of powers adopted by Indian Democracy. This inactive and lethargic role of the GST council violates the ruling of Dr. Ashwini Kumar v. Union of India Ministry of Home,⁴⁷ where it was held that “*with the world moving towards positive rights, even governmental inaction falls under violation of checks and balances*”. If this continues then the demarcation of powers will be forgotten and GST council loses the values vested by the constitution. So, it is high time the GST council’s decisions are questioned and it should be pushed to relook its obscure amendments and clarifications.

⁴⁵ Agenda for 47th GST Council Meeting 28-29 June, Vol 2, 2022.

⁴⁶ UoI v. Mohit Minerals Pvt Ltd. Civ Appl No. 1390 of 2022.

⁴⁷ Dr. Ashwini Kumar v. Union of India Ministry of Home W.P 738 2019

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2. Hatsun Agro Product Ltd., KAR ADRG 68/2019, 21st September 2019
3. Sri Venkateshwara Agencies TSAAR/ 02/2020, 2nd March, 2020
4. Anjappar Chettinad A/C Restaurants v. Jt. Commissioner, Office of the Commissioner of GST and Central Excise duty, (2021) 51 GSTC 125 Mad
5. In re Alisha Gruh Udyog, GUJ/GAAR/R/66/2020, 17th September 2020
6. In re Juzi Fruits Private Limited, KAR ADRG 49/2021
7. M/S Great Nuts Impex Pvt Ltd v. Commissioner Of Customs Delhi, (2023) DHC
8. In re United Breweries Limited, KAR/ADRG/32/2022, 14th September 2022.
9. UoI v. Mohit Minerals Pvt Ltd. Civ Appl No. 1390 of 2022.
10. Dr. Ashwini Kumar v. Union of India Ministry of Home W.P 738 2019
11. L.R Coelho by LR v. State of TN AIR 2007 SC 861
12. Shri Prithvi Cotton Mills and Anr v. Broach Borough Municipality & Ors (1969) 2 SCC 283
13. Seema Gupta v. Union of India W.P 10986, 2022
14. Taghar Vasudev Ambrish v. Appellate Authority W.P 14891 2021
15. Collector Of Central Excise v. Wood Craft Products Ltd (1995) 3 SCC
16. Signature International Foods India (P) Ltd, Nashik, GST-ARA-26/2018-19/B-91, 20th August 2018

(B) Notifications and Meeting Agendas:

17. CBIC, Clarifications regarding applicable GST rates & exemptions on certain services– reg, 164/19/2021, 06th October 2021.
18. Government of India Ministry of Finance (Department of Revenue), 11/2017-Central Tax (Rate), 28th June, 2017
19. CBIC, Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 48th meeting held on 17th December, 2022 –reg.,189/01/2023-GST,13 January 2023

20. Government of India Ministry of Finance (Department of Revenue), 2/2017-Central Tax (Rate), 28th June 2017
21. Government of India Ministry of Finance Department of Revenue, Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021 at Lucknow–reg, 163/19/2021-GST, 6th October 2021.
22. Agenda for 45th GST Council Meeting, Vol. 2, 17th September 2021
23. Government Of India Ministry Of Finance Department Of Revenue, Sl. No. 12b Of Schedule –IV Of Notification No. 1/2017- Ct(R) & Entry At Sl. No. 4b Of Notification No. 1/2017- Cc(R), 28th June 2017
24. Agenda for 47th GST Council Meeting 28-29 June, Vol 2, 2022.
25. Agenda for 47th GST Council Meeting 28-29 June, Vol 3, 2022.
26. Agenda for 50th GST Council Meeting, Vol 1, 11th July 2023
27. Agenda for 49th GST Council Meeting, Vol 1, 18th February 2023
28. Agenda for 48th GST Council Meeting, Vol 1, 17th December 2022
29. Agenda for 37th GST Council Meeting, Vol 3, 20th September 2019
30. Agenda for 43rd Meeting of the GST Council, Vol 3, 28th May 2021
31. Agenda for 31st GST Council Meeting, Vol 2, 22nd December 2018
32. Abhyudhaya Singh, *Objectives and Implications of Taxation in India*, Tax Guru, Objective and Implication of Taxation in India (taxguru.in).
