



**Bal Bharati**  
PUBLIC SCHOOL

Sector-21, Noida, G.B. Nagar

# Invite

## **ABT-BBPS INTER SCHOOL MOOT COURT COMPETITION, 2023**

Dear Sir/Madam,

We at Bal Bharati Public School, Noida are committed to supporting innovation in education for the benefit of students and adding value to society, at large. It gives us immense pleasure to invite your esteemed School to the Interschool Moot Court Competition being jointly organised by BBPS, Noida and A B Tutorials on 6th May 2023 at Bal Bharati Public School, Noida.

Adv Pradeep Rai ,Vice President ,Supreme Court Bar Association has kindly consented to be the Chief Guest for the event.

Adv Sanjay Rathi , Secretary, Delhi Bar Council; Adv Vikrant Pachnanda, Founder India Law Journal; Adv Divyansh Hanu, Founder Latest Laws; Adv Sumant Nayak, Sr. Partner Desai and Diwanji, Adv. Varuna Bhandari Guglani, Advocate, Supreme Court of India will be amongst the special invitees alongwith many more legal luminaries.

The Moot Court Competition is an innovative concept that will serve as an invaluable opportunity for students interested in pursuing legal education. It will introduce them to the moot court process helping them re-affirm their choice of law as a career and will be an invaluable opportunity for the students to have direct interaction with senior legal professionals, law professors and graduates from top National Law Universities. Furthermore, it will also give them an advantage over other students entering law university in mooting competitions.

Since, this concept is new to school students, special six days training will be provided to all participating teams through online web sessions by legal experts from AB Tutorials upon registration.

The schools are invited to register themselves by filling up the following google form.

<https://docs.google.com/forms/d/e/1FAIpQLSePiQgp7cnq9jGjMjB60CYWY-lzLYNfS3eOewAk8EMuXEam9w/viewform?vc=0&c=0&w=1&flr=0>

The detailed itinerary, guidelines and brochure for the moot court competition are enclosed.

We look forward to welcoming young enterprising mooters from your esteemed organisation in the aforesaid MOOT COURT COMPETITION.

Warm Regards,

Yours Sincerely,

Asha Prabhakar

(Principal)

Bal Bharati Public School

Sector – 21, Noida



Indian Dispute  
Resolution Centre  
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## Organising Partner:

**ABT (AB Tutorials) is India's global law academy and India's first law exam preparation academy established in 1992 with over 4000 students mentored in top NLUs and over 400 students guided overseas in top overseas law universities. At the Helm of Affairs is Mr Gaurav Bharata, CEO, AB Education. Amongst other laurels, he has also been featured in Forbes 2020 and 2021.**

**The three verticals of AB tutorials :**

**AB Tutorials Pvt Ltd: Established in 1992, it is India's first Law exam training institute.**

**ABERD: Guiding and mentoring law aspirants and professionals for higher education programmes in foreign universities and work Abroad. Education consultancy and resource and research development.**

**MyGuru: A counselling division—interfacing with psychometric assessment for school and college students to help them make aware academic and career choices, and life skills to become successful.**



## Our Knowledge & Media Partners:

- ❑ This event is also being partnered by **Latest Laws.com** (one of India's largest online web law portals with over 4,40,000 online Facebook followers and over 5,00,000 mobile app downloaders, it also has 10 million view subscribers and was awarded as a best legal startup by INBA).
- ❑ The event is also being supported by the **Indian Dispute Resolution Centre ("IDRC")**, a non-profit initiative to provide online and offline resolution for all kinds of disputes. IDRC is registered with NITI Aayog and duly empanelled with the Ministry of Law & Justice, Government of India. It maintains an inhouse panel of the Judges of the Supreme Court of India, Judges of the High Courts and eminent lawyers.
- ❑ **India Law Journal (ILJ)** is dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. ILJ also aims to explore challenges that lie before lawmakers, lawyers and the society at large, in the event of the ever-changing social, economic and technological scenario. This platform shall ignite igniting the initiative and desire of young law students to contribute in the field of law alongside the erudite response of legal luminaries.



# Our Esteemed Guests



**Sr. Adv. Pradeep Rai**  
Vice President  
Supreme Court Bar Association



**Adv. Sanjay Rathi**  
Secretary  
Supreme Court Bar Association



**Adv. Vikrant Pachnanda**  
Advocate  
Supreme Court Bar Association



**Adv Divyansh Hanu**  
Managing Partner  
Lexidem & Rathi



**Adv Varuna Bhandari G**  
Advocare  
Supreme Court of India



**Adv Sumant Nayak**  
Sr. Partner  
Desai and Dewani Ji



**Bal Bharati**  
PUBLIC SCHOOL

Sector-21, Noida, G.B. Nagar



# ABT – BBPS NOIDA 2023

## INTER SCHOOLMOOT COURT COMPETITION

# BROCHURE



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# INTRODUCTION & RULES

Mooting is a simulative court experience that allows students to experience a courtroom environment while developing the student's ability to research, draft, argue and network. It provides for a brilliant introduction to the field of law and enables the student's to understand the factors that are important to excel in law school.

This competition will familiarise school going students with various aspects of preparing and arguing a case. Participants will take part in simulated court or arbitration proceedings, usually involving drafting memorials or memoranda and participating in oral argument. They will engage in research work and use their oratory skills to argue the case in front of actual legal practitioners. The competition will be adjudicated by legal luminaries, Senior Lawyers & Advocates of the Supreme Court and Professors of Law Universities.

The competition will comprise a moot proposition which will involve areas of law such as constitutional law, contracts law and torts law.

## Students will be required to:

- a) Form a team of three members, out of which two persons will be speakers and one person will be the researcher.
- b) Draft a memorial and argue on the propositions of law. To draft the memorial, the students will be required to identify the main issue(s) in the moot proposition, research on the said issue(s) and draft a memorial with the arguments and supporting research.
- c) Argue the memorial before the judges, as well as critique the opponent team's submissions.



# TEAMS

- Each team will comprise of three students from Classes IX – XII and will have to take the role of the Petitioners/Appellants' Advocates or Defendants/ Respondents' Advocates. Of the three students, the two speakers shall prepare themselves for the oral arguments, and the researcher needs to assist with consolidating the memo.
- The teams have to submit their memorial or plaint before the date of submission. Accordingly, the students have to approach the moot proposition, identify the main issues, draft the memorial and argue the matter.
- The dress code for Moot Court Competition is formal (Black Pants, White Shirt, and Black Coat)





# OBJECTIVE

The exercise will help the students with:

- a) Research and Drafting Skills
- b) Formatting Skills
- c) Critical thinking and Analyzing
- d) Working with a Team
- e) Arguing Skills
- f) Public Speaking Skills



# GRADING

The teams will be graded on the basis of the following:

- a) Ability to accurately identify the main issue(s).
- b) Researching and drafting skills.
- c) Arguing skills (including rebuttal arguments).



# SUBMISSION OF MEMOS

- Students are required to submit the memorials five (5) days prior to the competition. i.e 1<sup>st</sup> May 2023.
- In case the registration process is done by any school/ team in a belated manner, kindly reach out to us on [moot.court@nd.balbharati.org](mailto:moot.court@nd.balbharati.org) to seek further extension of time to submit the memorials, which may be granted on a need basis.



# RULES OF THE COMPETITION

- The teams will be distributed into groups. Each group will consist of 8 teams.
- Upon registration, the team will be informed whether they have been allotted the Petitioner/ Respondent role, and will have to prepare their memos/ arguments accordingly.
- On the day of the competition, each team will be provided 5 minutes to present their case to the judges. For instance, T1 and T2 are two teams of Group A.

**Stage 1:** T1 will present their case in 5 mins.

**Stage 2:** T2 will present their case in the next 5 mins.

**Stage 3:** T1 will get 2 minutes to rebut/counter T2's case after hearing the arguments made by T2. (Either of/ or both the speakers of the team can opt to rebut/ counter the arguments within the given time frame.)

**Stage 4:** T2 will get 2 minutes to rebut T1's case after hearing the arguments made by T1. (Either of/ or both the speakers of the team can opt to rebut/ counter the arguments within the given time frame.)

- Three top teams from across the groups, will be selected on the basis of the marks scored in the oral as well as written submissions, as the finalists of the competition.



## TIMELINES OF THE COMPETITION

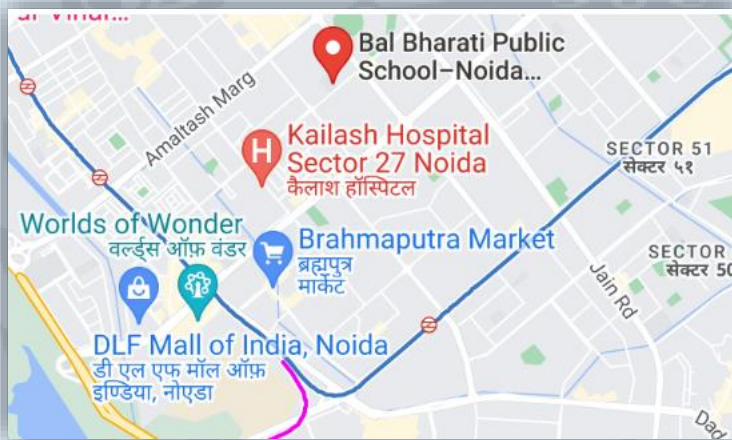
The timelines for the **MOOT COURT COMPETITION** are as follows:

<b>Announcement of the competition and release of Moot problem 2023</b>	<b>10 April, 2023</b>
Last date for Registration	20 April, 2023
Training sessions The links will be sent to all the teams by the host school/will be available on the FB page of ABT/BBPS	20 April, 2023 to 26 April, 2023
Date and time of submission of memos	01 May, 2023 11:59 pm
Date and time of the moot court competition Preliminary Round	06 May, 2023 9:30 am to 12 pm
Finale round of the moot court competition	06 May, 2023 1:00 pm
Announcement of the winners	06 May, 2023 2:00 pm



# DATE AND OTHER DETAILS OF THE MOOT COURT COMPETITION

The moot court competition will be held at :  
Bal Bharati Public School, Noida  
Sector 21, Noida,  
Uttar Pradesh 201301



Time: 9 am.

- ❖ Kindly be present at least half an hour in advance at the venue.

Do visit our social-media pages

- ❖ <https://www.facebook.com/profile.php?id=100091374802708>
- ❖ <https://www.instagram.com/abtbppsnmootcourt/>
- ❖ Email id : [moot.court@nd.balbharati.org](mailto:moot.court@nd.balbharati.org)





# AWARDS

- ❖ A Rolling Trophy and a Cash Prize for the Winning team and Runner-Up team.
- ❖ A Trophy/ Award for the Best Memorial.
- ❖ A Trophy/ Award for the Best Speaker.
- ❖ There will be participation certificates for all participants.



# TRAINING SESSIONS

It takes preparation, hard work, determination. However, more than anything, it takes guidance and resources to do well in mooting. It makes a huge difference if you have someone along the way to guide you in the right direction. Mooting is incredibly competitive, and therefore students will be provided with training on approaching the moot proposition for 06 days starting from 20th to 26th April 2023. Additionally, students are encouraged to reach out to seniors, friends in law schools and practicing lawyers who will be able to advise and assist in the preparation of the competition. Further, students are advised to join the Facebook/ Insta pages which have been created for the purpose of imparting additional information on the competition.

Details are as follows:

<https://www.instagram.com/abtbbpsnmootcourt/>

<https://www.facebook.com/profile.php?id=100091374802708>



# ABT - BBPS 2023

## INTER SCHOOL MOOT COURT COMPETITION

### MOOT PROPOSITION

1. The Republic of Alexia (“**Alexia**”) is a Parliamentary Democracy and has a quasi-federal structure of power-sharing with its thirty-five constituent States. The Constitution and laws of Alexia are *pari materia* with the Constitution and laws of the Republic of India.
2. National Law Schools (“NLS”) were established in different States by their respective State Legislatures, and to declare these National Law Schools to be Law schools of National Importance and to consolidate the state laws providing for establishment of these National Law Schools, the Central Government passed the National Law School of Alexia, Act of 2017. One of such NLS was the Jonas Legal Studies Academy (“**JLSA**”) in the State of Jonas. Soon, the NLSs became popular for their five-year integrated B.A. L.L.B. (Hons.) program.
3. Pursuant to the National Law School of Alexia Act of 2017, Governor of a State was made the *ex-officio* Chancellor of the respective NLS in their State. Accordingly, the Governor of Jonas, Ms. Maria Alfred, took charge as the Chancellor of JLSA. The Act, made the Governors responsible for, *inter alia*, discipline in such Universities.
4. The National Law School of Alexia Act of 2017 also provided for the Power and Duties of the Chancellor, which are as follows:
  - (A) The Chancellor, at any time, may issue directions to the Vice-Chancellor to convene the meeting of any authority of the university for specific purposes, whenever necessary, and the Vice-Chancellor shall submit the minutes of such meeting to the Chancellor for his perusal.
  - (B) The Chancellor, may call for a report or an explanation or such information and record relating to such matter or any matter or affairs of the university, and after considering such report or explanation, or information or record, issue such directions there- upon as may be deemed fit in the interest of the university or student or larger interest of the public, and his directions shall be final and shall be complied with by the university forthwith.



## ABT - BBPS 2023

# INTER SCHOOL MOOT COURT COMPETITION

(C) The Chancellor shall exercise such other powers and perform such other duties as may be conferred upon or vested in him by or under this Act.

5. On June 30, 2018, a group of three friends from the third-year batch studying in JLSA - Ms. Sakshi Jha, Mr. Marco Thomas, and Mr. Vishwanath Paragon, returned to campus late evening in an intoxicated state. They entered the campus way beyond the curfew time, and further entered the University's Library where they created a ruckus and caused nuisance to the students studying there. They also had an altercation with the Librarian Mr. I.T. Kariyappa. Moreover, when they were confronted by the Chief Warden Ms. Daisy Hailey on their way out of the Library, they made impertinent jokes upon her, and ran away.
6. The Vice-Chancellor of the University, incensed at such behavior, prepared a report and submitted the same to Ms. Maria Alferd on August 2, 2018. Ms. Maria Alferd, who had a reputation of being a strict disciplinarian, constituted a 'Committee on Discipline' ("CoD") under the 'Hostel and Campus Welfare Rules, 1999' of JLSA with immediate effect, to investigate into the matter and recommend penalties to her. She appointed Mr. R.K Wadhwa (the Proctor of JLSA), Ms. Daisy Hailey (the Chief Warden of JLSA), and Mr. I.T. Kariyappa (the Librarian of JLSA), as members of the CoD. Ms. Maria Alferd announced the constitution of the Committee through an Order dated August 3, 2018 that was affixed to all major notice boards inside the JLSA campus.

### Proceedings Before the 'Committee on Discipline'

7. Upon being made aware of the composition of CoD, Ms. Sakshi Jha, Mr. Marco Thomas, and Mr. Vishwanath Paragon (the "**Petitioners**") expressed grave doubts upon the impartiality of Mr. R.K Wadhwa (owing to their protests against his arbitrary actions in the past) through individual Facebook posts, all made on August 4, 2018, which were widely read and shared by the JLSA student community, and soon their reservations became breakfast table gossip in the JLSA Mess. As a consequence, Mr. R.K Wadhwa recused from the proceedings of the CoD.



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# INTER SCHOOL MOOT COURT COMPETITION

8. The recusal order dated August 5, 2018 is reproduced below:

*“In view of the Facebook posts by Ms. Sakshi Jha, Mr. Marco Thomas, and Mr. Vishwanath Paragon, I hereby recuse myself from all the cases pertaining to them so that they not only get justice but they also perceive that the Committee has been fair beyond any shred of doubt. This step is also required to uphold the student community’s perception of impartiality and objectivity of the Committee.”*

9. The CoD held its first meeting on August 6, 2018 wherein it intimated the Petitioners about the accusations against them. The Petitioners raised a preliminary objection to the continuance of proceedings, claiming that there should be student representation on the CoD. They also expressed their apprehension that the proceedings would be nothing but a ‘witch- hunt’ because both Ms. Daisy Hailey and Mr. I.T. Kariyappa were made members in it. The CoD considered such objections, however, *vide* its Order dated August 7, 2018 it rejected the Petitioner’s preliminary objections against the continuance of the proceedings. The last paragraph of such Order read as follows:

*“The Committee would intimate the next date of hearing to all concerned parties to the proceedings in due course.”*

10. On August 10, 2018 and August 16, 2018, through notices affixed on all notice boards in the JLSA, the CoD had asked the Petitioners to furnish a detailed written reply along with written witness-statements in their support, if any. While the notice dated August 10, 2018 went unanswered, the Petitioners responded to the second notice dated August 16, 2018 by informing the CoD that they had filed a Writ Petition before the High Court of Judicature at Jonas under Article 226 of the Constitution of Alexia, seeking a stay on the proceedings before the CoD, in which they had impugned the CoD’s Order dated August 7, 2018, which recorded its finding on





## ABT - BBPS 2023

### INTER SCHOOL MOOT COURT COMPETITION

the Petitioner's preliminary objections. The Petitioners' communication to the CoD, mainly contained two points:

1. Since the petition before the High Court deals with the issue of maintainability of proceedings before the CoD, the CoD should not proceed till the High Court has pronounced upon the preliminary objections; and
  2. Since Mr.R.K Wadhwa had recused from the CoD, the proceedings should not take place before just two CoD members, and that the name of the third member on the panel replacing Mr.R.K Wadhwa should be announced before commencing the proceedings.
11. Thereafter, no date of hearing was fixed by the CoD before its opinion on merits which was published on September 2, 2018, which recorded a finding of guilt against the Petitioners and recommended suspension for one academic year and prohibition from residing in the hostels for two months. The opinion was communicated to Ms. Maria Alferd on the same day.
12. When the opinion on merits was published, the Petitioners noted that it had been signed by Ms.Daisy Hailey, Mr. I.T. Kariyappa, and Mr.R.K Wadhwa. It stated, *inter alia*, that Mr. R.K Wadhwa, who had earlier recused from the CoD, had rejoined the proceedings upon persuasion from Ms. Alferd's office, and hence full quorum was complete. None of the intervening communications dated August 10 and 16, 2018, whereby the CoD had sought written arguments and witness-statements from the Petitioners, made any reference to Mr. R.K Wadhwa having rejoined the proceedings.

#### **Actions Taken by Ms. Maria Alferd**

13. Ms. Maria Alferd, was fully satisfied with the alacrity and tenaciousness which the CoD displayed in the conduct of the proceedings. However, she felt that the penalties recommended were not harsh enough in comparison to the acts of indiscipline committed by the Petitioner.
14. She, as a consequence, modified the penalty to suspension for one academic year and prohibition from residing in the hostels for one semester, and published such order on September 5, 2018. She notified the final penalties through notices affixed on all notice boards in the JLSA campus.





## ABT - BBPS 2023

# INTER SCHOOL MOOT COURT COMPETITION

### Issues / Arguments before the High Court of Jonas

15. The Petitioner apprised the High Court of the above developments on the next date of hearing and amended their petition by adding new prayers pertaining to quashing of the Governor's Order dated September 5, 2018. They also assailed the proceedings before the CoD as a complete sham with absolute disregard to the principles of natural justice. The Petitioners also claimed that the proceedings before the CoD were quasi-judicial in nature and hence it was obligated to grant personal / oral hearings to the Petitioners before arriving at any decision, and that written communication could not constitute a 'hearing' in these circumstances. Additionally, it was claimed that not being informed of Mr. R.K Wadhwa rejoining the CoD severely hampered the Petitioners' ability to respond to the CoD.
16. The Governor of the State of Jonas, and Chancellor, JLSA, Ms. Maria Alferd (Respondent No. 1), argued that anything which she does in her capacity as the Chancellor of JLSA is a matter of her discretion under Alexia's Constitution, and not subject to judicial review *vide* Article 163 of the Constitution. Further, the CoD (represented by the Registrar, JLSA, as Respondent No. 2) strongly denied that there had been any violation of the principles of natural justice since on more than one occasion they sought written statements from the Petitioners who had willfully stayed away from the proceedings, and are now trying to take advantage of their own callous attitude. It contended that it was not obligated to grant a personal / oral hearing to the Petitioners, and that inviting written arguments and making written communications would suffice as a 'hearing' for the purposes of the proceedings, which are not quasi-judicial in nature, but merely inquisitorial.
17. After hearing both the Petitioners and the Respondents, The Court framed the following broad issues for arguments:
- (i) *Are the actions of Respondent No. 1 in the present context subject to judicial review before this Court?*
  - (ii) *Was there a violation of principles of natural justice in the conduct of the proceedings by Respondent No. 2, as a consequence of which the Petitioners were denied a fair hearing, vitiating the proceedings?*



# ABT - BBPS 2023

## INTER SCHOOL MOOT COURT COMPETITION

### APPENDIX

- 1) Below is the extract of Article 163 of the Constitution of Alexia:

**“Article 163. Council of Ministers to aid and advise the Governor.** – (1) *There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.*

(2) *If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.*

(3) *The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.”*

- 2) The Hostel and Campus Welfare Rules, 1999 of the JLSA, govern the conduct of disciplinary proceedings by committees such as the CoD. Some of its provisions have been produced below:

#### **“5. Powers of a Committee on Discipline**

*Where in connection with tendering any opinion to the Chancellor, the Committee considers it necessary or proper to make an enquiry and the Committee is satisfied that on the basis of the affidavits filed and the documents produced in such inquiry by the parties concerned of their own accord, it cannot come to a decisive opinion on the matter which is being inquired into, the Committee shall have, for the purposes of such inquiry, the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of:*

- (i) *summoning and enforcing attendance of any person and examining them on oath*
- (ii) *requiring the discovery and production of any document or other material object producible as evidence, etc.*

#### **5B. Procedure to be followed by Committees on Discipline.**

*The Committee on Discipline shall have the power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private).”*

## ANNEXURE - B

### SAMPLE MOOT PROBLEM

- Thomas Ltd., a company established in India, manufactures a product called Bob. It has its manufacturing factories at Mumbai, Kolkata and Hyderabad and has a corporate office at Delhi registered as an 'Input Service Distributor'.
- To manufacture Bob, Thomas has to procure various inputs and input services. These inputs and input services are taxed at a high rate resulting in the accumulation of Input Tax Credit (ITC) under Section 16 of the CGST Act, 2017. A major portion of this ITC is ascribable to input services.
- Thomas, thus, filed for refund claims under Section 54(3)(ii) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017 for refund of Input Tax Credit with the refunds being filed at Mumbai, Hyderabad and Kolkata. The refunds have been claimed due to a higher rate of tax on inputs than the rate of tax on output supplies for the period 01.07.2017 to 31.03.2018.
- The Mumbai Commissionerate by an order dated 31.01.2018 allowed for the refund of Rs. 4 crores for the period 01.07.2017 to 31.12.2017. The claims filed at Hyderabad and Kolkata are still pending.
- On 18.04.2018, Notification No. 21/2018-CT, was issued which amended Rule 89(5) of the CGST Act, 2017. Rule 89(5), as originally read, provided for refund of tax on input and input services. After the amendment by the Notification, the Rule restricted the refund of tax on inputs alone. Further, Notification No. 26/2018-CT, dated 13.06.2018, was issued which further amended Rule 89(5) and gave it a retrospective effect from 01.07.2017.
- Due to these amendments in the CGST Rules, Thomas was issued an order dated 11.10.2018 under Section 73 of the CGST Act read with Maharashtra Goods

and Services Tax Act, 2017 directing it to refund an amount of Rs. 2.5 crores with reference to the refund of ITC on input services. This order was, however, issued without any show cause notice to Thomas.

- Aggrieved with the retrospective amendment of the CGST Rules and the consequent issue of the order dated 11.10.2018, Thomas Ltd. has filed this present Writ Petition in the Hon'ble High Court of Delhi under Article 226 of the Constitution of India.

The following questions arise:

- *WHETHER THE WRIT PETITION IS MAINTAINABLE UNDER BEFORE THE HIGH COURT OF DELHI.*
  - *WHETHER RULE 89(5) OF CGST RULES AS AMENDED VIDE NOTIFICATION NO. 21/2018-CT IS VALID.*
  - *WHETHER THE POWER OF THE GOVERNMENT TO AMEND RULES RETROSPECTIVELY UNDER SECTION 164(3) OF THE CGST ACT IS VALID.*
  - *WHETHER THE NOTIFICATION NO. 26/2018-CT WHICH GIVES RETROSPECTIVE EFFECT TO NOTIFICATION NO. 21/2018-CT IS VALID.*
  - *WHETHER THE ORDER FOR RECOVERY OF REFUND DATED 11.10.2018 IS VALID.*
-

**REMEMBERING S. P. SATHE**  
**THE 13<sup>TH</sup> NATIONAL MOOT COURT COMPETITION**  
**2018-19**



**BEFORE THE HON'BLE**  
**HIGH COURT OF DELHI**

**UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA**

**WRIT PETITION NO: \_\_\_\_\_/2019**

**IN THE MATTER OF**

**THOMAS LTD.**  
**(PETITIONER)**

**v.**

**UNION OF INDIA,**  
**COMMR. OF GST, MUMBAI,**  
**MINISTRY OF LAW & JUSTICE,**  
**CENTRAL GST COUNCIL.**  
**(RESPONDENTS)**

**UPON SUBMISSION TO THE HON'BLE CHIEF JUSTICE AND HIS COMPANION**  
**JUSTICES OF THE HON'BLE HIGH COURT OF DELHI**

**MEMORIAL FOR THE PETITIONER**

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<b>LIST OF ABBREVIATIONS</b>
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ABBREVIATION	ACTUAL TERM
&	And
AIR	All India Report
All	Allahabad
Anr	Another
Art	Article
Bom	Bombay
Cal	Calcutta
CCE	Commissioner of Central Excise
CGST	Central Goods & Service Tax
CIT	Commissioner of Income Tax
Commr	Commissioner
Comp Case	Company Cases
DB	Division Bench
Del	Delhi
edn	Edition
GST	Goods and Services Tax
Guj	Gujarat

HC	High Court
Hon'ble	Honorable
IGST	Integrated Goods & Services Tax
Ltd	Limited
Mad	Madras
No	Number
Ors	Others
Para	Paragraph
Para	Paragraph
Pvt	Private
	Rule
	Section
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reports
STC	Service Tax Cases
v	Versus
WP	Writ Petition



## STATEMENT OF JURISDICTION

The Petitioner has moved to the Hon'ble High Court of Delhi under Article 226 of the Constitution of India, 1950. The Hon'ble High Court of Delhi has the jurisdiction to hear the instant matter.

### **Article 226 of the Constitution of India reads as:**

*“226. Power of High Courts to issue certain writs*

*(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.*

*(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.*

*(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without*

*(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and*

*(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated*

*(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32.”*

## STATEMENT OF FACTS

- Thomas Ltd., a company established in India, manufactures a product called Bob. It has its manufacturing factories at Mumbai, Kolkata and Hyderabad and has a corporate office at Delhi registered as an ‘Input Service Distributor’.
- To manufacture Bob, Thomas has to procure various inputs and input services. These inputs and input services are taxed at a high rate resulting in the accumulation of Input Tax Credit (ITC) under Section 16 of the CGST Act, 2017. A major portion of this ITC is ascribable to input services.
- Thomas, thus, filed for refund claims under Section 54(3)(ii) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017 for refund of Input Tax Credit with the refunds being filed at Mumbai, Hyderabad and Kolkata. The refunds have been claimed due to a higher rate of tax on inputs than the rate of tax on output supplies for the period 01.07.2017 to 31.03.2018.
- The Mumbai Commissionerate by an order dated 31.01.2018 allowed for the refund of Rs. 4 crores for the period 01.07.2017 to 31.12.2017. The claims filed at Hyderabad and Kolkata are still pending.
- On 18.04.2018, Notification No. 21/2018-CT, was issued which amended Rule 89(5) of the CGST Act, 2017. Rule 89(5), as originally read, provided for refund of tax on input and input services. After the amendment by the Notification, the Rule restricted the refund of tax on inputs alone. Further, Notification No. 26/2018-CT, dated 13.06.2018, was issued which further amended Rule 89(5) and gave it a retrospective effect from 01.07.2017.
- Due to these amendments in the CGST Rules, Thomas was issued an order dated 11.10.2018 under Section 73 of the CGST Act read with Maharashtra Goods and Services Tax Act, 2017 directing it to refund an amount of Rs. 2.5 crores with reference to the refund of ITC on input services. This order was, however, issued without any show cause notice to Thomas.
- Aggrieved with the retrospective amendment of the CGST Rules and the consequent issue of the order dated 11.10.2018, Thomas Ltd. has filed this present Writ Petition in the Hon’ble High Court of Delhi under Article 226 of the Constitution of India.

**ISSUES RAISED**

**ISSUE 1. WHETHER THE WRIT PETITION IS MAINTAINABLE UNDER BEFORE THE HIGH COURT OF DELHI.**

- [1.1] *Principles of natural justice have been violated.*
- [1.2] *Fundamental Rights have been violated.*
- [1.3] *There exists a valid cause of action at Delhi.*

**ISSUE 2. WHETHER RULE 89(5) OF CGST RULES AS AMENDED VIDE NOTIFICATION NO. 21/2018-CT IS VALID.**

- [2.1] *It is invalid under the doctrine of substantive ultra vires.*
- [2.2] *It violates Article 14 of the Constitution.*
- [2.3] *It violates Article 300A of the Constitution.*

**ISSUE 3. WHETHER THE POWER OF THE GOVERNMENT TO AMEND RULES RETROSPECTIVELY UNDER SECTION 164(3) OF THE CGST ACT IS VALID.**

- [3.1] *There exist excessive delegation of powers.*
- [3.2] *It violates Article 14 & 265 of the Constitution.*

**ISSUE 4. WHETHER THE NOTIFICATION NO. 26/2018-CT WHICH GIVES RETROSPECTIVE EFFECT TO NOTIFICATION NO. 21/2018-CT IS VALID.**

- [4.1] *The notification impaired the vested right of the Petitioner.*
- [4.2] *The impugned notification is non clarificatory in nature.*
- [4.3] *It violates Article 14 of the Constitution of India.*
- [4.4] *It violates Article 19(1)(g) of the Constitution of India.*

**ISSUE 5. WHETHER THE ORDER FOR RECOVERY OF REFUND DATED 11.10.2018 IS VALID.**

- [5.1] *Principles of Audi Alteram Partem was not complied with and the procedure provided under S. 73 of CGST wasn't adhered to.*
- [5.2] *It violates Articles 14, 19(1)(g) & 300A of the Constitution.*

**SUMMARY OF ARGUMENTS**

**ISSUE 1: WHETHER THE WRIT PETITION IS MAINTAINABLE UNDER BEFORE THE HIGH COURT OF DELHI.**

The present petition is maintainable before the Hon'ble High Court of Delhi, under Article 226 of the Constitution of India as there is a violation of principles of natural justice, Fundamental Rights guaranteed under Part III of the Constitution of India and a valid cause of action has arisen in Delhi. Furthermore, existence of an alternative remedy does not bar maintainability of the petition under Article 226 of the Constitution of India.

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**ISSUE 2: WHETHER RULE 89(5) OF CGST RULES AS AMENDED VIDE NOTIFICATION NO. 21/2018-CT IS VALID.**

Rule 89(5) of the Central Goods and Services Tax Rules, 2017 as amended vide Notification No. 21/2018-CT dated 18.04.2018 is ultra vires the provisions of the Central Goods and Services Tax Act, 2017, as such a notification exceeds the provisions of the parent statute. In addition to the above, it also violates Article 14 and Article 300A of the Constitution of India.

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**ISSUE 3: WHETHER THE POWER OF THE GOVERNMENT TO AMEND RULES RETROSPECTIVELY UNDER SECTION 164(3) OF THE CGST ACT IS VALID.**

The power of the Government to amend rules retrospectively under section 164(3) of the Central Good and Services Tax Act, 2017 is not valid as it is a result of excessive delegation of powers and violates Article 14 and Article 265 of the Constitution of India.

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**ISSUE 4: WHETHER THE NOTIFICATION NO. 26/2018-CT WHICH GIVES RETROSPECTIVE EFFECT TO NOTIFICATION NO. 21/2018-CT IS VALID.**

Notification No. 26/2018-CT giving retrospective effect to Notification No. 21/2018-CT is not valid because it impairs a vested right of the petitioner. Further, it is not a clarificatory notification and thus, cannot be given a retrospective effect. In addition to this, it also violates Article 14 and Article 19(1)(g) of the Constitution of India.

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**ISSUE 5: WHETHER THE ORDER FOR RECOVERY OF REFUND DATED 11.10.2018 IS VALID.**

The order for recovery of refund dated 11.10.2018 is not valid as the principle of *Audi Alteram Partem* provided for under Section 73 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 was completely disregarded. Further, Articles 14, 19(1)(g) and 300A of the Constitution are also violated by issuance of such order.

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**ARGUMENTS ADVANCED**

**ISSUE 1: WHETHER THE WRIT PETITION IS MAINTAINABLE UNDER BEFORE THE HIGH COURT OF DELHI.**

It is humbly contended before the Hon'ble High Court of Delhi that the writ petition is maintainable under Article 226. This contention is sought to be proved by way of three-fold arguments: [1.1] Principles of natural justice have been violated, [1.2] Fundamental Rights have been violated, and [1.3] There exists a valid cause of action arising at Delhi.

**[1.1] PRINCIPLES OF NATURAL JUSTICE HAVE BEEN VIOLATED.**

Natural Justice has been described as “fair-play in action”<sup>1</sup>. The concept entails two ideas: (i) *audi alteram partem*, i.e. no person affected by a decision should be condemned unheard, and (ii) *Nemo iudex in re sua*, i.e. the deciding authority adjudicating the matter should be free from bias<sup>2</sup>.

The principles of natural justice require the authorities to act fairly in their actions.<sup>3</sup> A decision which contravenes the rules of natural justice is a nullity and person affected is entitled to have such decision aside<sup>4</sup>.

The rules of natural justice are read into the administrative actions involving civil consequences unless a statute by specific language excludes its application.<sup>5</sup> Thus, even an administrative order or decision in matters involving civil consequences have to be made consistent with the rules of natural justice.<sup>6</sup>

The principle of *Audi Alteram Partem* is founded on the rule that no one should be condemned unheard or deprived of his right even in quasi-judicial proceedings.<sup>7</sup> This doctrine has expanded and the courts have included in its purview the right to notice and requirement of reasoned orders upon due application of mind.<sup>8</sup> Thus, violation of *audi alteram partem* would render a quasi-judicial order null and void<sup>9</sup>.

<sup>1</sup> *State of Maharashtra v Jalgaon Municipal Council* (2003) 9 SCC 731.

<sup>2</sup> *Dev Dutt v Union of India* (2008) 8 SCC 725.

<sup>3</sup> *Dev Dutt* (n 2).

<sup>4</sup> *State of Orissa v Binapanidevi* AIR 1967 SC 1269.

<sup>5</sup> *Sahar India (Firm) Lucknow v Commissioner of Income Tax Central I* (2008) 14 SCC 150.

<sup>6</sup> *Dr. Binapanidevi* (n 4) .

<sup>7</sup> *Competition Commission of India v Steel Authority of India Limited* (2010) 10 SCC 744.

<sup>8</sup> M P Jain & S N Jain, *Principles of Administrative Law* (6<sup>th</sup> edn, LexisNexis 2013) 307.

<sup>9</sup> *Jaswant Singh Mathura Singh v Ahmedabad Municipal Corporation* 1992 Supp (1) SCC 5.

In the present case, order dated 11.10.2018 was issued on the petitioner under Section 73<sup>10</sup> of the Central Goods and Services Act, 2017 (hereinafter, CGST Act) Act read with the Maharashtra Goods and Service Tax Act, 2017 directing it to refund an amount of Rs. 2.5 crores pertaining to ITC on input services erroneously refunded<sup>11</sup>. The said order was made without issuance of any show cause notice to the petitioner as required under S. 73(1)<sup>12</sup> of the CGST Act, violating the principle of *Audi Alteram Partem*.

***[1.1.1] The presence of an alternative remedy does not negate the maintainability of the present petition.***

The Supreme Court has held that even if there is an alternate remedy available to the aggrieved, it would still be within the jurisdiction and the discretion of the Court to grant relief under Article 226 of the Indian Constitution.<sup>13</sup> The Hon'ble Supreme Court has also held that where an order has been passed in violation of the principles of natural justice, even if there exists an alternate remedy, it can become no bar to the exercise of writ jurisdiction under Article 226.<sup>14</sup> Where an adjudicating order was passed without giving reasons, the same was held to violate the principles of natural justice and the order was set aside in the writ jurisdiction despite the presence of an alternate appeal remedy.<sup>15</sup> Thus, the existence of an alternative remedy cannot be said to be a bar to the exercise of writ jurisdiction by the court especially when there has been the violation of the principles of natural justice.<sup>16</sup>

Therefore, it is humbly submitted that the present writ petition is maintainable before the Hon'ble High Court of Delhi as there exist violation of principles of natural justice [1.1], even though there exists an alternate remedy.

***[1.2] FUNDAMENTAL RIGHTS HAVE BEEN VIOLATED.***

Article 226 confers power on every High Court to reach injustice wherever it is found and provide for the appropriate remedy.<sup>17</sup> It concerns itself with the irrationality, illegality and procedural impropriety of an order passed by a statutory authority or the State.<sup>18</sup>

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<sup>10</sup> Central Goods and Services Tax Act 2017, s 73. (CGST Act)

<sup>11</sup> Moot Proposition, para 09.

<sup>12</sup> CGST Act, s 73(1).

<sup>13</sup> *UP State Spinning Co Ltd v R S Pandey and Anr* (2005) 8 SCC 264.

<sup>14</sup> *Guruvayoor Devasom Committee and Anr v C K Rajan and Ors* (2003) 7 SCC 546.

<sup>15</sup> *Himalaya Construction (P) Ltd v Union of India* [2016] 41 STR 587 (Punjab & Haryana).

<sup>16</sup> *Whirlpool Corporation v Registrar of Trade Marks Mumbai and Ors* AIR 1999 SC 22.

<sup>17</sup> *Secretary ONGC Limited v VU Warriar* (2005) 5 SCC 245.

<sup>18</sup> *Dwarka Prasad Agarwal v BD Agarwal* (2003) 6 SCC 230.



Under Article 226, the High court is empowered to issue writs in case any judicial or executive action violates fundamental rights of the public.<sup>19</sup>

In the present case, the Notification No. 21/2018 – CT dated 18.04.2018, Notification No. 26/2018 – CT dated 13.06.2018 and order dated 11.10.2018 has violated Article 14 & 19(1)(g) of the Constitution. Therefore, it is humbly submitted that the present writ petition is maintainable before the Hon'ble High Court of Delhi as there exist violation of fundamental rights.

***[1.3] THERE EXIST A VALID CAUSE OF ACTION ARISING AT DELHI.***

On reading of Article 226<sup>20</sup>, it is clear that the High Court can exercise its power of writ jurisdiction if the cause of action has even partly arisen within the territories in relation to which it exercises its jurisdiction, notwithstanding the seat of the authority or Government against whom such writ is to be issued.<sup>21</sup> Clause (2) of Article 226 is reproduced below:

*“(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”<sup>22</sup>*

This Hon'ble High Court has held that when a cause of action, wholly or in part, has arisen within the territorial jurisdiction of the Court, the writ issued by the Court can extend and run beyond its territorial jurisdiction.<sup>23</sup>

A writ petition can challenge the enactment of a legislation if it gives rise to a cause of action and the same can be filed in any High Court of the country.<sup>24</sup> This is because a legislation published in the Official Gazette, unless excluded specifically, applies to the whole of the territory of India.<sup>25</sup>

In the present case, the substitution of Rule 89(5) of the CGST Rules, 2017, by Notification No. 21/2018 – CT dated 18.04.2018 and Notification No. 26/2018 – CT dated 13.06.2018<sup>26</sup> has given rise to the present cause of action which is applicable to the whole territory of India. This

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<sup>19</sup> *Minerva Mills Ltd v Union of India* AIR 1980 SC 1789.

<sup>20</sup> Constitution of India, art 226.

<sup>21</sup> *Tecpro Systems Ltd v Union of India* 2016 SCC OnLine 18358.

<sup>22</sup> Constitution of India, art 226(2).

<sup>23</sup> *Ajit Jain v Union of India* (2000) 84 DLT 1.

<sup>24</sup> *M/S Kusum Ingots & Alloys Ltd v Union of India & Anr* Appeal (2004) 6 SCC 254.

<sup>25</sup> *ibid*

<sup>26</sup> Moot Proposition, para 7.

retrospective change in the legislation has severely affected the rights of the Petitioner by having him refund an egregious amount of ₹2.5 crore.<sup>27</sup>

Further, the Petitioners have a corporate office at Delhi registered as an Input Service Distributor<sup>28</sup>. A remedy before the High Court cannot be said to be barred from being maintainable on the ground that the cause of action has not arisen in Delhi but in Mumbai. Since the effect of passing the order dated 11.10.2018 has also affected the Petitioner's functioning of his business at the Delhi office, a refund of the amount asked in the said order would lead to a loss to the Petitioner. Thus, in the present case, a part of the cause of action has arisen in Delhi and hence this court has the authority to entertain this writ petition.

Therefore, in light of the above submissions, it is humbly submitted that the present writ petition is maintainable under Article 226 of the Constitution of India<sup>29</sup> before this Hon'ble High Court of Delhi.

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**ISSUE 2: WHETHER RULE 89(5) OF CGST RULES AS AMENDED VIDE NOTIFICATION NO. 21/2018-CT IS VALID.**

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It is humbly contended before this Hon'ble High Court of Delhi that the Rule 89(5), as amended vide notification No. 21/2018-CT dated 18.04.2018 is ultra vires to provisions of CGST Act and the Constitution of India. This contention is sought to be proved by way of three-fold argument: [2.1] It is invalid under the doctrine of substantive *ultra vires*, [2.2] It violates Article 14 of the Constitution, and [2.3] It violates Article 300A of the Constitution.

**[2.1] IT IS INVALID UNDER THE DOCTRINE OF SUBSTANTIVE ULTRA VIRES.**

Delegated legislation can be questioned before the courts on the ground of substantive *ultra vires*<sup>30</sup>. Such a situation arises when the delegated legislation exceeds the power conferred upon it and goes beyond the parent Act, or when it is in conflict with the delegating statute<sup>31</sup>.

The principle is that the delegate cannot make a rule which is not authorised by the parent statute<sup>32</sup>. It has to work within the scope of its authority and cannot widen or constrict the scope of the Act<sup>33</sup>. Rules have to be consistent with the provisions of the parent statute<sup>34</sup>. The power

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<sup>27</sup> Moot Proposition, para 9.

<sup>28</sup> Moot Proposition, para 2.

<sup>29</sup> Constitution of India, art 226.

<sup>30</sup> *Tahir Hussain v Dist Board Muzaffarnagar* AIR 1954 SC 630.

<sup>31</sup> *Ganpati Singh v State of Ajmer* AIR 1955 SC 188.

<sup>32</sup> *Yassin v Town Area Committee* AIR 1952 SC 115.

<sup>33</sup> *Agriculture Market Committee v Shalimar Chemical Works* AIR 1997 SC 2502.

<sup>34</sup> *State of Uttar Pradesh v Babu Ram* AIR 1961 SC 751.

to make rules cannot include within its scope the power to make a rule which is in conflict to the provisions of the parent act<sup>35</sup>.

It has been held by the Supreme Court of India that when the Act confers rule making power for carrying out purposes of the Act, rules cannot be so framed as not to carry out purposes of the Act or be in conflict with same.<sup>36</sup> Therefore, a piece of delegated legislation may be declared invalid if it seeks to achieve an object which falls outside the compass of, or goes against, the basic policy of the parent statute<sup>37</sup>.

In the present case, clause (5) of Rule 89 (the delegated legislation), as amended vide notification No. 21/2018-CT dated 18.04.2018 is against the Section 54(3) r/w S. 2(59), (60), (62) & (63) CGST Act (the parent statute). This is sought to be proved by way of two arguments: [2.1.1] A statute has to be read as a whole in accordance with its object, and [2.1.2] The term “inputs” as used in S. 54 (3) includes both input and input services.

***[2.1.1] A statute has to be read as a whole in accordance with its object.***

It is a well-settled rule of construction that every effort should be made to secure a harmonious reading of the several sections of the Act as a whole<sup>38</sup>. The words of statutes have to be understood to the object and subject of the enactment<sup>39</sup>. The statute has to be read as a whole unless exclusion of some portions specified<sup>40</sup>.

If the court is satisfied and feels certain that the language employed by the legislature does not represent its avowed intention, if interpreted literally, it can legitimately add to the language of the statute<sup>41</sup>. Addition to, or modification of, words used in statutory provisions is generally not permissible, but courts may depart from this rule to avoid a patent absurdity<sup>42</sup>.

Object of the enactment should be kept in view<sup>43</sup>. The courts can modify the language used to achieve the Legislative intention and produce rational results<sup>44</sup>. They can supplement the

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<sup>35</sup> *State of Karnataka v H Ganesh Kamath* AIR 1983 SC 550.

<sup>36</sup> *Laghu Udhyog Bharti v Union of India* (1999) 6 SCC 418.

<sup>37</sup> *Boban Naik v Union of India* AIR 1979 Goa 1.

<sup>38</sup> *FK Hasheeb & Co v State of Madras* (1966) 17 STC 38 (Mad DB).

<sup>39</sup> *Madanlal Fakirchand v Shree Chandgeo Sugar Mills* AIR 1962 SC 1543.

<sup>40</sup> *Knit Foulds (P) Ltd v Collector of Central Excise* [1988] 1988 taxmann.com 313.

<sup>41</sup> *Shyam Kishore Devi v Patna Municipal Corporation* AIR 1966 SC 1678.

<sup>42</sup> *Narayanswami v Paneerselvan* 1973 1 SCR 172.

<sup>43</sup> *Mercury Laboratories Pvt Ltd v State of UP and Ors* (2000) 119 STC 271 (All DB).

<sup>44</sup> *Kalyan Roller Flour Mills Pvt Ltd v Com Of CT AP* (2004) 134 STC 545 (AP DB).

written words so as to give “force and life” to the intention of the legislature<sup>45</sup>. The purpose of the Act and the object of a particular section has to be borne in mind<sup>46</sup>.

The main objective of implementing the Goods and Services Tax (hereinafter referred as ‘GST’) was to ensure that the cascading effect of tax on tax will be eliminated<sup>47</sup>. GST levied on supply of goods or services is one of the value added tax system where credit of input and input services is permitted to achieve that objective<sup>48</sup>. Therefore, all the provisions of the CGST Act should be construed harmoniously, keeping in mind the said objective.

***[2.1.2] The term “inputs” as used in S. 54 (3) includes both input and input services.***

Section 2 (59)<sup>49</sup> & (60)<sup>50</sup> provides for the definition of “input” and “input services”. Section 2 (62)<sup>51</sup> provides for the definition of “input tax” which states that “[it] means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him.” Section 2 (63)<sup>52</sup> provides for the definition of “input tax credit” (hereinafter, ITC) which states that “[it] means the credit of input tax.” On reading clause (63) in light of clause (62), input tax credit means the credit of central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him.

Similarly, S. 16(1)<sup>53</sup> deals with the eligibility and conditions for taking input tax credit which states that every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business.

Section 54 (3)<sup>54</sup> provides for the refund of any unutilised ITC where the credit has been accumulated on account of rate of tax on “inputs” being higher than the rate of tax on output supplies. On plain reading of the section, it states that refund can be claimed only on unutilised ITC accumulated from input and not input services.

On reading S. 53(3) in light of S. 2 (63) & S. 16(1) and reading the statute as a whole by giving harmonious construction to all sections, it is easily established that the intention of the legislature was to include both input and input services in the term “inputs” as used in S. 54

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<sup>45</sup> *Gaekwar Mills Ltd v State of Gujarat* [1976] 37 STC 129.

<sup>46</sup> *Bisra Limestone Co Ltd v Sales Tax Officer Rourkela Circle Uditnagar* [1971] 27 STC 531.

<sup>47</sup> *KPH Dream Cricket (P) Ltd In re* [2018] 98 taxmann.com 243 (AAR-PUNJAB).

<sup>48</sup> *JCB India Ltd v Union of India* [2018] 92 taxmann.com 131 (Bombay)

<sup>49</sup> CGST Act, s 2(59).

<sup>50</sup> CGST Act, s 2(60).

<sup>51</sup> CGST Act, s 2(62).

<sup>52</sup> CGST Act, s 2(63).

<sup>53</sup> CGST Act, s 16(1).

<sup>54</sup> CGST Act, s 54(3).

(3). Therefore, the intention of the legislature was to provide refund on unutilised ITC accumulated on both input and input services.

Further, as already submitted, the purpose of implementing GST is to remove cascading effect of tax on tax. Providing refund of unutilised ITC only on inputs and not input services will force the input service users to treat the tax paid on such services as their expense which will defeat the objective of the Act entirely and lead to a manifest contradiction to the apparent purpose of the enactment, as discussed in [2.1.1]. Therefore, keeping in mind the objective of the Act, it can be established that the term “input” as used in the S. 54(3) includes both input and input services.

It is humbly submitted that the Notification No. 21/2018-CT dated 18.04.2018 amending Rule 89 (5) by providing refund of unutilised ITC only on inputs and not input services is against the very objective of the CGST Act and Section 54(3) r/w S. 2(59), (60), (62), (63) & S. 16(1) of the CGST Act. Hence, Notification No. 21/2018-CT dated 18.04.2018 is invalid under the doctrine of substantive *ultra vires*.

**[2.2] IT VIOLATES ARTICLE 14 OF THE CONSTITUTION.**

Article 14 of the Constitution of India provides for equality which is one of the magnificent pillars of Indian democracy<sup>55</sup>. The main objective of Article 14 is to secure to all persons, citizens or non-citizens, the equal status and opportunity referred to in the Preamble of the Constitution<sup>56</sup>. All persons in similar circumstances shall be treated alike both in privileges and liabilities imposed<sup>57</sup>.

It is established that Article 14 strikes at arbitrary state action, both administrative and legislative<sup>58</sup>. Article 14 provides as a safeguard against any discriminatory or arbitrary action of the state. Non-application of mind becomes a facet of arbitrary exercise of power<sup>59</sup>.

As submitted before, the principle is that the delegate cannot make a rule which is not authorised by the parent statute<sup>60</sup>. It has to work within the scope of its authority<sup>61</sup> and has to frame the rules have to keeping in view the object of the enactment<sup>62</sup>. Contradiction to such will lead the action of the delegate as arbitrary.

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<sup>55</sup> *Indra Sawhney v Union of India* AIR 1993 SC 477.

<sup>56</sup> *Natural Resources Allocations Re Special Reference Number 1 of 2012* (2012) 10 SCC 1 (77).

<sup>57</sup> *John Vallamattom v Union of India* (2003) 6 SCC 611.

<sup>58</sup> *Maneka Gandhi v Union of India* AIR 1978 SC 597.

<sup>59</sup> *Onkar Lal Bajaj v Union of India* (2003) 2 SCC 673.

<sup>60</sup> *Yassin v Town Area Committee* AIR 1952 SC 115.

<sup>61</sup> *Agriculture Market Committee v Shalimar Chemical Works* AIR 1997 SC 2502.

<sup>62</sup> *Mercury Laboratories Pvt Ltd v State of UP and Ors* (2000) 119 STC 271 (All DB).

In the present case, the Notification No. 21/2018-CT dated 18.04.2018 amended Rule 89 (5) by providing refund of unutilised ITC only on inputs and not input services. The said amended Rule 89(5) is manifestly arbitrary as it excludes input services from the calculation of refund of ITC which is against the provisions of CGST Act and against its basic objective. Therefore, such arbitrary action of excluding refund of unutilised ITC accumulated from input services from Rule 89(5) is violative Article 14 of the Constitution of India. Hence, Notification No. 21/2018-CT dated 18.04.2018 is *ultra vires* to Article 14 of Constitution of India.

***[2.3] IT VIOLATES ARTICLE 300A OF THE CONSTITUTION.***

Article 300A<sup>63</sup> provides that no person shall be deprived of his property save by authority of law. This means that a state cannot deprive a person of his property by taking recourse to executive power<sup>64</sup>. A person can be deprived of his property only by authority of law and not by a mere executive fiat or order<sup>65</sup>.

In the present case, ITC can be termed as property because it is as good as money, therefore, it falls under the definition of “property” in Article 300A. As submitted before, the Notification No. 21/2018-CT dated 18.04.2018 is invalid under the doctrine of substantive *ultra vires* as it is against the provisions of the CGST Act and its objective. The Government didn’t have the authority to amend Rule 89(5) and deny public refund of unutilised ITC accumulated from input services under the said rule.

Therefore, in the present case, since unutilised ITC accumulated from input services is as good as money and can be termed as property, by way amendment to Rule 89(5) vide Notification No. 21/2018-CT dated 18.04.2018, the public is denied the refund of such ITC without any authority of law depriving them of their property. Hence, Notification No. 21/2018-CT dated 18.04.2018 is violative of Article 300A of the Constitution of India.

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**ISSUE 3: WHETHER THE POWER OF THE GOVERNMENT TO AMEND RULES  
RETROSPECTIVELY UNDER SECTION 164(3) OF THE CGST ACT IS VALID.**

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It is humbly contended before the Hon’ble High Court of Delhi that the power given under S. 164(3) to amend rules retrospectively is not valid. This contention is sought to be proved by way of two-fold arguments: [3.1] There exist excessive delegation of powers, and [3.2] It violates Article 14 & 265 of the Constitution.

***[3.1] THERE EXIST EXCESSIVE DELEGATION OF POWERS.***

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<sup>63</sup> Constitution of India, art 300A.

<sup>64</sup> *Bishamber Dayal Chandra Mohan v State of Uttar Pradesh* AIR 1982 SC 33.

<sup>65</sup> *Chairman Indore Vikar Pradhikaran v Pure Industrial coke & Chemical Limited* (2007) 8 SCC 705.

It is a well construed principle of law that the legislature cannot delegate unqualified, unrestrained and uncanalised legislative power on an executive authority.<sup>66</sup> The legislature can delegate the law-making power, but such power must be subject to laying down standards, principles and policy within which the delegatee must exercise its delegated legislative power<sup>67</sup>. Should the Legislature fail to do so, the law made by the delegatee will be invalid<sup>68</sup>. This is known as the doctrine of excessive delegation<sup>69</sup>.

The doctrine of excessive delegation applies to taxation matters as well<sup>70</sup>. Therefore, it is required that the parent statute should lay down guidelines or a policy while granting powers to the subordinate authority to make rules<sup>71</sup>.

The Indian Legislature while granting the power to the subordinate authority to make retrospective rules has always given guidelines. For example, S. 295(4) of the Income Tax Act, 1961, S. 85(3) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, S. 46(3) of the Gift Tax Act, 1958, S. 25(2-A) of the Companies (Profits) Surtax Act, 1964, S. 46(3) of the Wealth Tax Act, 1957, etc., states that:

*“No such retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person whom such rule may be applicable.”*

In the present case, S. 164(3) of the CGST Act simply states that the power of the Government to make rules include ‘the power to give retrospective effect to the rules’, and it does not lay down any policy, principle or standard subject to which the Government may make retrospective rules.

Since, the government under S. 164(3) has been given unrestrained and uncanalised power to allow retrospective operation of the rules made by them without any guidelines or policy provided by the statute, there exist an excessive delegation of power. Hence, the power given under S. 164(3) to amend rules retrospectively is invalid and should be struck down.

### ***[3.2] IT VIOLATES ARTICLE 14 & 265 OF THE CONSTITUTION.***

Article 14 of the Constitution of India provides for equality which is one of the magnificent pillars of Indian democracy<sup>72</sup>. It is established that Article 14 strikes at arbitrary state action,

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<sup>66</sup> *Humdard Dawakhana (Wakf) v Union of India* AIR 1960 SC 554.

<sup>67</sup> *Kishan Prakash Sharma v Union of India* (2001) 5 SCC 212.

<sup>68</sup> *State of Rajasthan v Basant Nahata* (2005) 12 SCC 766.

<sup>69</sup> *MP High Court Bar Association v union of India* (2004) 11 SCC 766.

<sup>70</sup> *Gwalior rayon Co v Asst Commr Of Sales Tax* AIR 1974 SC 1660.

<sup>71</sup> *HR Banthia v Union of India* AIR 1970 SC 1453.

<sup>72</sup> *Indra Sawhney* (n 55).

both administrative and legislative<sup>73</sup>. As submitted before, any act or provision which is manifestly arbitrary is liable to be struck down<sup>74</sup>.

In the present case, S. 164(3) provides unrestrained and uncanalised power to the government to give retrospective effect to the rules made by them without any guidelines or policy provided by the statute. Such power given is arbitrary and violative of Article 14 of the Constitution. Hence, S. 164(3) violates Article 14 of the Constitution of India.

Article 265<sup>75</sup> of the Constitution of India provides that no tax shall be levied or collected except by authority of law. The SC has held that the power to tax is an incident of sovereignty. The power to legislate retrospectively is a plenary power of the legislature and such power cannot be extended to the executive<sup>76</sup>.

In the present case, S. 164(3) provides the power to the executive to legislate retrospectively which is with the Legislature only. Hence, S. 164(3) violate Article 265 of the Constitution of India.

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**ISSUE 4: WHETHER THE NOTIFICATION NO. 26/2018-CT WHICH GIVES RETROSPECTIVE EFFECT TO NOTIFICATION NO. 21/2018-CT IS VALID.**

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It is humbly contended before the Hon'ble High Court of Delhi that the Notification No. 26/2018-CT giving retrospective effect to Notification No. 21/2018-CT is perverse and invalid. The said contention is sought to be proved by way of four-fold arguments: **[4.1]** The notification impaired the vested right of the petitioner. **[4.2]** The impugned notification is non-clarificatory in nature. **[4.3]** It violates Article 14 of the Constitution of India, and **[4.4]** It violates Article 19(1)(g) of the Constitution of India.

***[4.1] THE NOTIFICATION IMPAIRED THE VESTED RIGHT OF THE PETITIONER.***

The SC has held that retrospective rules made by way of delegated legislation are invalid if they take away the vested rights of affected parties<sup>77</sup>. The expression “vested rights” means any right flowing from the relevant rule which is sought to be altered with effect from a prior date and thus taking away the benefits available under the rule in force at that time<sup>78</sup>. The

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<sup>73</sup> *Maneka Gandhi* (n 58).

<sup>74</sup> *Shayara Bano v Union of India* (2017) 9 SCC 1.

<sup>75</sup> Constitution of India, art 265.

<sup>76</sup> *New Delhi Municipal Committee v State of Punjab* (1997) 7 SCC 339.

<sup>77</sup> *KC Arora v State of Haryana* (1984) 3 SCR 623.

<sup>78</sup> *Chairman Railway Board v CR Rangadhamaiah* (1997) 6 SCC 623.



amendments which are retrospective in nature are valid only when procedural law is affected, and not when vested rights are affected or new liabilities or duties are created.<sup>79</sup>

The SC has held that the substantive right to input tax credit is indefeasible<sup>80</sup>. In the case of *Jayam & Co.*<sup>81</sup>, the issue before the SC was as to whether retrospective effect could be given to the newly inserted sub-section (20) of S. 19 of the Tamil Nadu Value Added Tax Act, 2006, where S. 19 deals with input tax credit of the amount if tax payable under the Act. Sub-section 20 was inserted to determine the input tax in specific situations, where the selling price of goods is less than their purchase price, and this has the effect of causing a decrease in the amount of ITC that the dealers would be entitled to. The SC struck down the retrospective amendment of S.19(20) of the Tamil Nadu Value Added Tax Act, 2010 on the ground that it affected the vested rights that had accrued in favour of the dealers in the period prior to the amendment. The same has been upheld by the SC in various other judgements as well<sup>82</sup>.

In the present case, S. 54(3) r/w Rule 89(5) prior to its amendment, the petitioner was vested with the right to avail refund on unutilised ITC accumulated on inputs and input services. Such vested right of the petitioner has been curtailed by the retrospective application of Notification No. 21/2018-CT vide Notification No. 26/2018-CT. After the amendment, the petitioner was allowed to avail refund on unutilised ITC accumulated on inputs only and not input services thereby taking away its vested right to avail refund on unutilised ITC accumulated on input services

Therefore, it is humbly submitted that the Notification No. 26/2018-CT issued by the CBIC, giving retrospective effect to Notification No. 21/2018-CT, impaired the vested right of the petitioner. Thus, the Notification No. 26/2018-CT must be declared invalid and void.

**[4.2] THE IMPUGNED NOTIFICATION NOT CLARIFICATORY AND CANNOT OPERATE  
RETROSPECTIVELY.**

The general principle regarding retrospective amendments is that amendments related to procedure may operate retrospectively, but with the exception that whatever be the procedure which was correctly adopted and proceedings concluded under the old law the same cannot be reopened for the purpose of applying the new procedure.<sup>83</sup> This principle was reinforced by the Supreme Court of India where the amount of tax to be paid was increased retrospectively where

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<sup>79</sup> *Blyth v Blyth* (1966) 1 All ER 524.

<sup>80</sup> *CCE Pune v Dai-Ichi-Karkaria Ltd* (1999) 7 SCC 448.

<sup>81</sup> *Jayam & Co v Assistant Commissioner* (2016) 15 SCC 125.

<sup>82</sup> *Southern Motors v State of Karnataka* (2017) 3 SCC 467.

<sup>83</sup> *Nani Gopal Mitra v State of Bihar* AIR 1970 SC 1636.

it was held that the amendment would apply only to pending transactions and will not apply to cases where the transaction has come to an end before the provision came into force.<sup>84</sup>

The arguments mentioned above are reaffirmed through principles of retrospective operation of law was laid down by the Hon'ble Supreme Court of India in *Hitendra Vishnu Thakur*<sup>85</sup>, wherein it was laid down that procedural amendments should not be given retrospective operation if it results in creation of new duties and liabilities in respect of transactions that have already been accomplished.

The doctrine of small repairs, as set out in the *Harvard Law Review*<sup>86</sup>, states that the legislature must be able to make small repairs, in order to cure any defects or eliminate any uncertainties in the statute as it was originally drafted. This has been accepted by the Supreme Court of India in *The Buckingham & Carnatic Co. case*.<sup>87</sup> where the position taken regarding retrospective tax amendments is that such amendments or notifications can only clarify existing defects in the statute and cannot introduce any substantive right or obligation.<sup>88</sup>

This principle is best applied in *Martin Lottery Agencies Ltd.*<sup>89</sup>, where an explanation added to the Finance act, 1994, which created new liabilities while also changing the nature of the tax being levied entirely was held to be not clarificatory in nature and therefore, was not made to operate retrospectively. It was further held that it is for the Court to decide whether an amendment is clarificatory in nature or not, irrespective of the language used in the statute.

In the present case, the impugned notifications amended Rule 89(5) of the Central Goods and Services Tax Rules, 2017<sup>90</sup>, but did not take into consideration the completion of previous transactions as a result of application of fair procedure in force at the time.

It may be argued by the respondents that the amendment only affected procedure, in the form of calculation of input tax credit, but it must also be kept in mind that the tax liability of affected parties was also increased by a very significant amount. Since the petitioner had already applied for refund at a time prior to the issuance of the impugned notifications, there existed a vested right in the unutilised input tax credit and its refund.

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<sup>84</sup> *Triveni Chemicals Ltd v Union of India & Anr* (2007) 2 SCC 503.

<sup>85</sup> *Hitendra Vishnu Thakur v State of Maharashtra & Ors* (1994) SCC (4) 602.

<sup>86</sup> Charles B Hochman 'The Supreme Court And The Constitutionality Of Retroactive Legislation' (1960) 73 *Harvard Law Review* 692

<sup>87</sup> *Asst Commr of Urban Land Tax & Ors v The Buckingham & Carnatic Co Ltd & Ors* (1969) 2 SCC 55.

<sup>88</sup> *WPIL Ltd v CCE* AIR 2005 SC 1321.

<sup>89</sup> *Union of India v Martin Lottery Agencies Ltd* (2009) 12 SCC 209.

<sup>90</sup> Central Goods and Services Tax Rules 2017, r 89(5).

Therefore, it is humbly submitted that the impugned notifications affect a substantive right of the petitioner, as the petitioner is denied refund of input tax credit for transactions already completed through adherence to fair procedures of the law in force at the time the transactions took place. In addition to the above, the impugned notifications also create new obligations for the petitioner, in terms of recovery of amount already refunded. Thus, impugned notifications are not clarificatory in nature and create a new liability to be borne by the affected parties, as has been discussed extensively in [2.1].

Hence, in the present case, the amending Notification No. 26/2018 is liable to be struck down.

**[4.3] THE IMPUGNED NOTIFICATION VIOLATES ARTICLE 14 OF THE CONSTITUTION OF INDIA.**

Article 14 of the Constitution of India provides for equality which is one of the magnificent pillars of Indian democracy<sup>91</sup>. ‘Equality’ is the essence of democracy and, accordingly a basic feature of the Constitution<sup>92</sup>. This means that even a constitutional amendment offending the right to equality will be declared invalid<sup>93</sup>.

The fundamental rights which are guaranteed by Part III in favour of a person include natural as well as juristic persons<sup>94</sup>. Therefore, if any fundamental rights of a company is being violated, it can approach the court under its writ jurisdiction<sup>95</sup>.

As submitted before, Article 14 provides as a bulwark against any arbitrary or discriminatory state action. It has been held that non-application of mind is a facet of arbitrary exercise of power<sup>96</sup>. An amendment having retrospective operation which has the effect of taking away a benefit already available to the person under the existing rule is arbitrary, discriminatory and violative of the right guaranteed under Article 14 of the constitution<sup>97</sup>. Therefore, such retrospective rules are invalid when they take away such vested rights of the affected persons<sup>98</sup>.

In the present case, as already submitted above, the vested right of the petitioners to avail refund on unutilised ITC on accumulated input services has been curtailed by the retrospective application of Notification No. 21/2018-CT vide Notification No. 26/2018-CT. Such retrospective effect of taking away a benefit of availing the refund on unutilised ITC

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<sup>91</sup> *Indra Sawhney* (n 55).

<sup>92</sup> *M Nagaraj v Union of India* AIR 2007 SC 1.

<sup>93</sup> *Kesavananda Bharti v State of Kerala* AIR 1973 SC 1461.

<sup>94</sup> *Naresh Agarwal v Union of India and Ors* 2005 4 AWC 3745 All.

<sup>95</sup> *Jindal Stainless Ltd v State of Haryana* (2017) 12 SCC 1.

<sup>96</sup> *Onkar Lal Bajaj v Union of India* (2003) 2 SCC 673.

<sup>97</sup> *Chairman Railway Board v CR Rangadhamaiah* (1997) 6 SCC 623.

<sup>98</sup> *RS Ajara v State of Gujarat* (1997) 3 SCC 639.

accumulated on input services already available to the petitioner under the existing rule is arbitrary.

Therefore, it is humbly submitted that the Notification No. 26/2018-CT issued by the CBIC, giving retrospective effect to Notification No. 21/2018-CT, violates Article 14 of the Constitution of India. Thus, the Notification No. 26/2018-CT must be declared invalid and void.

**[4.4] THE IMPUGNED NOTIFICATION VIOLATES ARTICLE 19(1)(G) OF THE CONSTITUTION OF INDIA.**

Article 19(1)(g)<sup>99</sup> grants the freedom of trade and profession to all citizens of India, but subject to reasonable restrictions<sup>100</sup>. Such reasonable restrictions are laid down in Article 19(6) of the Constitution of India<sup>101</sup>, which states that the State may impose reasonable restrictions to the exercise of the freedom under Article 19(1)(g).

The SC has held that in cases of question as to whether excessive retrospective operation prescribed by a taxing statute amounts to the contravention of the citizens' fundamental right, they should take into account all the relevant and surrounding facts and circumstances in relation to the taxation<sup>102</sup>.

The GST is primarily an indirect tax, an indispensable feature of which is that the burden of payment is passed on to the consumer. When such a tax is imposed retrospectively, the past burden of payment cannot be passed on to the consumer, defeating the very purpose of levying an indirect tax.<sup>103</sup> Such a levy of tax would be excessively burdensome and would thus, result in a significant restriction on the practice of trade and commerce violating Article 19(1)(g). Also, such a restriction cannot be regarded as reasonable under Article 19(6) of the Constitution of India.

In the present case, the petitioner, as per the Rule 89(5) of CGST Rules which stood before the amendment, did not pass on the burden of tax paid on input services to the consumers due to the expectation that he will receive refund on unutilised ITC on accumulated input services. But, the Notification No. 26/2018-CT issued by the CBIC gave retrospective effect to Notification No. 21/2018-CT<sup>104</sup>, which restricted the refund due to the inverted duty structure

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<sup>99</sup> Constitution of India, art 19(1)(g).

<sup>100</sup> *State of Karnataka v Associated Management of English Medium Schools* AIR 2014 SC 2094.

<sup>101</sup> Constitution of India, art 19(1)(6).

<sup>102</sup> *JK Cotton Spinning & Weaving Mills Ltd v Union of India* AIR 1988 SC 191.

<sup>103</sup> Harish Salve, 'Retrospective Taxation – The Indian Experience.' (British Institute For International and Comparative Law) <[https://www.biicl.org/files/6722\\_panel\\_two\\_harish\\_salve.pdf](https://www.biicl.org/files/6722_panel_two_harish_salve.pdf)> accessed 25 January 2019.

<sup>104</sup> Moot Proposition, para 8.

from ITC availed on input and input services to inputs alone<sup>105</sup>, the petitioner was impaired of the right to get refund on unutilised ITC accumulated on input services, the burden of which now couldn't be passed on to the final consumers.

Such retrospective application created an excessive burden on the petitioner and defeated the very purpose of indirect taxation of passing on the burden to the consumers. This resulted in a significant restriction on the practice of trade and commerce of the petitioner thereby violating Article 19(1)(g) of the constitution.

It is contended that retrospective amendments in taxation laws would also point towards an unstable & uncertain tax system and certainty is an integral part of Rule of Law and is of utmost importance in any fiscal system in order to make rational economic choices in the most efficient manner<sup>106</sup>.

As stated above, retrospective amendments to taxation laws create a fiscal system which is unstable and uncertain. It is also not the intention of the legislature to enact such laws. In the present case, a notification amending Rule 89(5) of the CGST Rules, 2017 was given retrospective effect through the issuance of another notification on a later date. Such practices contribute to a very uncertain and unstable fiscal system, which prohibits making rational economic decisions in an effective manner. Such a fiscal environment would make it extremely difficult for organisations to function in a profitable manner and such restrictions cannot be said to be reasonable under Article 19(6) of the Constitution of India.

Therefore, it is humbly submitted that the Notification No. 26/2018-CT issued by the CBIC, giving retrospective effect to Notification No. 21/2018-CT, violates Article 19(1)(g) of the Constitution of India. Thus, the Notification No. 26/2018-CT must be declared invalid and void.

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**ISSUE 5: WHETHER THE ORDER FOR RECOVERY OF REFUND DATED 11.10.2018 IS  
VALID.**

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It is humbly contended before this Hon'ble High Court of Delhi that the order dated 11.10.2018 is not valid. This contention is sought to be proved by way of two-fold argument: [5.1] Principle of *Audi Alteram Partem* was not complied with and the procedure provided under S. 73 of CGST wasn't be adhered to, and [5.2] It violates Article 14, 19(1)(g) & 300A of the Constitution.

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<sup>105</sup> Moot Proposition, para 7.

<sup>106</sup> *Vodafone International Holdings BV v Union of India* (2012) 6 SCC 613.

***[5.1] PRINCIPLE OF AUDI ALTERAM PARTEM WAS NOT COMPLIED WITH AND THE PROCEDURE PROVIDED UNDER S. 73 OF CGST WASN'T ADHERED TO.***

The *audi alteram partem* rule ensures that no one should be condemned unheard<sup>107</sup>. It means that any person against whom an action is sought to be taken, or whose right or interest is being affected, should be given a reasonable opportunity to defend himself<sup>108</sup>.

A statute may specifically prescribe notice as a pre-condition to any action being taken under it. When such a requirement is expressly provided by the statute in question, it cannot be passed away<sup>109</sup>. Such requirement of notice must be strictly complied with.<sup>110</sup>

The Supreme Court quashing the demand for excise duty has held that when a notice needs to be given to the assessee before raising a demand of excise duty as per the statute, non-compliance of the same makes such demand void<sup>111</sup>.

Section 73(1)<sup>112</sup> of the Central Goods and Services Tax, 2017, states that if it appears to an officer that any tax has been erroneously refunded, he shall serve a notice on the person to whom the refund has been erroneously made. It further requires such person to show cause as to why he should not pay the amount specified in the notice.

In the present case, an order dated 11.10.2018 was issued on the petitioner under Section 73 of the CGST Act read with Maharashtra Goods and Service Tax Act, 2017 directing it to refund an amount of Rs. 2.5 crores pertaining to ITC on input services erroneously refunded<sup>113</sup>. The said order was made without issuance of any show cause notice to the petitioner as required under S. 73(1) violating the principle of *Audi Alteram Partem*. Hence, it is humbly submitted that the order dated 11.10.2018 is invalid and void.

***[5.2] IT VIOLATES ARTICLE 14, 19(1)(G) & 300A OF THE CONSTITUTION.***

It is contended that the Order dated 11.10.2018 violates Article 14, 19(1)(g) & 300A of the Constitution. This contention is sought to be proved by way of three-fold arguments: **[5.2.1]** It violates Article 14 of the Constitution, **[5.2.2]** It violates Article 19(1)(g) of the Constitution, and **[5.2.3]** It violates Article 300A of the Constitution.

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<sup>107</sup> *Maneka Gandhi* (n 58).

<sup>108</sup> *Syndicate Bank v General Secretary Syndicate Bank Staff Association* (2000) 5 SCC 65.

<sup>109</sup> *CATA Sales Co-operative Society v AP Government* AIR 1977 SC 2313.

<sup>110</sup> *Laxmi Narayan Anand Prakash v Commissioner of Sales* (1980) 26 STC 71 (All).

<sup>111</sup> *Golak Patel Volkart Ltd v Collector Central Excise* AIR 1987 SC 1161.

<sup>112</sup> CGST Act, s 73(1).

<sup>113</sup> Moot Proposition, para 9.

***[5.2.1] It violates Article 14 of the Constitution***

Article 14 of the Constitution of India provides for equality which is one of the magnificent corner-stones of Indian democracy<sup>114</sup>. It strikes at arbitrary actions of the state, both administrative and legislative<sup>115</sup>.

In the present case, as submitted before, the Notification No. 21/2018-CT dated 18.04.2018 amended Rule 89 (5) by providing refund of unutilised ITC only on inputs and not input services. The said amended Rule 89(5) is manifestly arbitrary as it excludes input services from the calculation of refund of ITC which is against the provisions of CGST Act and against its basic objective. Therefore, such arbitrary action of excluding refund of unutilised ITC accumulated from input services from Rule 89(5) is violative Article 14 of the Constitution of India. Hence, the order dated 11.10.2018 demanding refund of Rs. 2.5 Crores based on Notification No. 21/2018-CT dated 18.04.2018 is *ultra vires* to Article 14 of Constitution of India.

***[5.2.2] It violates Article 19(1)(g) of the Constitution***

Article 19(1)(g)<sup>116</sup> grants the freedom of trade and profession to all citizens of India, but subject to reasonable restrictions<sup>117</sup>. The GST is primarily an indirect tax, an indispensable feature of which is that the burden of payment is passed on to the consumer.

In the present case, the petitioner, as per the Rule 89(5) of CGST Rules which stood before the amendment, did not pass on the burden of tax paid on input services to the consumers due to the expectation that he will receive refund on unutilised ITC on accumulated input services. But, the Notification No. 26/2018-CT issued by the CBIC gave retrospective effect to Notification No. 21/2018-CT<sup>118</sup>, which restricted the refund on account of inverted duty structure from ITC availed on input and input services to inputs alone<sup>119</sup>, the petitioner was impaired of the right to get refund on unutilised ITC accumulated on input services, the burden of which now couldn't be passed on to the final consumers.

Such retrospective application created an excessive burden on the petitioner and defeated the very purpose of indirect taxation of passing the burden of indirect tax to the consumers. This resulted in a significant restriction on the practice of trade and commerce of the petitioner

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<sup>114</sup> *Indra Sawhney* (n 55).

<sup>115</sup> *Maneka Gandhi* (n 58).

<sup>116</sup> Constitution of India, art (19)(1)(g).

<sup>117</sup> *State of Karnataka v Associated Management of English Medium Schools* AIR 2014 SC 2094.

<sup>118</sup> Moot Proposition, para 8.

<sup>119</sup> Moot Proposition, para 7.

thereby violating the fundamental right of the petitioner as enshrined under Article 19(1)(g) of the constitution.

Hence, the order dated 11.10.2018 demanding refund of Rs. 2.5 Crores is *ultra vires* to Article 19(1)(g) of Constitution of India.

***[5.2.3] It violates Article 300A of the Constitution.***

Article 300A<sup>120</sup> provides that no person shall be deprived of his property save by authority of law. In the present case, ITC can be termed as property because it is as good as money, therefore, it falls under the definition of “property” in Article 300A.

In the present case, as submitted before, since unutilised ITC accumulated from input services is as good as money and can be termed as property, by way amendment to Rule 89(5) vide Notification No. 21/2018-CT dated 18.04.2018, the petitioner is denied the refund of such ITC without any authority of law depriving it of its property. Hence, the order dated 11.10.2018 demanding refund of Rs. 2.5 Crores is *ultra vires* to Article 300A of Constitution of India.

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<sup>120</sup> Constitution of India, art 300A.



**PRAYER FOR RELIEF**

Wherefore, it is humbly prayed to this Hon'ble court that in the light of issues raised, arguments advanced and authorities cited, this Hon'ble Court may be pleased to:

1. **DECLARE** that the present Writ Petition is maintainable in the Hon'ble High Court.
2. **ISSUE** a writ of certiorari, mandamus and/or any other writ, order or direction in the nature thereof and **QUASH** Notification No. 21//2018-CT, dated 18.04.2018 as being ultra vires the CGST Act and violative of Articles 14 and 300A of the Constitution of India.
3. **ISSUE** a writ of certiorari, mandamus and/or any other writ, order or direction in the nature thereof and **DECLARE** section 164(3) of the CGST Act as unconstitutional being violative of Articles 14, 19(1)(g) and 300A of the Constitution of India.
4. **ISSUE** a writ of certiorari, mandamus and/or any other writ, order or direction in the nature thereof and **QUASH** Notification No. 26/2018-CT, dated 13.06.2018 as being ultra vires the CGST Act and violative of Articles 14 and 19(1)(g) of the Constitution of India.
5. **ISSUE** a writ of certiorari, mandamus and/or any other writ, order or direction in the nature thereof and **QUASH** the order, dated 11.10.2018 as being violative of the principles of natural justice and violative of Articles 14, 19(1)(g) and 300A of the Constitution.

*And / Or pass any such order, direction or relief as it may deem fit in order to uphold the principles of justice, equity and good conscience.*

*And for this act of kindness, the petitioner shall forever humbly pray.*

**Sd/-**

Counsels for the Petitioner

*REMEMBERING S. P. SATHE*  
**THE 13<sup>TH</sup> NATIONAL MOOT COURT COMPETITION**  
**2018-19**



BEFORE THE HON'BLE  
HIGH COURT OF DELHI

UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

WRIT PETITION NO: \_\_\_\_\_/2019

IN THE MATTER OF

THOMAS LTD.  
(PETITIONER)

v.

UNION OF INDIA,  
COMMR. OF GST, MUMBAI,  
MINISTRY OF LAW & JUSTICE,  
CENTRAL GST COUNCIL.  
(RESPONDENTS)

UPON SUBMISSION TO THE HON'BLE CHIEF JUSTICE AND HIS COMPANION  
JUSTICES OF THE HON'BLE HIGH COURT OF DELHI

MEMORIAL FOR THE RESPONDENT

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<b>LIST OF ABBREVIATIONS</b>
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ABBREVIATION	ACTUAL TERM
&	And
AIR	All India Report
All	Allahabad
Anr	Another
Art	Article
Bom	Bombay
Cal	Calcutta
CCE	Commissioner of Central Excise
CGST	Central Goods & Service Tax
CIT	Commissioner of Income Tax
Commr	Commissioner
Comp Case	Company Cases
DB	Division Bench
Del	Delhi
edn	Edition
GST	Goods and Services Tax
Guj	Gujarat

HC	High Court
Hon'ble	Honorable
IGST	Integrated Goods & Services Tax
Ltd	Limited
Mad	Madras
No	Number
Ors	Others
Para	Paragraph
Para	Paragraph
Pvt	Private
	Rule
	Section
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reports
STC	Service Tax Cases
v	Versus
WP	Writ Petition

r  
s

## STATEMENT OF JURISDICTION

The Petitioner has moved to the Hon'ble High Court of Delhi under Article 226 of the Constitution of India, 1950. The Hon'ble High Court of Delhi has the jurisdiction to hear the instant matter.

### **Article 226 of the Constitution of India reads as:**

*“226. Power of High Courts to issue certain writs*

*(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.*

*(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.*

*(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without*

*(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and*

*(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated*

*(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32.”*

**[Objections to jurisdiction to be mentioned hereafter. Refer to petitioner memo.]**

**STATEMENT OF FACTS**



**ISSUES RAISED**

**ISSUE 1. WHETHER THE WRIT PETITION IS MAINTAINABLE UNDER BEFORE THE HIGH COURT OF DELHI.**

**ISSUE 2. WHETHER RULE 89(5) OF CGST RULES AS AMENDED VIDE NOTIFICATION NO. 21/2018-CT IS VALID.**

**ISSUE 3. WHETHER THE POWER OF THE GOVERNMENT TO AMEND RULES RETROSPECTIVELY UNDER SECTION 164(3) OF THE CGST ACT IS VALID.**

**ISSUE 4. WHETHER THE NOTIFICATION NO. 26/2018-CT WHICH GIVES RETROSPECTIVE EFFECT TO NOTIFICATION NO. 21/2018-CT IS VALID.**

**ISSUE 5. WHETHER THE ORDER FOR RECOVERY OF REFUND DATED 11.10.2018 IS VALID.**

**SUMMARY OF ARGUMENTS**

**ISSUE 1: WHETHER THE WRIT PETITION IS MAINTAINABLE UNDER BEFORE THE HIGH COURT OF DELHI.**

The present petition is not maintainable because...

*[Summarize arguments on this issue. Refer to petitioner memo.]*

**ISSUE 2: WHETHER RULE 89(5) OF CGST RULES AS AMENDED VIDE NOTIFICATION NO. 21/2018-CT IS VALID.**

Rule 89(5) of the Central Goods and Services Tax Rules, 2017 is valid because...

*[Summarize arguments on this issue. Refer to petitioner memo.]*

**ISSUE 3: WHETHER THE POWER OF THE GOVERNMENT TO AMEND RULES RETROSPECTIVELY UNDER SECTION 164(3) OF THE CGST ACT IS VALID.**

The power of the Government to amend rules retrospectively under section 164(3) of the Central Good and Services Tax Act, 2017 is valid because...

*[Summarize arguments on this issue. Refer to petitioner memo.]*

**ISSUE 4: WHETHER THE NOTIFICATION NO. 26/2018-CT WHICH GIVES RETROSPECTIVE EFFECT TO NOTIFICATION NO. 21/2018-CT IS VALID.**

Notification No. 26/2018-CT giving retrospective effect to Notification No. 21/2018-CT is valid because...

*[Summarize arguments on this issue. Refer to petitioner memo.]*

**ISSUE 5: WHETHER THE ORDER FOR RECOVERY OF REFUND DATED 11.10.2018 IS VALID.**

The order for recovery of refund dated 11.10.2018 is not valid as the principle of *Audi Alteram Partem* provided for under Section 73 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 was accounted for, since...

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*[Summarize arguments on this issue. Refer to petitioner memo.]*

Thus, in view of the aforementioned summarized contentions succinctly elaborated hereinbelow, no violation of Articles 14, 19(1)(g) and 300A of the Constitution is made out.

**ARGUMENTS ADVANCED**

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**ISSUE 1: WHETHER THE WRIT PETITION IS MAINTAINABLE UNDER BEFORE THE HIGH COURT OF DELHI.**

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It is humbly contended before the Hon'ble High Court of Delhi that the writ petition is not maintainable. This is because...

*[Detailed elucidation to follow, with relevant citations. Refer to petitioner memo]*

**ISSUE 2: WHETHER RULE 89(5) OF CGST RULES AS AMENDED VIDE NOTIFICATION NO.  
21/2018-CT IS VALID.**

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It is humbly contended before this Hon'ble High Court of Delhi that the Rule 89(5), as amended vide notification No. 21/2018-CT dated 18.04.2018 is valid because...

*[Detailed elucidation to follow, with relevant citations. Refer to petitioner memo]*

**ISSUE 3: WHETHER THE POWER OF THE GOVERNMENT TO AMEND RULES RETROSPECTIVELY UNDER SECTION 164(3) OF THE CGST ACT IS VALID.**

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It is humbly contended before the Hon'ble High Court of Delhi that the power given under S. 164(3) to amend rules retrospectively is valid, because...

*[Detailed elucidation to follow, with relevant citations. Refer to petitioner memo]*

**ISSUE 4: WHETHER THE NOTIFICATION NO. 26/2018-CT WHICH GIVES RETROSPECTIVE EFFECT TO NOTIFICATION NO. 21/2018-CT IS VALID.**

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It is humbly contended before the Hon'ble High Court of Delhi that the Notification No. 26/2018-CT giving retrospective effect to Notification No. 21/2018-CT is valid, because...

*[Detailed elucidation to follow, with relevant citations. Refer to petitioner memo]*

**ISSUE 5: WHETHER THE ORDER FOR RECOVERY OF REFUND DATED 11.10.2018 IS  
VALID.**

---

It is humbly contended before this Hon'ble High Court of Delhi that the order dated 11.10.2018 is valid, because...

*[Detailed elucidation to follow, with relevant citations. Refer to petitioner memo]*



**PRAYER FOR RELIEF**

Wherefore, it is humbly prayed to this Hon'ble court that in the light of issues raised, arguments advanced and authorities cited, this Hon'ble Court may be pleased to:

*[Relevant prayers to be made. Refer to petitioner memo]*

*And / Or pass any such order, direction or relief as it may deem fit in order to uphold the principles of justice, equity and good conscience.*

*And for this act of kindness, the respondent shall forever humbly pray.*

**Sd/-**

Counsels for the Respondent